

**Worksession**

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

January 26, 2022

TO: Planning, Housing, and Economic Development (PHED) Committee

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 21-09, Office and Professional – Biohealth Priority Campus

**Expected Participants**

- Casey Anderson, Chair, Montgomery County Planning Board
- Gwen Wright, Director, Planning Department
- Robert Kronenberg, Deputy Director, Planning Department
- Jason Sartori, Chief, Countywide Planning and Policy, Planning Department
- Benjamin Berbert, Planner Coordinator, Countywide Planning and Policy, Planning Department
- Ehsan Motazedi, Deputy Director, Department of Permitting Services (DPS)
- Victor Salazar, Division Chief, Zoning, Well & Septic and Code Compliance, DPS
- Mark Beall, Zoning Manager, Division of Zoning, Well & Septic and Code Compliance, DPS

**Summary**

Zoning Text Amendment (ZTA) 21-09, Office and Professional – Biohealth Priority Campus, lead sponsor Councilmember Friedson, co-sponsors Councilmember Riemer, then-Council President Hucker, Council President Alborno, Councilmembers Navarro, Katz, Glass, Jawando, and Rice was introduced on October 19, 2021. A public hearing was held on November 30, 2021 with twelve speakers

ZTA 21-09 will create a definition for a Biohealth Priority Campus, which will include Life Sciences under Section 3.5.8, Research and Development under Section 3.5.8, or Medical/Scientific Manufacturing and Production under Section 3.6.4.D. This new use will provide a speedier regulatory process for biohealth facilities of 150,000 square feet or more or existing biohealth facilities already located in the County that are expanding by 50,000 square feet or more. As introduced, this new use will be allowed in the Commercial/Residential and

Employment Office zones; and be for developments within or adjacent to a red policy area, within an opportunity zone, or within ½ mile of a planned or existing Bus Rapid Transit route.

The intent of ZTA 21-09 is to build on the Planning Department’s recent *Speed to Market* efforts and serve as an important economic development tool to attract and retain biohealth companies and continue to build the County’s reputation as a leader in the biotech arena.

## **Public Hearing**

A public hearing was held on November 30, 2021. Twelve speakers testified in support of ZTA 21-09, primarily from the bio-sciences industry. While in support, a few minor concerns were noted:

- The Planning Board testified that the Planning Department may need additional resources to implement this ZTA. Several speakers supported this request.
- Speakers testified against any amendment that would remove Opportunity Zones or Bus Rapid Transit (BRT) routes and requested that the Corridor Cities Transitway (CCT) be included.
- Speakers asked that no additional processing time be added.
- Speakers requested that multiple users be allowed on an application.

Written testimony echoed the testimony during the public hearing.

## **Planning Board**

The Planning Board recommended approval of ZTA 21-09. However, as noted during the public hearing, the Board expressed concerns about having adequate resources. In addition, Planning Board made the following comments:

1. That it is important to make sure applicants are acting in good faith and will also be held to measured and meaningful timelines throughout the process, with an opportunity for extensions.
2. Pre-submission meetings will be important and can be done through the existing Development Review Committee to flag any issues of concern before an application is filed.
3. The Planning Department should be given lead-agency authority to streamline the process.

Planning Staff recommended several amendments, which are discussed further below.

## **Discussion**

### *Elements of the ZTA*

ZTA 21-09 modifies 7 different sections of the Zoning Ordinance. First, the ZTA creates a definition for Biohealth Priority Campus (hereinafter referred to as “BPC”) and adds it to the Commercial Uses under “Office and Professional.” The Use Table will also be amended, to allow this new use as a limited use in the CR and EOF zones. This use will be defined by the following:

- the headquarters or other primary place of business of a single commercial or industrial organization, including ancillary uses
- that includes at least 150,000 square feet of new space to be constructed or 50,000 square feet of new space to be added to an existing building or group of buildings
- that qualifies as a Life Sciences or Research and Development Use or as a Medical/Scientific Manufacturing and Production Use
- is located on property within a red policy area, within an opportunity zone, or within ½ mile of a planned or existing Bus Rapid Transit route including the Corridor Cities Transitway.

A sketch plan and a site plan will not be required for a BPC project. However, the standards of the underlying zone will still apply. As for use standards, residential FAR limits may be reallocated to commercial FAR, and FAR averaging may be utilized. A mechanical penthouse and roof structures may occupy 50% of the roof area.

The bulk of ZTA 21-09 is in a new section—Section 7.3.6. “Biohealth Priority Campus Plan”. It includes the following sections with the following additions of note:

- A. *Applicability and description*—BPC plans may be single- or multi-phase projects. The plan may encompass all or part of a property on which a BPC is located.
- B. *Application requirements*—An applicant must be the owner of the property or be authorized by the owner to file the application. The application requirements are similar to that of a site plan. However, the Planning Department must review the submitted plan for completeness within 3 days of receipt. If revisions are necessary, the revised application must be reviewed for completeness within 2 days.
- C. *Hearing date*—The Planning Board must schedule a public hearing within 60 days of application acceptance. The applicant may request an extension with Planning Director approval.
- D. *Review and recommendation*—Reviewing agencies will have 15 days to submit comments. The applicant will be required to submit revised drawings to address the comments 20 days before the hearing, a deadline the Planning Director may extend by 5 days’ written request. The Planning Director must submit a report and recommendation at least 10 days before the Planning Board hearing.
- E. *Necessary findings*—The Planning Board must make findings similar to that of a site plan. However, an application is exempt from the staging requirements of Non-Auto Driver Mode Share (NADMS) if the applicant enters a Transportation Demand Management plan; parking below the minimum required is provided; and the applicant can show that transit, bicycle, and pedestrian infrastructure is funded.<sup>1</sup>

---

<sup>1</sup> NADMS calculates the percentage of commuters who travel to their worksite by means other than single-occupant vehicle. Transportation demand management (TDM) means any method of reducing demand for road capacity, especially during a peak period, including an alternative work hours program, carpools, vanpools, subsidized transit passes, preferential parking for carpools or vanpools, improved bicycle and pedestrian access and safety, public transportation, and a parking charge, or other parking management strategies. A TDM plan means a set of strategies designed to implement TDM for a new or existing building, a new or existing development project, or an employer.

- F. *Decision*—The Planning Board must issue its decision within 7 days of the vote. Within 30 days of submission, the Planning Director must certify the final BPC plans.
- G. *Conforming permits*—DPS will not be able to issue permits unless the Planning Board has approved the BPC plan and a bond has been approved, as is standard with most regulatory approvals.
- H. *Duration of approval*—A BPC plan expires unless the plan is approved by the Planning Director within 24 months of the resolution being mailed. It does not become effective until a record plat, if required, is recorded. The applicant must have a building permit application accepted by DPS within 2 years of the date of the Planning Board resolution, that includes the core and shell of the principal building. Planning Board may approve extensions.
- I. *Recording procedures*—The Planning Department must maintain the plan and resolution in its permanent files.
- J. *Amendments*—Amendments are divided into major and minor. A major amendment must follow the same hearing procedures as the original BPC plan, but a minor amendment may be approved by the Planning Director without a public hearing if no relevant objection is received.
- K. *Compliance and enforcement*—If a property under development is not in compliance with the BPC plan, the Planning Board may: impose a civil fine or penalty; suspend or revoke the non-compliant portion of the BP plan approval; order a compliance program; or allow the applicant to propose modification.

Lastly, ZTA 21-09 updates the notice table. A BPC plan will require full noticing, similar to that of a site plan or a Signature Business Headquarters plan.

## Proposed Amendments

Council Staff recommends the following amendments:<sup>2</sup>

- Planning notes that use of the term “adjacent” in order to define where a BPC can be located is too broad. Council Staff agrees. The Zoning Ordinance defines “adjacent” as “being close to or nearby without requiring the sharing of a common boundary.” Planning suggests “abutting or confronting”, which are defined as sharing a property line or across a right-of-way less than 80 feet, respectively. However, given the fact that ZTA 21-09’s intent is to encourage campuses, Council Staff recommends:
  - is located on property within ||or adjacent to ||a red policy area including contiguous properties separated from a red policy area only by a public right-of-way;  
within an opportunity zone including contiguous properties separated from an opportunity zone only by a public right-of-way[.]; or  
 [Line 33]

---

<sup>2</sup> Minor formatting and clarifying amendments, such as specifying that “days” should be “business days”, are not listed in this memorandum but can be reviewed in the draft of ZTA 21-09 attached to this packet.

- Planning recommends removing opportunity zones and BRT routes from ZTA 21-09 in order to focus the ZTA on urban areas and reduce the number of applications that must be processed. Public testimony was strongly against this amendment. In addition, Councilmember Craig Rice has submitted comments encouraging the Committee to not omit these important areas of the County.<sup>3</sup> Given the public testimony and the support of Councilmembers, rather than removing opportunity zones and BRT routes, Council Staff recommends adding the CCT.
  - within ½ mile of a planned or existing Bus Rapid Transit route including the Corridor Cities Transitway.  
[Line 39]
- Planning recommends clarifying that the overlay zones are included in addition to the underlying zone. Council Staff agrees and recommends clarifying the hearing and review schedule of those sections will still apply.
  - Development of a Biohealth Priority Campus should proceed under the standards of Chapter 50 and the underlying zone, including any overlay zones, [[and Chapter 50, ]]except as modified by Section 3.5.8.E. and in conformance with the hearing and review schedule in Sections 7.3.6.C and 7.3.6.D,  
[Line 45]
- Planning recommends clarifying that residential FAR may be reallocated to commercial FAR, but not the other way around; that the mapped height should not be exceeded; and that the mechanical penthouse and roof structure standards are per building.
  - a. [[Commercial and residential]]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 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.  
[Line 55]
- Planning Staff recommends a vicinity map be required as part of the application. These maps help reviewers and the public easily see where an application is located. Council Staff included this requirement in the same section as a site map, rather than make it a separate section. Otherwise, Council Staff also recommends including a vicinity map.
  - a vicinity map at 1" = 200", and a site map showing existing buildings, structures, circulation routes, significant natural features, historic resources, and zoning and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;  
[Line 227]

---

<sup>3</sup> This letter is included in this packet at ©50.

- Planning recommends additional requirements for submitted drawings, including height and massing for on-site and adjacent off-site buildings. While Council Staff agrees with adding some additional requirements, Council Staff notes that requiring exact height and massing for off-site buildings could be difficult for the applicant, as they are not the property owner for those buildings. Therefore, Council Staff recommends the following:
  - use[, footprints,]]and ground-floor layout, building footprints, massing, and heights of all on-site buildings and structures, and approximate footprints and height for abutting and confronting off-site buildings;  
[Line 258]
- Planning recommends that the hearing date be “after 60 days” rather than “within 60 days”, in case the 60 days falls on a holiday or other day when a Planning Board hearing is cancelled. Council Staff does not recommend this amendment, since as written it could give Planning any amount of time over 60 days, which contradicts with ZTA 21-09’s goal of expediting the review process. However, acknowledging the concern that Planning should not lose review time due to holidays, Council Staff recommends adding:
  - If the next regularly scheduled hearing date would fall after the 60-day period due to a holiday or Council recess, then the next regularly scheduled hearing date should be used.  
[Line 287]
- Planning recommends the applicant submit revised drawings to address State and County agencies’ and utilities’ comments 25 days before the hearing, instead of 20 days. This gives Planning Staff sufficient time to review the revisions, including finalizing conditions with internal and external reviewers. Council Staff agrees with this recommendation, given staff reports must be posted 10 days before the hearing.
  - The applicant must submit revised drawings to address the comments a minimum of ~~[[20]]25~~ days before the date of the hearing.  
[Line 300]
- Planning recommends the Planning Director be given discretion to reject certified plans that do not address or comply with the Planning Board’s approval, with comments for the applicant to address.
  - Within 30 days of submission, the final Biohealth Priority Campus plans must be certified by the Planning Director to confirm that the drawings reflect the Planning Board’s approval. If the certified plans do not address or comply with the Planning Board’s approval, the plans will be rejected with comments for the applicant to address.  
[Line 359]
- Planning recommends that if an applicant fails to comply with deadlines in the “Duration of Approval” section, the applicable approval should be revoked. Council Staff does not recommend this amendment. Read as a whole, the effect would be that an applicant who completed the entire BPC approval process and missed the deadline by even a day would need to start the entire process over again. This would be a waste of both applicant and staff time. However, Council Staff agrees that language should be included that clarifies

what happens when an applicant fails to meet a deadline. Council Staff recommends the below language:

- If an applicant fails to comply with any of the deadlines within this section, the Planning Board must order the applicant to appear before the Planning Board in a public hearing and demonstrate why the Biohealth Priority Campus plan approval should not be revoked.  
[Line 393]
- Planning recommends a minor amendment be limited to an increase in density up to 10%, rather than 25%, or 15,000 square feet. These numbers are comparable to the Signature Business Headquarters provisions.
  - A minor amendment includes any request to:
    - i. increase density by up to ~~[[25%]]10%~~ or 15,000 square feet, provided the increase is less than or equal to the total mapped density, including any density increases or bonuses;  
[Line 417]

Council Staff **does not recommend** the following amendments proposed by the Planning Department:

- Planning recommends requiring an applicant to submit a concept plan to the Planning Director, to be reviewed by applicable State and County agencies and utilities. The concept plan submittal would include any applicable Traffic Statement or Traffic Study, and agencies would be required to must submit comments within 15 days after the date the concept plan is accepted. Council Staff does not recommend approval of this amendment since it conflicts with the overall goal of creating an expedited approval process.
- Planning recommends that an applicant submit final plans to the Planning Director within 35 days of issuance of the Planning Board resolution. Council Staff does not recommend approval of this amendment because situations could arise where an applicant cannot meet that deadline due to issues outside of the applicant's control, such as obtaining easements from the County or conditions of approval from utilities or other agencies. Council Staff recognizes the intent of this provision was to make sure an applicant did not make Planning go through this expedited process, only to sit on the Planning Board resolution. However, given all the conditions and requirements an applicant may have to fulfill before submitting the final plan to be certified, the appropriate number of days is difficult to determine. One alternative is for Planning Staff to require regular check-ins on the status of the final plans.

## **RESJ Impact Statement**

The Office of Legislative Oversight (OLO) submitted a Racial Equity and Social Justice (RESJ) impact statement on December 2, 2021. The RESJ impact statement notes that historically inequitable policies have fostered racial and ethnic inequities in economic development among business owners and employees. Relevant to this ZTA, the RESJ impact statement notes that the biohealth industry is seriously underrepresented by Black, Latinx, and Indigenous people, especially at the executive level. These disparities are significant, given the high wages in the

biohealth industry, and the size of the industry itself, especially in Montgomery County. OLO recommends several amendments to reduce the effects of these disparities, including:

- Enter into community benefit agreements
- Invest in biohealth workforce development opportunities for BIPOC residents
- Invest in underrepresented BIPOC small businesses
- Locate biohealth campuses in BIPOC communities

Council Staff acknowledges that many of these suggested amendments cannot be written into the Zoning Ordinance. However, if Montgomery County is going to continue to encourage biohealth companies to locate in Montgomery County, then additional steps must be taken to ensure that the effects of attracting an industry that has historically exacerbated racial and ethnic inequities are ameliorated. This can include focusing workforce initiatives on increasing diversity within the biohealth industry, encouraging the companies themselves to invest in such programs, or focusing on industries that are more representative of the County's residents.

This packet contains:

ZTA 21-09

Planning Board recommendation

Planning Staff memorandum

Map of affected areas

Written testimony

Councilmember Rice letter

Pages

© 1

© 26

© 28

© 42

© 43

© 50

Zoning Text Amendment No.: 21-09  
Concerning: Office and Professional –  
Biohealth Priority  
Campus  
Draft No. & Date: 2 – 1/24/2022  
Introduced: October 19, 2021  
Public Hearing: November 30, 2021  
Adopted:  
Effective:  
Ordinance No.:

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

---

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

---

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

- create a Biohealth Priority Campus use; and
- provide a process for approval of a Biohealth Priority Campus.

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

DIVISION 1.4.	“DEFINED TERMS”
Section 1.4.2.	“Specific Terms and Phrases Defined”
DIVISION 3.1.	“USE TABLE”
Section 3.1.6.	“Use Table”
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”
Section 4.5.4.	“Optional Method Development”
DIVISION 4.6.	“EMPLOYMENT ZONES”
Section 4.6.2.	“Density and Height Allocation”
Section 4.6.4.	“Optional Method Development”
DIVISION 7.3.	“REGULATORY APPROVALS”
Section 7.3.3.	“Sketch Plan”
DIVISION 7.5.	“NOTICE STANDARDS”
Section 7.5.1.	“Noticed Required”

And by adding the following section:

Section 7.3.6.            “Biohealth Priority Campus Plan”

**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 59-1.4 is amended as follows:**

**Division 1.4. Defined Terms**

\* \* \*

**Section 1.4.2. Specific Terms and Phrases Defined**

\* \* \*

Biohealth Priority Campus: See Section 3.5.8.E

\* \* \*

**Sec. 2. DIVISION 59-3.1 is amended as follows:**

**Division 3.1. Use Table**

\* \* \*

**Section 3.1.6. Use Table**

The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.

15

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential				Residential												Commercial / Residential			Employment				Industrial		
							Residential Detached								Residential Townhouse			Residential Multi-Unit										
		AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC	EOF	IL	IM	IH
* * *																												
COMMERCIAL																												
* * *																												
Office and Professional	3.5.8																											
Life Sciences	3.5.8.A																						P					
Office	3.5.8.B								C	C	C							P	P	P	P	P	L	P	L	L		
Research and Development	3.5.8.C																		P	P			P	L	P	P		
Signature Business Headquarters	3.5.8.D																			L								
Biohealth Priority Campus	3.5.8.E																			L				L				
* * *																												

16

**Sec. 3. Division 3.5 is amended as follows:**

**Division 3.5. Commercial Uses**

\* \* \*

**Section 3.5.8. Office and Professional**

\* \* \*

**E. Biohealth Priority Campus**

**1. Defined**

Biohealth Priority Campus means the headquarters or other primary place of business of a single commercial or industrial organization, including ancillary uses, that includes at least 150,000 square feet of new space to be constructed or 50,000 square feet of new space to be added to an existing building or group of buildings:

- a. that qualifies as a Life Sciences or Research and Development Use under Section 3.5.8 or as a Medical/Scientific Manufacturing and Production Use under Section 3.6.4.D; and
- b. is located on property:
  - i. within [[or adjacent to ]]a red policy area including contiguous properties separated from a red policy area only by a public right-of-way;
  - ii. within an opportunity zone including contiguous properties separated from an opportunity zone only by a public right-of-way[[,]]; or
  - iii. within ½ mile of a planned or existing Bus Rapid Transit route including the Corridor Cities Transitway.

**2. Exemptions**

- a. A sketch plan and a site plan are not required for a Biohealth Priority Campus if the Planning Board approves a Biohealth Priority Campus plan under Section 7.3.6.
- b. Development of a Biohealth Priority Campus should proceed under the standards of Chapter 50 and the underlying zone, including any overlay zones, ~~and Chapter 50,~~ except as modified by Section 3.5.8.E. and in conformance with the hearing and review schedule in Sections 7.3.6.C and 7.3.6.D.
- c. After a Biohealth Priority Campus Plan is approved, subsequent additions or expansions of the Biohealth Priority Campus, in any size or amount, will be processed under Section 7.3.6 as amendments.

### **3. Use Standards**

- a. ~~Commercial and residential~~ 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 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.

\* \* \*

## **Sec. 4. DIVISION 59-4.5 is amended as follows:**

### **Division 4.5. Commercial/Residential Zones**

**Section 4.5.2. Density and Height Allocation**

**B. FAR Averaging**

1. Only standard method development projects that require site plan approval or optional method development projects can average FAR between properties.
2. FAR may be averaged over 2 or more directly abutting or confronting properties in one or more Commercial/Residential zones[,] if:
  - a. the properties are under the same site plan, sketch plan, [or] Signature Business Headquarters plan, or Biohealth Priority Campus plan; however, if a sketch plan, [or] Signature Business Headquarters plan, or Biohealth Priority Campus plan is required, density averaging must be shown on the applicable plan;
  - b. the resulting properties are created by the same preliminary subdivision plan or satisfy a phasing plan established by an approved sketch plan, [or] Signature Business Headquarters plan, or Biohealth Priority Campus plan;
  - c. the maximum total, nonresidential, and residential FAR limits apply to the entire development, not to individual properties;
  - d. the total allowed maximum density on a resulting property that is abutting or confronting a property in an Agricultural, Rural Residential, or Residential Detached zone that is vacant or improved with an agricultural or residential use does not exceed that allowed by the property's zone; and

- e. public benefits are required to be provided under any phasing element of an approved sketch plan, [or] Signature Business Headquarters plan, or Biohealth Priority Campus plan.
3. Density may be averaged over 2 or more non-contiguous properties in one or more CRT or CR zones[,] if:
  - a. [Each] each provision under Section 4.5.2.B.2 is satisfied;
  - b. [The] the properties are within ¼ mile of each other, located in a designated master-planned density transfer area, or are part of a Signature Business Headquarters plan or Biohealth Priority Campus plan;
  - c. [The] the minimum public benefit points required under Section 4.5.4.A.2 must be exceeded by at least 50%; and
  - d. [The] the applicable master plan does not specifically prohibit the averaging of density between non-contiguous properties.
4. If the Planning Board approves a site plan [or], Signature Business Headquarters plan, or Biohealth Priority Campus plan for a development project using FAR averaging across two or more lots, the maximum density on certain lots in the development project will be less than or greater than the zone allows, as indicated in the applicable plan. To provide additional notice of the FAR averaging, before the Planning Board approves a certified site plan [or], certified Signature Business Headquarters plan, or Biohealth Priority Campus plan for such a project or, if plat approval is required, before plat approval, the applicant must state the gross square footage taken from any lot with reduced density in an instrument approved by the Planning Board and must record the instrument in the Montgomery County land records.

\* \* \*

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

The CRT and CR zones allow development under the optional method.

#### **A. General Requirements**

##### **1. Procedure for Approval**

A sketch plan must be approved under Section 7.3.3, unless a Signature Business Headquarters plan is approved under Section 7.3.5 or a Biohealth Priority Campus plan is approved under Section 7.3.6.

A site plan must be approved under Section 7.3.4 for any development on a property with an approved sketch plan.

\* \* \*

#### **Sec. 5. DIVISION 59-4.6 is amended as follows:**

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

\* \* \*

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

\* \* \*

#### **B. FAR Averaging**

1. Only standard method development projects that require site plan approval or optional method development projects can average FAR between properties.
2. FAR may be averaged over 2 or more directly abutting or confronting properties in one or more Employment zones[,] if:
  - a. the properties are under the same site plan, [or] sketch plan, or Biohealth Priority Campus plan; however, if a sketch plan or Biohealth Priority Campus plan is required, density averaging must be shown on the [sketch] applicable plan;

b. the resulting properties are created by the same preliminary subdivision plan or satisfy a phasing plan established by an approved sketch plan or Biohealth Priority Campus plan;

\* \* \*

e. public benefits are required to be provided under the phasing element of an approved sketch plan or Biohealth Priority Campus plan.

3. Density may be averaged over 2 or more non-contiguous properties in one or more LSC or EOF zones[,] if:

a. [~~Each~~] each provision under Section 4.6.2.B.2 is satisfied;

b. [~~The~~] the properties are within ¼ mile of each other or in a designated master-planned density transfer area or part of a Biohealth Priority Campus plan;

c. [~~The~~] the minimum public benefit points required under Section 4.6.4.A.2 [~~must be~~] are exceeded by at least 50%; and

d. [~~The~~] the applicable master plan does not specifically prohibit the averaging of density between non-contiguous properties.

4. If the Planning Board approves a site plan or Biohealth Priority Campus plan for a development project using FAR averaging across two or more lots, the maximum density on certain lots in the development project will be less than or greater than the zone allows, as indicated in the [~~site~~]applicable plan. To provide additional notice of the FAR averaging, before the Planning Board approves a certified site plan or certified Biohealth Priority campus plan for such a project or, if plat approval is required, before plat approval, the applicant must state the gross square footage taken from any lot with reduced

density in an instrument approved by the Planning Board and must  
record the instrument in the Montgomery County land records.

\* \* \*

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

The LSC and EOF [zone]zones allow development under the optional method.

#### **A. General Requirements**

##### **1. Procedure for Approval**

A sketch plan must be approved under Section 7.3.3 or a Biohealth  
Priority Campus plan must be approved under Section 7.3.6. A site  
plan must be approved under Section 7.3.4 for any development on a  
property with an approved sketch plan.

\* \* \*

#### **Sec. 6. DIVISION 59-7.3 is amended as follows:**

#### **Division 7.3. Regulatory Approvals**

\* \* \*

#### **Section 7.3.3. Sketch Plan**

#### **A. Applicability and Description**

1. Development under optional method in the CRT, CR, EOF, or LSC  
zone requires approval of a sketch plan, [or]unless the development is  
approved as a Signature Business Headquarters plan[.]]under Section  
7.3.5 or Biohealth Priority Campus plan under Section 7.3.6.

\* \* \*

#### **Section 7.3.6. Biohealth Priority Campus Plan**

#### **A. Applicability and Description**

1. A Biohealth Priority Campus plan provides a detailed overview of a  
proposed Biohealth Priority Campus. A Biohealth Priority Campus  
plan review will be used to determine if the proposed development

satisfies current laws, regulations, and this Chapter, and substantially conforms with the intent of the applicable master plan and approved guidelines.

2. A Biohealth Priority Campus plan may be phased, with each phase approved separately under this section.

3. A Biohealth Priority Campus plan may encompass all or part of any property on which the Biohealth Priority Campus will be located and must demonstrate its relation to and coordination with other applicable approvals or submittals. Any amendment to a previously approved plan may follow the timeframe for review under Section 7.3.6.B.3 through Section 7.3.6.B.6, Section 7.3.6.C, and Section 7.3.6.D.

## **B. Application Requirements**

### **1. Ownership**

a. An applicant must own the subject property or be authorized by the owner to file the application.

b. If any land or right-of-way encompassed by a Biohealth Priority Campus plan application is owned or controlled by the State, County, or any other entity or agency, a written agreement or authorization from that entity or agency must be submitted with the Biohealth Priority Campus plan application.

### **2. A Biohealth Priority Campus plan application must include:**

a. a legally binding commitment or other evidence accepted by the Planning Director that the Biohealth Priority Campus will meet the requirements of Section 3.5.8.E.1[[]];

b. an application form and fees required by the Planning Director;

- c. a vicinity map at 1" = 200", and a site map showing existing buildings, structures, circulation routes, significant natural features, historic resources, and zoning and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;
- d. a list of abutting and confronting property owners in the [[County]] State tax records;
- e. a list of any civic, homeowners, and renters associations that are registered with the Planning Department and located within ½ mile of the site;
- f. documentation of property interest in the proposed development site under Section 7.3.6.B.1 and, if applicant is not the property owner, documentation from the property owner authorizing the application;
- g. a statement of justification outlining how the proposed development satisfies the standards and criteria required to grant the application;
- h. verification that the applicant has posted notice on the property, notified affected properties, and held a pre-submittal community meeting that followed the Planning Department's Administrative Procedures for Development Review process;
- i. a Traffic Statement or Study accepted by the Planning Director, if not submitted with a previous or concurrent application;
- j. environmental documentation or exemption for:
  - i. an approved Natural Resources Inventory/Forest Stand Delineation;

- ii. a Stormwater Management Concept Application or, if required, a Water Quality Plan Application; and
    - iii. a final Forest Conservation Plan application;
  - k. existing and proposed dry and wet utility plan;
  - l. plans of proposed development showing:
    - i. use[, footprints,] ground-floor layout, building footprints, massing, and heights of all on-site buildings and structures, and approximate footprints and height for abutting and confronting off-site buildings;
    - ii. required open spaces and recreational amenities;
    - iii. detailed layout and dimensions for all sidewalks, trails, paths, roadways, parking, loading, and bicycle storage areas;
    - iv. grading;
    - v. landscaping and lighting; and
  - m. a development program and inspection schedule detailing the construction schedule for the project.
- 3. The applicant must submit an initial application to the Planning Director for approval of completeness. The Planning Director must review the application for completeness within 3 business days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale or lacks proper signatures. The assessment of completeness must not address the merits of the application.
- 4. The applicant must submit any required revisions to the Planning Director. The Planning Director must review the revised application for completeness within 2 business days after receipt.

5. [[After]]Once the Planning Director verifies that the application is complete, the applicant must file the final application with the Planning Director, who will accept the application and establish a hearing date under Section 7.3.6.C.
6. Public notice is required under Division 7.5.

**C. Hearing Date**

The Planning Board must schedule a public hearing to begin within 60 days after the date an application is accepted. If the next regularly scheduled hearing date would fall after the 60-day period due to a holiday or Council recess, then the next regularly scheduled hearing date should be used. The applicant may request an extension with Planning Director approval. Any extension of the public hearing must be noticed on the hearing agenda with the new public hearing date indicated.

**D. Review and Recommendation**

1. State and County Agencies

- a. Reviewing State and County agencies and utilities must submit comments within 15 days after the date an application is accepted. If no comments are submitted within that time, the reviewing agency or utility's portion of the application is deemed approved.

- b. The applicant must submit revised drawings to address the comments a minimum of [[20]]25 days before the date of the hearing. The Planning Director may extend the deadline if the applicant submits a written request within 5 days after the revised drawings were due.

2. Planning Director

The Planning Director must publish a report and recommendation a minimum of 10 days before the Planning Board hearing.

3. Withdrawal of an Application

The Planning Board must send a notice to all parties entitled to notice of the hearing when an applicant withdraws an application for a Biohealth Priority Campus plan.

**E. Necessary Findings**

1. When reviewing an application, the approval findings apply only to the site covered by the application.

2. To approve a Biohealth Priority Campus plan, the Planning Board must find that the proposed development:

a. satisfies any previous approval that applies to the site, unless exempt under Section 3.5.8.E.2 or amended;

b. satisfies the applicable use and development standards and general requirements of this Chapter;

c. satisfies the applicable requirements of Chapter 19 and Chapter 22A;

d. provides safe, well-integrated parking, circulation patterns, building massing, and site amenities;

e. substantially conforms with the intent of the applicable master plan, existing and approved or pending adjacent development, the requirements of this chapter, and any guidelines approved by the Planning Board that implement the applicable plan;

[[f. will be located within or adjacent to a red policy area, within an opportunity zone, or within ½ mile of a planned or existing Bus Rapid Transit route]]

[[g.]]f. if on a property in a master plan area that requires staging based on Non-Auto Driver Mode Share (NADMS), is exempt from the staging requirement if:

- i. the applicant agrees to enter into a [[traffic mitigation agreement]]Transportation Demand Management plan that provides an action plan for substantial achievement of the applicable NADMS goal;
- ii. parking below the minimum required under Section 6.2.4 is provided; and
- iii. transit, bicycle, and pedestrian infrastructure required by the applicable stage of the master plan is funded in the Capital Improvements Program or Consolidated Transportation Program, or provided by the applicant; and

[[h.]]g. will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

## **F. Decision**

- 1. The Planning Board must act upon the close of the record of the public hearing by majority vote of those present at the public hearing to approve, approve with modifications or conditions, or deny the application. The Planning Board must issue a resolution reflecting its decision within 7 days of the Planning Board vote.
- 2. Any party aggrieved by a decision of the Planning Board may file a petition for judicial review of the decision within 30 days after the Planning Board's action[[ to the Circuit Court and thereafter to the Court of Special Appeals.]]

3. Within 30 days of submission, the final Biohealth Priority Campus plans must be certified by the Planning Director to confirm that the drawings reflect the Planning Board’s approval. If the certified plans do not address or comply with the Planning Board’s approval, the plans will be rejected with comments for the applicant to address. If no action is taken by the Planning Director within 30 days, the plan is deemed approved and certified.

**G. Conforming Permits**

For any development requiring a Biohealth Priority Campus plan, DPS must not issue a sediment control permit, building permit, or use-and-occupancy permit for any building, structure, or improvement unless the Planning Board has approved a Biohealth Priority Campus plan and a bond has been approved under Section 7.3.6.K.4.

**H. Duration of Approval**

1. A Biohealth Priority Campus plan expires unless a certified Biohealth Priority Campus plan is approved by the Planning Director within 24 months after the date the resolution is mailed.
2. A Biohealth Priority Campus plan does not become effective until a record plat, [[if otherwise needed]]if required, is recorded that satisfies any approved subdivision plan for the subject property. If no record plat is [[needed]]required, then the Biohealth Priority Campus plan becomes effective upon certification under Section 7.3.6.F.3.
3. Development activities under Section 7.3.6 must satisfy the certified Biohealth Priority Campus plan and any conditions of approval.
4. If the Planning Board approves a Biohealth Priority Campus plan, the applicant must have a building permit application, accepted by [[the Department of Permitting Services]] DPS, that includes the core and

shell of the principal building within two years of the date of the Planning Board's resolution. Within two years after [[the Department of Permitting Services]] DPS accepts the building permit application that includes the core and shell of the principal building, the applicant must obtain that building permit.

5. The deadlines under this section may be extended with approval of the Planning Board by up to 12 months.

6. If an applicant fails to comply with any of the deadlines within this section, the Planning Board must order the applicant to appear before the Planning Board in a public hearing and demonstrate why the Biohealth Priority Campus plan approval should not be revoked.

#### **I. Recording Procedures**

The certified Biohealth Priority Campus plan and Planning Board resolution must be maintained in the permanent files of the Planning Department.

#### **J. Amendments**

Any property owner may apply for a Biohealth Priority Campus plan amendment to change a certified Biohealth Priority Campus plan. There are two types of amendments: a major and a minor amendment.

##### 1. Major Amendment

a. A major amendment includes any request to:

i. increase density or height by more than that allowed under a minor amendment (Section 7.3.6.J.2);

ii. decrease open space;

iii. deviate from a condition of approval; or

iv. alter a basic element of the plan.

b. Public notice is required under Division 7.5.

- c. A major amendment must follow the same hearing procedures and satisfy the same necessary findings as the original Biohealth Priority Campus plan.

2. Minor Amendment

- a. A minor amendment includes any request to:
- i. increase density by up to ~~[[25%]]10%~~ or 15,000 square feet, provided the increase is less than or equal to the total mapped density, including any density increases or bonuses;
  - ii. increase height by up to 10%, provided the height is less than or equal to the height and any increases allowed under Section 3.5.8.D; or
  - iii. change an ancillary use, a parking or loading area, landscaping, sidewalk, recreational facility or area, configuration of open space, or any other plan element that will have a minimal effect on the overall design, layout, quality or intent of the plan.
- A minor amendment also includes a reduction in approved parking to satisfy Article 59-6. A minor amendment does not include any change that prevents circulation on any street or path.
- b. Public notice is required under Division 7.5.
- c. A minor amendment may be approved by the Planning Director without a public hearing if no objection to the application is received within 15 days after the application notice is sent. If an objection is received within 15 days after the application notice is sent, and the objection is considered relevant, a public

hearing is required. A public hearing must be held under the same procedures as an original application.

**K. Compliance and Enforcement**

1. If the Planning Board finds, after holding a public hearing or designating a hearing officer to hold a public hearing, that a property under development is not in compliance with a certified Biohealth Priority Campus plan, it may:
  - a. impose a civil fine or administrative civil penalty authorized by Chapter 50 (Section 50-10.6.D);
  - b. suspend or revoke the non-compliant portion of the Biohealth Priority Campus plan approval;
  - c. order a compliance program that would permit the applicant to take corrective action to satisfy the certified Biohealth Priority Campus plan;
  - d. allow the applicant to propose modifications to the certified Biohealth Priority Campus plan; or
  - e. take any combination of these actions.
2. If the Planning Board or its designee finds that the applicant has failed to comply with a compliance program approved under Section 7.3.6.K.1.c, the Planning Board may, without holding any further hearing, take any of the actions identified in Section 7.3.6.K.1.a through Section 7.3.6.K.1.e.
3. If the Planning Board suspends or revokes all or any portion of a Biohealth Priority Campus plan, DPS must immediately suspend any applicable building permit under which construction has not been completed or withhold any applicable use-and-occupancy permit, until

465           the Planning Board reinstates the applicable portion of the Biohealth  
466           Priority Campus plan or approves a new plan for the development.  
467           4. The Planning Board may require the applicant to post a commercially  
468           acceptable form of surety securing compliance with and full  
469           implementation of specified features of the certified Biohealth Priority  
470           Campus plan in an amount set by the Planning Board. If such surety  
471           is required, DPS must not issue a building permit or use-and-  
472           occupancy permit until such surety is accepted.  
473           \*    \*    \*

**Sec. 7. DIVISION 59-7.5 is amended as follows:**

**Division 7.5. Notice Standards**

**Section 7.5.1. Notice Required**

Notice is required for each application according to the following table:

Application	Newspaper	Pre-Submittal Meeting	Application Sign	Application Notice	Hearing Notice	Resolution Notice	Building Permit Sign Notice	Website Posting
* * *								
Regulatory Approvals								
* * *								
Site Plan		x	x	x	X	x		x
Signature Business Headquarters Plan		x	x	x	X	x		x
<u>Biohealth Priority Campus Plan</u>		<u>x</u>	<u>x</u>	<u>x</u>	<u>X</u>	<u>x</u>		<u>x</u>
* * *								
Amendments to Approvals								
* * *								
Minor Site Plan Amendment				x				x
Major Signature Business Headquarters Plan Amendment			x	x	X	x		x

Minor Signature Business Headquarters Plan Amendment				x				
<u>Major Biohealth Priority Campus Plan</u>			<u>x</u>	<u>x</u>	<u>X</u>	<u>x</u>		<u>x</u>
<u>Minor Biohealth Priority Campus Plan</u>				<u>x</u>				

**KEY:** x = Required

479 \* \* \*

480           **Sec. ~~[[7]]~~8. Effective date.** This ordinance becomes effective 20 days after  
481 the date of Council adoption.



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

November 29, 2021

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 21-09

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment (ZTA) No. 21-09 at its regular meeting on November 18, 2021. By a vote of 5:0, the Planning Board strongly supports the intent of the ZTA to streamline the regulatory review process for businesses within the Biohealth industry. The structure of this ZTA, especially the Biohealth Priority Campus Plan, is based substantially on ZTA 18-05 Signature Business Headquarters and the Signature Business Headquarters Plan process. When the District Council approved the expedited review for Signature Business Headquarters, there was an understanding that additional resources would need to be dedicated for the effective implementation of the process to ensure both the success of this expedited review, and that the regulatory review of other development applications does not suffer.

Therefore, as the District Council determines the appropriate geographic scope for Biohealth Priority Campus (BPC) Plans and shortens the necessary regulatory review timeline through ZTA 21-09, please keep in mind that additional resources for dedicated staff must be commensurate with those decisions. The Planning Board is fully prepared to work with the Council and its staff as it works through the final language of this ZTA to help create a process that is both reasonable for the applicants, and manageable for the regulatory agencies.

In addition to concerns about adequate resources to meet the requirements of this ZTA, the Board offers the following comments for your consideration as you work to finalize the text changes:

1. As indicated above, depending on the anticipated breadth of application, the ZTA must include timelines that are appropriate and manageable for both the applicant and the reviewing agencies. It is important to make sure applicants are acting in good faith when submitting BPC Plans and that they also be held to measured and meaningful timelines throughout the process from pre-meetings through to the final permits. Each of these deadlines must include an opportunity for extension upon request of the applicant and approval by the Planning Board to address any demonstrated hardship in meeting the deadlines as they arise.

2. The pre-submission meetings recommended for most development review applications are even more critical for the BPC Plans, and they must be robust and include multiple review agency representatives from both from the Planning Department and Executive Department agencies. This can be done through special meetings of our existing Development Review Committee to help flag issues of concern before an application is filed. Certain associated studies, as applicable, must be included and submitted at the earlier stages of review to accommodate the extended reviews often completed by external agencies. This is not intended to be a new comprehensive or time-consuming process but rather an opportunity for potential applicants to ask threshold questions of review agencies or to share preliminary drawings for feedback.
3. To ensure reviews are completed on time and that any inter-agency conflicts are resolved quickly and effectively, the Board also recommends the Planning Department be given lead-agency authority to streamline the process, to make decisions in the absence of outside agency comment, and to address conflicts as they arise. This would be consistent with and a step toward the County Executive's expressed interest in his June 10, 2021 comments to Council President Hucker on Thrive Montgomery 2050 in "merging all functions of the development approval and permitting process under one agency."

The Planning Department has made many strides to improve our efficiency and reduce review times including the recently adopted Speed to Market process for identified high economic development priorities. The Planning Board is excited to see how ideas from that initiative can be incorporated into this process. However, the Council must not lose sight of the budget impacts that these initiatives will have, and we ask that the Council recognize these fiscal impacts must be addressed as part of the implementation.

#### **CERTIFICATION**

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, November 18, 2021.



Casey Anderson  
Chair

CA:BB:aj

## Zoning Text Amendment 21-09, Office and Professional – Biohealth Priority Campus

- ☐ Benjamin Berbert, Planner Coordinator, CP&P, [Benjamin.Berbert@montgomeryplanning.org](mailto:Benjamin.Berbert@montgomeryplanning.org), 301.495.4644
- ☐ Jason Sartori, Chief, CP&P, [Jason.Sartori@montgomeryplanning.org](mailto:Jason.Sartori@montgomeryplanning.org), 301.495.2172

**Completed: 11/10/2021**

### Staff Recommendation

Transmit comments to the District Council in support of Zoning Text Amendment (ZTA) 21-09 with some minor modifications, which would create a new type of use and a new type of development plan review, both called Biohealth Priority Campus.

### Contents

<b>Staff Recommendation .....</b>	<b>1</b>
<b>Summary .....</b>	<b>2</b>
<b>Background .....</b>	<b>2</b>
<b>Analysis of Introduced ZTA .....</b>	<b>2</b>
Section 1.4.2. Specific Terms and Phrases Defined .....	2
Section 3.1.6. Use Table .....	3
Section 3.5.8 Office and Professional .....	3
Division 4.5 Commercial/Residential Zones and Division 4.6 Employment Zones .....	4
Division 7.3 Regulatory Approvals .....	4
Division 7.5 Notice Standards .....	6
<b>Concerns and Recommended Changes to ZTA 21-09 .....</b>	<b>6</b>
Section 3.5.8 Office and Professional .....	6
Exemptions .....	7
Use Standards .....	8
Section 7.7.3. Sketch Plan .....	8
Section 7.3.6. Biohealth Priority Campus Plan .....	9
C. Hearing Date .....	10
D. Review and Recommendations .....	11
E. Findings .....	11
F. Decision .....	12
H. Duration of Approval .....	13
J. Amendments .....	13
<b>Racial Equity and Social Justice Impact .....</b>	<b>14</b>
<b>Conclusion .....</b>	<b>14</b>
<b>Attachments .....</b>	<b>14</b>

## Summary

Planning staff recommends the Planning Board support, with modifications, ZTA 21-09, which has a Public Hearing on November 30, 2021. The ZTA was first introduced by Councilmember Friedson on October 19, 2021 but was subsequently co-sponsored by the full Council. This ZTA would establish a new use, and a new type of development plan for a Biohealth Priority Campus (BPC), with the intent of streamlining the development review process for certain biohealth and life science research and development companies looking to establish or expand in Montgomery County.

## Background

This ZTA is modeled after the Signature Business Headquarters, ZTA 18-05, Ordinance 18-45, which created a new use, use standards, and development review process for that specific use. The use of Biohealth Priority Campus is different, but the review process with the associated BPC plan including the condensed timeline is very similar. This report will walk through all of the changes proposed through ZTA 21-09, pointing out a few minor text changes that staff recommends to improve the final code, as well as some larger concerns over the potential impacts and implications of the ZTA. The ZTA as it was introduced can be seen in attachment A, with Planning staff's proposed modifications to the ZTA in attachment B.

## Analysis of Introduced ZTA

Staff is recommending support for this ZTA, with some minor modifications to the language and some more substantial changes to the scope of which properties may be eligible for a BPC. Most of the modifications do not greatly impact the policy of the ZTA but instead clarify intent or make minor adjustments to timelines or deliverables based on staff's concerns over reviewing the BPC plans. Staff however has concerns that the ZTA may be too broad in scope and could substantially impact workload and review process if allowed too liberally. This first section will focus on walking through the ZTA sections as introduced, paraphrasing the technical ZTA language. The subsequent section will highlight the changes staff is recommending the Planning Board transmit to the District Council.

### Section 1.4.2. Specific Terms and Phrases Defined

The term Biohealth Priority Campus is being added to the list of defined terms, but the definition directs readers to the use standards under Section 3.5.8.E.

### Section 3.1.6. Use Table

The use table is being updated to reflect the new BPC use. The ZTA proposes making it a limited use in the CR and EOF zones.

USE OR USE GROUP	Definitions and Standards		Commercial/Residential			Employment				Industrial		
			CRN	CRT	CR	GR	NR	LSC	EOF	IL	IM	IH
* * *												
COMMERCIAL												
* * *												
Office and Professional	3.5.8	*										
Life Sciences	3.5.8.A	*						P				
Office	3.5.8.B	*	P	P	P	P	P	L	P	L	L	
Research and Development	3.5.8.C			P	P			P	L	P	P	
Signature Business Headquarters	3.5.8.D				L							
<u>Biohealth Priority Campus</u>	<u>3.5.8.E</u>				L				L			
* * *												

### Section 3.5.8 Office and Professional

One of the two substantial impacts of this ZTA is to establish a new use with associated standards within the Office and Professional section of the Code. This new use would be found under a new subsection, *E. Biohealth Priority Campus*. This subsection includes the definition, exemptions and use standards that would apply to this use.

#### *Defined*

The use, as defined would apply to any single commercial or industrial use that is part of Life Sciences or Research Development, or Medical/Scientific Manufacturing and Production, that is planning 150,000 SF or more of new space, or an addition of at least 50,000 SF to an existing facility. Qualifying facilities would need to be within or adjacent to a red policy area (as defined by the Growth and Infrastructure Policy), within an opportunity zone, or within ½ mile of a planned or existing BRT route. Attached to the introduction packet for ZTA 21-09 was a map showing areas that would be eligible for consideration as a BPC use, based on the introduced definition.

#### *Exemptions*

If a project qualifies for a BPC and is reviewed as a BPC plan, it would be exempt from sketch and site plan applications. The BPC is still subject to the rules of the underlying zone unless expressly exempt, and once a BPC plan is approved, any amendment to the plan shall follow the standards for amendments of such plans.

#### *Use Standards*

The use standards that would apply to the BPC include allowing floor area ratio (FAR) averaging across the site, the allotment of up to 50% of the rooftop area to have height encroachments

allowed by code including mechanical equipment or rooftop amenities, and a provision that would allow the Commercial and Residential FAR allocations to be reallocated, so long as the total FAR does not exceed the mapped FAR for the property.

#### Division 4.5 Commercial/Residential Zones and Division 4.6 Employment Zones

ZTA 21-09 proposes minor changes to some of the requirements of the CR zones and the Employment ones under the Density and Height Allocations and Optional Method of Development subsections. The primary purpose is to add the BPC plan type to the existing standards including using FAR averaging, and the approval procedure for optional method projects. Generally, everywhere the existing code requires something be shown or approved through a site plan or Signature Business Headquarters plan, Biohealth Priority Campus plan is being added.

#### Division 7.3 Regulatory Approvals

The regulatory approvals division is the other location in which this ZTA makes substantial changes, adding a new type of regulatory plan called a Biohealth Priority Campus plan including the plan requirements and necessary findings of making such plan.

##### *Sketch Plan*

The first section amended is under Section 7.3.3 for Sketch Plan, adding the BPC plan to the list of plans that would satisfy review as an optional method development.

##### *Biohealth Priority Campus Plan*

The Biohealth Priority Campus Plan is a new Section 7.3.6, and includes subsections on applicability, application requirements, hearing dates, review and recommendations, necessary findings, decision, permits, duration of approval, recording procedures, amendments, and compliance and enforcement. The framework of the BPC plan is nearly identical to that of the Signature Business Headquarters plan.

##### A. Applicability

The purpose of the BPC plan is stated as providing a means for reviewing BPC applications for conformance with all applicable county laws and master plan recommendations. BPC plans may be single or multi-phase projects. The geography of a BPC plan may cover part or all of a property on which it is located and must demonstrate its relationship to other applicable approvals.

##### B. Application Requirements

The submittal requirements are nearly identical to a site plan in scope, types of plan drawings, and detail. The primary difference is the intake requirements are condensed, requiring the Planning Department to review a submitted BPC plan for completeness within three days of receipt. If an application is requested to submit revisions, the subsequent reviews for completeness must be completed within two days.

##### C. Hearing Date

The first primary difference between a BPC plan and a site plan is the hearing date, which is legally set at 120 days after acceptance for site plan but is only 60 days after acceptance for a BPC plan. As written, only applicants may request extensions of the public hearing date.

#### D. Review and Recommendations

As introduced, comments from all reviewing agencies are due 15 days after an application is accepted which corresponds with our normal DRC cycle. Revised drawings based on those first comments are not due from the applicant until 20 days before the date of a hearing. The technical Staff Report would be posted at least 10 days prior to the Board hearing analyzing the application and outlining any conditions of approval.

#### E. Necessary Findings

The findings for a BPC plan are substantively similar to a site plan and include satisfying non exempt elements of Chapter 59, stormwater and forest conservation requirements, master plan conformance, adequate public facility conformance, and finding that parking, circulation, buildings and amenities are safe and well-integrated. The findings start to differ from a site plan by providing special provisions for properties within master plans that have staging requirements based on Non-Auto Driver Mode Share – allowing an application out of the staging limitations if they enter into a traffic mitigation agreement, providing parking below the minimums recommended in Division 6.2 and can prove that transit, bicycle and pedestrian infrastructure required by the master plan is funded.

#### F. Decision

Under subsection F. Decision, the timeline is laid out requiring a resolution be dated within 7 days of the Planning Board's vote on an application, that a 30 day window is allowed for any party to file a petition for judicial review, and that upon submittal of the final plans for review and certification the Planning Department has 30 days to take action or the plans are deemed approved and certified.

#### G. Conforming Permits and I. Recording Procedures

Subsections G and I are standard for regulatory plans and ensure permits are not issued before a BPC plan is approved and bond is posted. Subsection I requires the Planning Board to keep copies of the approval in permanent file.

#### J. Amendments

The final element of a BPC plan that warrants detailed discussion is the amendment procedures under proposed subsection J. This section defines two types of amendments, Major and Minor. Major amendments would include any increase in height or density beyond that allowed by Minor, decreasing open space, deviation from a condition of approval, or altering a basic element of the plan. Minor amendments would allow an increase in density of up to 25% provided the density remains under the mapped density after factoring any density bonuses, increase in height by up to 50% if otherwise allowed, and any change in ancillary use, parking or loading, landscaping, sidewalk, amenity or open space configuration that has a minimal effect on the overall design, layout or quality that does not prevent circulation of any street or path.

#### K. Compliance and Enforcement

The final subsection of the BPC Plan section is Compliance and Enforcement. This subsection is standard and lays out the process for inspections, and what happens if the Board or DPS finds a compliance issue.

#### Division 7.5 Notice Standards

The final page of the ZTA updates the Notice Required table under Section 7.5.1 to add the BPC plan, and show that full noticing is required equal to that of a site plan or a Signature Business Headquarters plan.

#### **Concerns and Recommended Changes to ZTA 21-09**

Planning staff recommends some changes to the language in the ZTA. Many of the changes clarify intent or process, however others have a more substantial impact to the scope and intent of the ZTA. This ZTA creates a new highly compressed schedule for Planning and other county agencies to review certain applications based on the timeline established for the review of Signature Business Headquarter (SBH) plans. The SBH plan was introduced with the understanding that few applications could take advantage of the highly compressed timeline due to the qualifying size requirement (20,000+ employees). Even then, Planning and other agencies raised concerns about the ability to provide adequate short-term staffing during the review of SBH plans given the extraordinary amount of coordination that would be required between applicants, Planning Staff and other review agencies. The BPC use threshold is much smaller than the SBH, needing to generate only 200,000 SF of new space, or 50,000 SF of additions to an existing biohealth company. The likelihood that multiple companies, both existing and new, could take advantage of this proposed process is high, which raises an even greater concern about the ability for Planning to adequately staff the reviews of BPC plans while still attending to other projects utilizing the normal 90 or 120 day review process.

The Planning Department understands the county's economic development priorities around the biohealth industry and is committed to performing fair and reasonable reviews of these plans. The original intent with this ZTA was to create a process that would apply only to a very small number of companies that are uniquely challenged and site constrained in urban areas, consistent with the red policy areas proposed as one of the geographic criteria. Red policy areas are transit and amenity rich urban areas with unique development constraints not shared in more suburban areas of the county. The red policy areas are also areas where the county is actively pursuing centers of job and population growth and this zoning policy can help with that.

Staff presented to the Board back on March 25, 2021 the Speed to Market Initiative, which was a commitment by Planning to streamline and encourage concurrent reviews of sketch, preliminary and site plans, commit to faster reviews of certified plans, accept site plan and forest conservation plan bonds during the plat review, and continue to improve the Planning Department's coordination with other review agencies. The time and money savings from the Speed to Market Initiative could be substantial over existing practices and is the more appropriate avenue for larger employers from any industry including biohealth to pursue in more suburban areas.

The following sections navigate through the introduced ZTA, highlighting the modifications recommended by staff in each section.

#### Section 3.5.8 Office and Professional E. Biohealth Priority Campus

##### *Defined*

The first recommendation staff has is to clarify the definition of where a BPC use can be located. The current definition states a property located within or adjacent to a red policy area. The term adjacent is

a defined term in the Zoning Ordinance however the definition is *being close to or nearby without requiring the sharing of a common boundary*. That definition is too vague and open to interpretation, therefore **staff recommends specifically describing properties within a red policy area, or those that directly abut or confront those properties.**

To better refine the scope of this ZTA, **staff is recommending the removal of Opportunity Zones or the planned or existing Bus Rapid Transit (BRT) routes from the list of geographies that make a property eligible for a BPC.** This proposal by staff is intended to focus the efforts of the ZTA on the urban, constrained red policy areas. Opportunity Zones and properties located within ½-mile of BRT routes represent a large, predominantly suburban portion of the county, including the locations of many existing biohealth companies. This is a primary reason staff is concerned about the number of companies that may qualify for the expedited review either as a new application or an amendment to existing properties. Staff recommends the following changed language for the definition of a BPC as shown below, which would modify lines 32-34 in the introduced ZTA.

**E. Biohealth Priority Campus**

**1. Defined**

\* \* \*

- b. is located on property within or [[adjacent to]] abutting or confronting property located within a red policy area [[, within an opportunity zone, or within ½ mile of a planned or existing Bus Rapid Transit route]].

It should be noted that the use of red policy areas may prove problematic in the future because red policy areas are a geography defined by the Growth and Infrastructure Policy, which may be removed or replaced with future revisions to the policy. An alternative would be to refer to properties located within a ½ mile of a Metrorail station or future Purple Line station, since that is generally how red policy areas are define. Nevertheless, staff is fine with referring to red policy areas in the zoning text for now, with the understanding that future text changes may be needed if the red policy areas cease to exist in the future.

**Exemptions**

Staff is proposing a minor addition to text under Section 2.b that clarifies that overlay zones are included as part of the underlying zoning. The change would impact line 40 of the introduced ZTA as shown below:

**E. Biohealth Priority Campus**

**2. Exemptions**

\* \* \*

- b. Development of a Biohealth Priority Campus should proceed under the standards of the underlying zone including any overlay zones and Chapter 50, except as modified by Section 3.5.8.E.

\* \* \*

### Use Standards

In the Use Standards, Section 3.5.8.E.3.a would allow FAR limits on the property to be reallocated so long as the total FAR does not exceed the mapped FAR. Staff supports the idea behind reallocating the residential FAR to commercial, however recommends the language be tightened up to only allow residential to be reallocated to commercial, and not the other way around. The intent of the BPC is to encourage new and expanded research and scientific businesses and not be used to allow substantial unplanned residential development. There is also a concern this may lead to the interpretation that the mapped building heights are flexible to accommodate the reallocated densities therefore staff wants to be clear it is not. Lastly, staff recommends clarifications for the mechanical penthouse standard that there be a maximum of 50% for each building's roof area. The modified text staff recommends would affect lines 47-52 of the introduced ZTA and is as follows:

#### **E. Biohealth Priority Campus**

\* \* \*

#### **3. Use Standards**

- a. [[Commercial and r]]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.
- 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.

\* \* \*

### Section 7.7.3. Sketch Plan

This ZTA modifies the Sketch Plan Applicability and Description section to clarify that optional method development in the CR and Employment Zones requires sketch plan, or a Signature Business Headquarter (SBH) or Biohealth Priority Campus plan. However, staff finds the wording unusual because it affirms the necessary approval of a BPC plan in a section of code that only applies to sketch plans. Therefore, staff recommends the following change to lines 180-182 of the introduced ZTA:

#### **Section 7.7.3. Sketch Plan**

##### **A. Applicability and description**

1. Development under optional method in the CRT, CR, EOF, or LSC zone requires approval of a sketch plan, [or] unless the development is approved as a Signature Business Headquarters plan under Section 7.3.5, or Biohealth Priority Campus plan under Section 7.3.6.

This modification more appropriately lets section 7.7.3 dictate when a sketch plan is required, and otherwise lets the separate regulatory plan sections for SBH and BPC plans stand alone.

### Section 7.3.6. Biohealth Priority Campus Plan

#### *B. Application Requirements*

Staff remains concerned about the ability for Planning and other partner agencies to perform adequate reviews within the 60 day review period, and recommends that applicants be required to submit a concept plan for review before submitting a BPC plan. A concept plan is a type of plan application that is available on the [Montgomery Planning Development Applications website](#), but is not formally defined by the Zoning Ordinance. The website defines a concept plan as *a flexible plan type that allows applicants to get staff and Development Review Committee (DRC) input on various details of a proposed project. Applicants have the freedom to submit with whatever level of detail they'd like in order to get feedback on any number of issues.* These plans have been extremely useful in the past in pre-emptively highlighting major issues that Planning or other agencies may have with an application, which ultimately expedites the formal review process later. The other concern is that any required Traffic Impact Study or Statement is reviewed by outside agencies such as the State Highway Administration that operate under a 60 day review and comment period which will not fit within the 60 day Planning Board schedule. Requiring the traffic study be included at concept plan provides an extra two weeks for the review of this document. Lastly, within the list of elements that a BPC application must include, notably missing from the list is a vicinity map at a 1" = 200' scale. These maps are typical on the cover sheet of other regulatory applications and is a simple yet effective way of helping reviewers and the public locate where an application is within the county. The changes staff proposes would add a new subsection 2 about concept plans at line 210, and would insert the requirement for a vicinity map at line 214.

### Section 7.3.6. Biohealth Priority Campus Plan

\* \* \*

#### B. Application Requirements

\* \* \*

2. Prior to submitting an application for a Biohealth Priority Campus plan, an applicant must submit a concept plan as outlined on the Planning Department's Development Applications website to the Planning Director to be reviewed by applicable State and County agencies and utilities. The concept plan submittal shall include any applicable Traffic Statement or Traffic Study. Agencies must submit comments within 15 days after the date the conceptual plan is accepted.

[[2.]] 3. A Biohealth Priority Campus plan application must include:

\* \* \*

b. a vicinity map at 1" = 200'

[[b.]] c. an application form and fees required by the Planning Director.

\* \* \*

It should be noted that the entire list of subsections, both the numbered and lettered ones, would have their values adjusted throughout the Application Requirement section that is not being reflected here for brevity.

Additional changes within the Application Requirements section include modifying some of the elements requested of the plan submittal drawings for the proposed development from lines 242-244 of

the introduced ZTA to include massing of the proposed and adjacent buildings to help with compatibility findings.

#### B. Application Requirements

\* \* \*

**[[2.]] 3.** A Biohealth Priority Campus plan application must include:

**[[1.]] m.** plans of proposed development showing:

- i. use~~[[, footprints,]]~~ and ground-floor layout~~[[, and heights]]~~ of all on-site buildings and structures, and building footprints, height, and massing for on-site and adjacent off-site buildings;

Finally, within the Application Requirements section, a series of minor but important changes are proposed to the intake process for BPC plans. As introduced, the turn-around for the completeness check is only three days, and if revisions are requested to make an application complete, the re-check must occur within two days. Staff recommends that the completeness check requirements specify business days instead of calendar days. It is conceivable an applicant may drop off plans on a Friday, or before a holiday, making it infeasible to meet the completeness check deadlines without this adjustment. There is also a concern that, as written, it could be implied that the Director has only one opportunity to reject plans as not complete. A subtle adjustment is recommended to emphasize that the process continues to public notice only once the Director deems an application complete. These recommended changes are shown below and are applied to lines 255-263 of the introduced ZTA.

#### B. Application Requirements

\* \* \*

**[[3.]] 4.** The applicant must submit an initial application to the Planning Director for approval of completeness. The Planning Director must review the application for completeness within 3 ~~business~~ days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale or lacks proper signatures. The assessment of completeness must not address the merits of the application.

**[[4.]] 5.** The applicant must submit any required revisions to the Planning Director. The Planning Director must review the revised application for completeness within 2 ~~business~~ days after receipt.

**[[5.]] 6.** ~~[[After]]~~ Once the Planning Director verifies that the application is complete, the applicant must file the final application with the Planning Director, who will accept the application and establish a hearing date under Section 7.3.6.C.

#### C. Hearing Date

Staff recognizes the intent of the 60-day period for when the Planning Board must conduct a public hearing after an application is accepted is intended to streamline the review process. However, depending on the actual acceptance date, the review could materially be much shorter, since the 60 days is the longest period of time that may elapse from submittal to hearing. Certain submittal periods may align with holidays or other days for which regularly scheduled Planning Board hearing dates are canceled. To ensure reviewers have adequate time to conduct their reviews and that the applicant has adequate time to respond to comments, staff recommends adjusting the language to state that a

hearing must be scheduled for the next regularly scheduled hearing date after 60 days have elapsed from the date of application acceptance. This modification is to lines 269-270 of the introduced ZTA.

### **Section 7.3.6. Biohealth Priority Campus Plan**

\* \* \*

#### **C. Hearing Date**

The Planning Board must schedule a public hearing to begin [[within]] at the next regularly scheduled hearing date after 60 days [[after]] have elapsed from the date an application is accepted. The applicant may request an extension with Planning Director approval. Any extension of the public hearing must be noticed on the hearing agenda with the new public hearing date indicated.

#### **D. Review and Recommendations**

The Review and Recommendation section sets forth the submittal and review requirements for BPC plans, and proposes a very condensed timeline to meet a 60 day hearing clock. As introduced, comments from all reviewing agencies are due 15 days after an application is accepted, which corresponds with our normal DRC cycle. Revised drawings are not due from the applicant until 20 days before the date of a hearing. This date may be problematic, because it would only give staff one week (five working days) with revised plans before the staff report must be posted to meet the 10-day minimum publishing of the staff report. This time includes finalizing conditions from internal and external reviewers and having the report approved by the Director and legal counsel. Staff is recommending the final plans instead be due at least 25 days prior to the hearing to provide staff adequate time to complete the report and include any necessary conditions of approval. The revised language to lines 274-284 of the introduced ZTA would read as follows:

#### **D. Review and Recommendation**

##### **1. State and County Agencies**

\* \* \*

- b. The applicant must submit revised drawings to address the comments a minimum of ~~[[20]]~~ 25 days before the date of the hearing. The Planning Director may extend the deadline if the applicant submits a written request within 5 days after the revised drawings were due.

#### **E. Findings**

Most of the necessary findings for a BPC plan are similar to a site plan. There is one finding however that is a bit unusual – finding f. Finding f would require staff to find that the plan met the location criteria for a BPC which is duplicative, since that is already part of the submittal requirements. In addition, one finding not included in a BPC plan, as introduced, is the site plan finding that a use is compatible with existing and approved or pending adjacent development. The applicability of a BPC plan also mentions demonstrating its relation to and coordination with other applicable approvals or submittals. In acknowledging the constraints associated with developing within the county's red policy areas, the finding staff proposes is more specific than the typical site plan finding by focusing compatibility review to a specific master plan recommendation, or to the necessary height and setback compatibility requirements in Chapter 59. Therefore, staff finds it reasonable to include the

compatibility finding and recommends replacing the current finding in f with the compatibility language. This finding is located on lines 308-310 of the introduced ZTA and would be modified as follows:

**E. Necessary Findings**

\* \* \*

2. To approve a Biohealth Priority Campus plan, the Planning Board must find that the proposed development:

\* \* \*

- f. [[will be located within or adjacent to a red policy area, within an opportunity zone, or within ½ mile of a planned or existing Bus Rapid Transit route;]] is compatible with existing and approved or pending adjacent development per recommendations from the applicable Master Plan and requirements of the Zoning Code;

\* \* \*

**F. Decision**

To keep the process streamlined and predictable, staff recommends a new subsection within the Decision section that includes a maximum period of time that may elapse from the Planning Board decision and the applicant's submittal of the final plans for certification. To account for any potential petition for judicial review, staff is recommending submittal of final plans to the Planning Department within 35 days of the date of issuance of the resolution. Additionally, this section requires the Planning Director to confirm that the certified drawings reflect the Planning Board approval within 30 days, but has no provision for what happens if the submitted plans do not comply with the Board's approval. Staff recommends the section allow the Director to reject the certified plans with comments for revision and that the rejection constitutes taking an action complying with the 30-day timeline. The new section, from lines 327-341 of the introduced ZTA, would read as follows:

**F. Decision**

\* \* \*

2. Any party aggrieved by a decision of the Planning Board may file a petition for judicial review of the decision within 30 days after the Planning Board's action to the Circuit Court and thereafter to the Court of Special Appeals.
3. Within 35 days of issuance of the resolution reflecting the Planning Board's decision, the final Biohealth Priority Campus plans must be submitted to the Planning Director for review.
- [[3.]] 4. Within 30 days of submission, the final Biohealth Priority Campus plans must be certified by the Planning Director to confirm that the drawings reflect the Planning Board's approval. If the certified plans do not address or comply with the Planning Board's approval, the plans will be rejected with comments for the applicant to address. If no action is taken by the Planning Director within 30 days, the plan is deemed approved and certified.

#### H. Duration of Approval

Missing from the Duration of Approval section is a provision that specifies what happens if an applicant fails to meet a deadline or requirement. Staff's recommendation is to add a clause at the end of the section stating that *if an applicant fails to comply with any of the deadlines within this section, the applicable Biohealth Campus Plan approval is revoked*. This would add text to the end of line 366 of the introduced ZTA:

#### H. Duration of Approval

\* \* \*

4. If the Planning Board approves a Biohealth Priority Campus plan, the applicant must have a building permit application, accepted by the Department of Permitting Services, that includes the core and shell of the principal building within two years of the date of the Planning Board's resolution. Within two years after the Department of Permitting Services accepts the building permit application that includes the core and shell of the principal building, the applicant must obtain that building permit. *If an applicant fails to comply with any of the deadlines within this section, the applicable Biohealth Campus plan approval is revoked.*

#### J. Amendments

The Amendments sub-section of the BPC Plan section is the last part of the ZTA that staff has recommended changes. Of primary concern is what qualifies as a major versus minor amendment. The ZTA text would allow increases of density of a BPC plan by up to 25% as a minor amendment with limited review and noticing requirements. Staff has concerns for such a large change to the plans being considered minor and not a basic element of the plan, which is a criteria otherwise reserved for a major amendment.

In site plans, any increase in building density or height not explicitly exempt elsewhere is automatically a major amendment. Under a SBH plan, the rules are more lenient and do allow up to a 10% or 30,000 SF increase in density (whichever is less) to proceed as a minor amendment, and allow a 10% increase in building height so long as both the height and density increases fall within the mapped zoning limitations. Concerns about increasing density above what was approved by original plans include potential impacts to adequate public facility approvals and any findings around compatibility that were made. To be consistent with the flexibility that was afforded for the SBH plan type, staff at a minimum recommends adjusting the amendment section to cap increased density to no more than the less of 10% or 15,000 SF. Staff recommends 15,000 SF rather than 30,000 SF because the SBH plan was in anticipation of a facility that could accommodate up to 20,000 employees whereas the BPC plan is for uses that may be as small as 150,000 SF in space. The revisions staff propose to lines 386-389 of the introduced ZTA would read as follows:

#### J. Amendments

\* \* \*

##### 2. Minor Amendment

- a. A minor amendment includes any request to:

- i. increase density by up to ~~[[25%]]~~ 10% or 15,000 square feet, provided the increase is less than or equal to the total mapped density, including any density increases or bonuses;

\* \* \*

### **Racial Equity and Social Justice Impact**

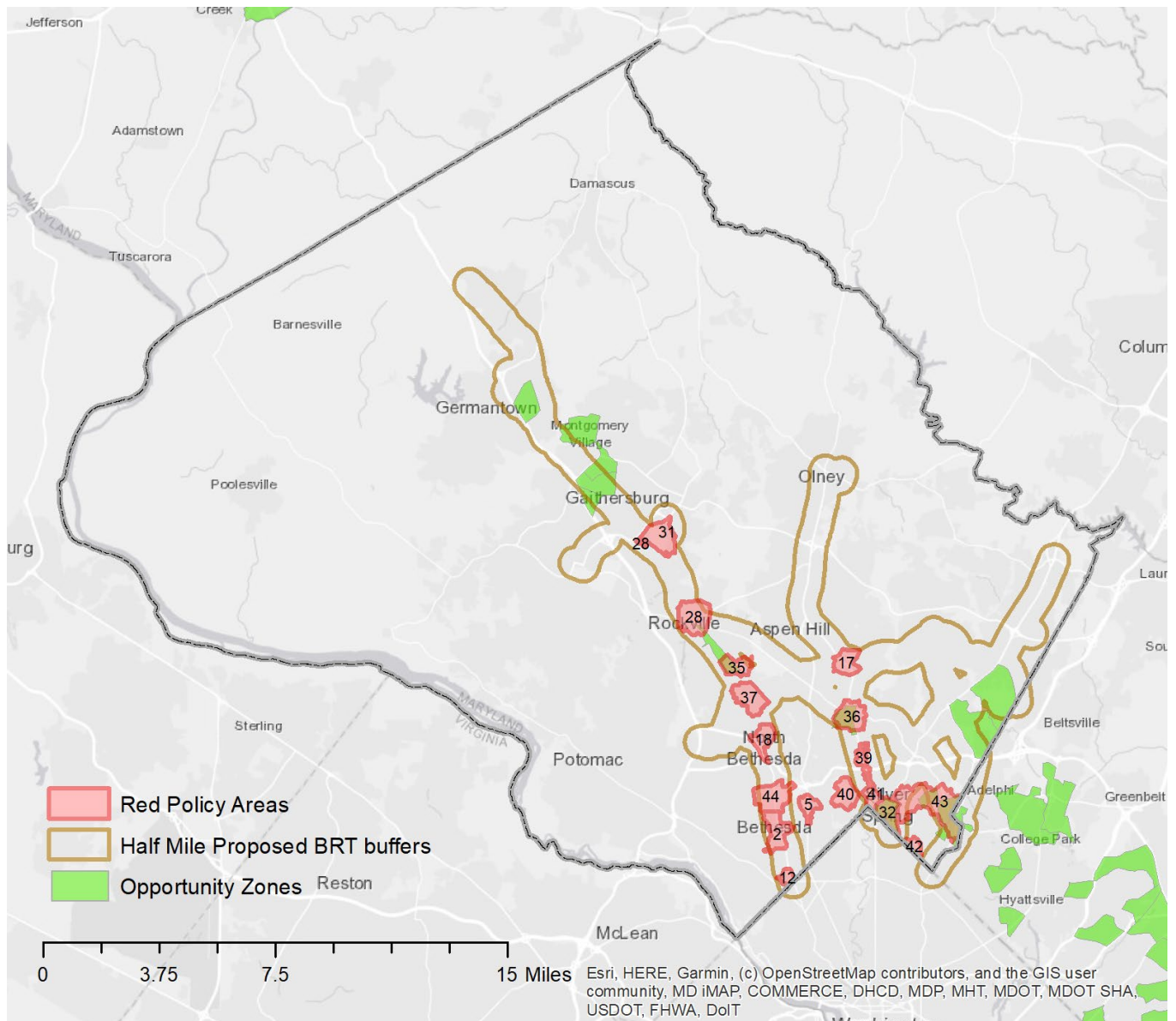
Bill 44-20 Racial Equity and Social Justice – Impact Statements – Advisory Committee – Amendments was enacted on December 1, 2020 and became fully effective September 1, 2021. This Bill requires that the Office of Legislative Oversight (OLO), in consultation with the Planning Department, produce a racial equity and social justice (RESJ) impact statement for each ZTA that is introduced on or after September 1, 2021. At the time of posting this staff report, the RESJ impact statement for ZTA 21-09 had not yet been received from OLO.

### **Conclusion**

Staff recommends the Planning Board transmit comments to the District Council in support of ZTA 21-09 with recommended changes proposed by staff, to create a new Biohealth Priority Campus use under the Office and Professional Use, and to create a new Biohealth Priority Campus Plan section under the regulatory approvals section of the Zoning Ordinance.

### **Attachments**

- A – ZTA 21-09 introduction packet
- B – ZTA 21-09 modifications as recommended by Planning Staff



## **Benjamin Wu / MCEDC submission**

### **Public Hearing for ZTA-21-09**

Today, we have the opportunity to seize national leadership in life sciences, continuing the positive trajectory of this key industry for Montgomery County. Councilmember Friedson's Zoning Text Amendment 21-09 for creating a Biohealth Priority Campus would be a boon to our county by streamlining the regulatory process to attract and grow biohealth facilities in Montgomery County.

We fully support this amendment, which would expand speed-to-market opportunities for multiple STEM uses, including R&D and medical and scientific manufacturing and production. A speedier, more efficient, more predictable process will invariably attract national and international companies looking to grow. It's critical in a global marketplace to be hyper competitive – and creating and promoting the Biohealth Priority Campus will heighten life science expansion in our community.

Passage of ZTA-21-09 will be a win for the county in multiple ways. One, it will attract the full spectrum of life sciences from research and development through manufacturing and distribution. Two, the companies at stake will make very large capital investments with custom built facilities that expand the tax base, providing high-paying jobs and drawing top talent. These gains will contribute mightily to the local economy.

The need for the ZTA is reinforced in a landmark report recently released by MCEDC's Economic Advisory Panel that calls for streamlining the approval process for life sciences. The ZTA passage will underpin other initiatives that include creating more lab infrastructure to meet critical demand and creating a global pandemic prevention and biodefense center in the county to address future health crises. All of this will help us reach our collective goal of rising to be a Top 3 national life science cluster. Montgomery County is poised to achieve that goal.

As Councilmember Friedson said, we must double down on our efforts to attract and retain companies doing cutting edge work. Passage of this amendment and outreach efforts signals our readiness for innovation. The time to act on ZTA 21-09 is now.



November 29, 2021

The Honorable Tom Hucker  
Council President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Dear Council President Hucker and Members of the Montgomery County Council:

The Montgomery County Chamber of Commerce (MCCC) supports ZTA 21-09, *Office and Professional – Biohealth Priority Campus* and believes this creates an impactful economic development tool for Montgomery County. MCCC thanks the lead sponsor, Councilmember Friedson, for its introduction and members of the County Council for their support

MCCC is supportive of any amendments the County Council and the sponsor seek to strengthen what the ZTA intends to accomplish. This may include allowing eligibility to other rapid transit options like the Corridor Cities Transitway and examining whether to apply the ZTA to multiple collocated users instead of to a single commercial or industrial organization.

ZTA 21-09 creates a new definition for Biohealth Priority Campus that includes Life Sciences, Research and Development, or Medical/Scientific Manufacturing and Production. The ZTA applies to biohealth facilities of 150,000 square feet or more or existing County facilities that are expanding by 50,000 square feet or more. ZTA 21-09 is allowed in Commercial/Residential and Employment Office zones, within or adjacent to a red policy area, within Opportunity Zones, or within a half mile of a Bus Rapid Transit route.

The ZTA is an economic development tool that seeks to attract and retain biohealth companies and will further bolster Montgomery County's reputation as a welcoming place for innovative and cutting-edge technologies. Montgomery County is home to a thriving biohealth industry thanks to its status as a strategic economic industry and the foresight of policymakers. Today, Montgomery County has thousands of biohealth-related jobs and nearly 500 companies call it home, including global leaders in the development of life-saving vaccines and therapeutics.

County leaders play an indispensable role in creating a favorable climate for biohealth companies to locate, grow, and expand in Montgomery County. ZTA 21-09 continues the legacy of these efforts by creating a more business-friendly regulatory environment, removing impediments to growth, and fast-tracking important economic development projects.

Again, MCCC supports the passage of ZTA 21-09 and any amendments the County Council and the sponsor seek to strengthen what the ZTA. We look forward to continuing to partner on ways to move Montgomery County forward. As you continue your important work, please do not hesitate to reach out to us if we can be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Godwin", written in a cursive style.

Georgette "Gigi" Godwin  
President & CEO

**Montgomery County Chamber of Commerce**  
51 Monroe St, Suite 1800, Rockville, MD 20850 | 301-738-0015 | [www.mccc.md.com](http://www.mccc.md.com)



November 30, 2021

By Electronic Mail

The Honorable Thomas Hucker, President and  
Members of the Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: Testimony on Zoning Text Amendment No. 21-09

Dear Council President Hucker and Members of the County Council:

I am writing this letter as the CEO of Lantian Development in support of ZTA 21-09, Office and Professional – Biohealth Priority Campus. We view this legislation as a vital opportunity to create a favorable climate for biohealth companies to locate, grow, and expand in Montgomery County. The ZTA also firmly embraces the County's Speed to Market initiative.

Headquartered in Bethesda, Lantian is a real estate investment and development company that focuses on advancing medium to large-scale development in Montgomery County. Lantian currently owns approximately 204 acres of land in Montgomery County, including most significantly, the Clarksburg Comsat Property along I-270 in the Technology Corridor. The potential redevelopment of the Comsat site to include significant employment opportunities is a prime example of how this ZTA should be utilized.

ZTA 21-09 creates a new definition for Biohealth Priority Campus that includes Life Sciences, Research and Development, or Medical/Scientific Manufacturing and Production. As proposed, the ZTA would apply to new facilities of 150,000 square feet or greater or existing County facilities that are expanded by at least 50,000 square feet. Moreover, ZTA 21-09 is permitted in Commercial/ Residential and Employment Office Zones that are (1) within or adjacent to a red policy area, (2) within Opportunity Zones, or (3) within a half mile of a Montgomery County Bus Rapid Transit (BRT) route.

Lantian strongly encourages preserving ZTA 21-09's scope of eligible properties to include those properties within a half mile of any current or proposed BRT route, including the Corridor Cities Transitway (CCT), which has would terminate on the Comsat Property. We would propose that the Council amend its language to make this point clear by use of specific references to CCT and potentially other rapid transit options. Opportunities for future development along important transit routes like the CCT are critical to County's economic development and should be reflected in this legislation as this is where this type of development is likely to occur.

Additionally, Lantian would support either a revision or an amendment to the ZTA that would expand its application to allow for multiple user groups, rather than only a single commercial or industrial user. Expanding the scope of this legislation to allow for multiple users would allow smaller life science companies with higher growth potential to also benefit from this legislation, particularly in the case of new construction. There simply is not enough high-quality, bespoke life science space available in Montgomery County's supply constrained market. Smaller users represent the dominant number of firms in the biohealth market and often expand more quickly delivering important biohealth-related jobs. This is exactly the kind of life science and biohealth development that the ZTA should encourage. As such, we would suggest that a reasonable compromise may be to require a project to identify a particular user for at least 35% of the proposed building area and then allow for multiple tenants to occupy the remainder of the premises. This would allow for a project to move forward with a name tenant while still avoiding speculative development.

We are pleased that the Planning Board and its Staff have recommended approval of this ZTA. However, we would encourage the County Council to not only approve ZTA No. 21-09 but to also support amendments that strengthen the ZTA to fully realize its potential as an economic development tool for the County.

We appreciate the Council's consideration regarding our position on ZTA No. 21-09.

Sincerely,



Bob Elliott  
CEO  
Lantian Development

**William Kominers**  
*Attorney*  
301-841-3829  
[wkominers@lerchearly.com](mailto:wkominers@lerchearly.com)

December 8, 2021

***Via Electronic Mail***

The Honorable Gabe Albornoz  
President, Montgomery County Council  
Stella B. Werner Council Office Bldg.  
100 Maryland Avenue  
Rockville, MD 20850

Re: ZTA Text Amendment 21-09 – Biohealth Priority Campus

Dear President Albornoz:

The purpose of this letter is to suggest a modification in the language of ZTA 21-09. This additional language is needed as a result of a recommendation proposed by the Planning Board Staff in its Report on the ZTA, dated November 10, 2021.

In its Report on page 7, the Planning Board Staff recommends a minor addition to the text under Section E.2.b to clarify that overlay zones are included as a part of the underlying zoning. The Staff recommends changing the text of line 40 of the ZTA as noted below.

"E. Biohealth Priority Campus

2. Exemptions

\* \* \*

b. Development of a Biohealth Priority Campus should proceed under the standards of the underlying zone including any overlay zones and Chapter 50, except as modified by Section 3.5.8.E."

While an existing overlay zone should be included as part of the underlying zone standards for a Biohealth Priority Campus, the Council should be careful that this clarification does not inadvertently undermine the goals and timing of the Biohealth Priority Campus process that is being established in the ZTA. The process, timing, and procedures of the underlying base zone are subject to *de facto* modification to comply with the procedures of the Biohealth Priority Campus under proposed Section 7.3.6. Similarly, the ZTA should make clear that the process, timing, and procedures that are laid out in the ZTA take precedence, and thus any obligations under the underlying base zone, and any overlay zone, must conform to the Section 7.3.6 timelines.

To make this relationship clear, I suggest adding an additional clause at the end of the Section E.2.b to state: "and in conformance to the hearing and review schedule established in Sections 7.3.6.C. and D." With this addition, that subsection of the ZTA would read as follows (underlined text is new):

E. Biohealth Priority Campus

2. Exemptions

\* \* \*

b. Development of a Biohealth Priority Campus should proceed under the standards of the underlying zone including any overlay zones and Chapter 50, except as modified by Section 3.5.8.E. and in conformance to the hearing and review schedule established in Sections 7.3.6.C. and D.

With this additional language, the intent of the ZTA and its planned processing of the Biohealth Priority Campus Plan will be preserved. The requirements and practices of the underlying zone and any applicable overlay zone, will be preserved, but must occur within the timeframe and process established under Section 7.3.6.

Thank you for your consideration of this proposed amendment to ZTA No. 21-09. Please place this letter in the Record of the November 30, 2021, public hearing on the ZTA.

If you have any questions about this material, please contact me.

Very truly yours,

LERCH, EARLY & BREWER, CHTD.




William Kominers

cc: The Honorable Andrew Friedson (Lead Sponsor)  
The Honorable Hans Riemer (PHED Chair)  
Ms. Cindy Gibson  
Livhu Ndou, Esquire  
Mr. Benjamin Berbert

## MEMORANDUM

January 26, 2022

TO: Planning, Housing, and Economic Development (PHED) Committee  
Councilmember Hans Riemer, Chair  
Councilmember Andrew Friedson  
Councilmember Will Jawando

FROM: Councilmember Craig Rice 

SUBJECT: ZTA 21-09 Biohealth Priority Campus

As a co-sponsor of ZTA 21-09, I urge the PHED Committee to adopt the amended language that includes areas within “1/2 mile of a planned or existing Bus Rapid Transit route including the Corridor Cities Transitway.” While the language at introduction referenced the Bus Rapid Transit (BRT) route, it is important to clearly state the Corridor Cities Transitway (CCT) is included to eliminate any confusion as to the extent of this ZTA. As always, the Upcounty deserves access to the benefits of this ZTA and I appreciate the inclusion of the BRT/CCT.

Item #1  
January 31,  
2022  
**Worksession  
Addendum**

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

January 28, 2022

TO: Planning, Housing, and Economic Development (PHED) Committee

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 21-09, Office and Professional – Biohealth  
Priority Campus

In submitting the original staff report for the ZTA 21-09 PHED Worksession, the Racial Equity and Social Justice Impact Statement was inadvertently not included. The RESJ Impact Statement is attached with this addendum.

This packet contains:  
RESJ Impact Statement

Circle #  
1

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

Office of Legislative Oversight

## ZTA 21-09: OFFICE AND PROFESSIONAL-BIOHEALTH PRIORITY CAMPUS

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Zoning Text Amendment 21-09 could negatively impact racial equity and social justice as its benefits would disproportionately accrue to White business owners and employees. Given the size of the biohealth industry in Maryland and Montgomery County, OLO anticipates a moderate impact. To improve racial equity and social justice, this statement offers several 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 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 21-09

The primary purpose of ZTA 21-09 is to expedite the permitting process for biohealth campuses from 120 days to 60 days. Toward this end, this ZTA would make the following changes to the Zoning Ordinance if enacted:

- Create a new commercial use category for Biohealth Priority Campus under the use group Office and Professional Section 59-3.5.8.
- Create a new regulatory review category, Biohealth Campus - Section 7.3.6, amending, Division 59-7.3.
- Expedite regulatory reviews for new biohealth facilities of 150,000 square feet or more and for existing facilities expanding 50,000 square feet or more by reducing the regulatory review process from 120 to 60 days.
- Allow a biohealth campus as a permitted use in the Commercial/Residential and Employment Office zones for developments within a Red Policy Area<sup>3</sup> (or adjacent to it), within an Opportunity Zone,<sup>4</sup> or within ½ mile of a planned or existing Bus Rapid Transit route.<sup>5</sup>

The intent of ZTA 21-09 is to grow the biohealth sector in the County to advance economic development. ZTA 21-09 was introduced on October 19, 2021.

---

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

Understanding the impact of ZTA 21-09 on racial equity and social justice requires understanding the historical context that shapes land use and economic development in the 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.

# RESJ Impact Statement

## Zoning Text Amendment 21-09

**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 as a way to separate not only uses – like residential, commercial, and industrial – but also people according to wealth, class, and race.<sup>6</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>7</sup> This has resulted in the concentration of poverty, especially in BIPOC communities.<sup>8</sup> Because social determinants are so tightly connected to where one lives, 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>9</sup> For homeowners, where one resides is perhaps the most important determinant of their family's wealth.<sup>10</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>11</sup> The land use injustices and social inequities impacting localities are multi-faceted.<sup>12</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>13</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>14</sup>

Patterns of inequitable land use in the County manifest as racial and economic segregation by Council district, higher rates of unemployment, poverty, and housing burden among Black and Latinx residents, and has 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>15</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>16</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>17</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>18</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>19</sup>
- Racial inequities in commuting time where Black residents averaged a 38 minute commute to work compared to a 36 minute commute for Asian residents and a 34 minute commute for both White and Latinx residents.<sup>20</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>21</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

# RESJ Impact Statement

## Zoning Text Amendment 21-09

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 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>22</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 that their applications will be rejected.<sup>23</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>24</sup>
- Nearly two-thirds (64 and 62 percent) of White and Asian residents in the 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>25</sup>
- The median household income for White families in the County was \$119,000 in 2017 and was \$109,000 for Asian families compared to \$73,000 for Black households and \$72,000 for Latinx households.<sup>26</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 smallpox and other diseases from European colonists and the inhumane treatment of enslaved Africans that made them more susceptible to disease and death.<sup>27</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 became integrated.<sup>28</sup>

Racial inequities have also characterized the biohealth industry where historically the medical community has exploited Black people through experimentation.<sup>29</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>30</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 and 8 percent of life science jobs.
- 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 recent study of personnel and executives in the biotech industry also find an under-representation of Black, Latinx and Indigenous employees and executives. The 2020 survey of 18 biotech firms found that:<sup>31</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;

# RESJ Impact Statement

## Zoning Text Amendment 21-09

- 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>32</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>33</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. across a broad range of occupations; it is estimated that the biohealth industry supports another 4.7 million jobs across the country.<sup>34</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>35</sup>

---

### ANTICIPATED RESJ IMPACTS

Understanding the impact of ZTA 21-09 on racial equity and social justice requires understanding the stakeholders most likely to be impacted by this zoning text amendment. Since it is aimed at expediting the permitting process for biohealth facilities, biotech firm owners and employees 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 21-09. While White-owned firms accounted for slightly more than half of all County businesses in 2012, they accounted for more than 90 percent of local business revenue. If White-owned firms benefit more from ZTA 21-09 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 Asian residents are significantly over-represented among local biohealth workers and could disproportionately benefit from growth in the local biotech industry fostered by ZTA 21-09 and White people account for a majority of the biotech workforce and 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 21-09 than Black, Latinx and Indigenous residents, this ZTA could widen current racial and ethnic inequities in biohealth employment.

Taken together, OLO finds that ZTA 21-09 could have a net impact of widening racial and ethnic inequities in the County as available data suggests 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 21-09 would have to yield greater benefits for BIPOC groups under-represented in the biohealth industry as business owners and employees: Black, Indigenous, and Latinx people. Because the biotech industry is large in the County and is anticipated to grow,<sup>36</sup> OLO anticipates a moderate impact of ZTA 21-09 on racial equity and social justice. Further, if ZTA 21-09 spurs economic development, County residents could benefit from increased economic activity associated with the growth of the biohealth industry. The community only gains, however, if there are spillover effects of the ZTA, OLO anticipates that these spillover benefits would favorably impact every racial and ethnic group and thus sustain racial and social inequities in the County.

# RESJ Impact Statement

## Zoning Text Amendment 21-09

Finally, there is also the potential for ZTA 21-09 to further widen racial and social inequities in the County if it displaces future affordable housing units due to biohealth campuses locating in Commercial/Residential (C/R) zones in or near Red Policy Areas or Bus Rapid Transit routes. If enacted, the ZTA could create competition between residential developments and biohealth campuses in C/R zones that could reduce the future supply of affordable housing units near transit and employment hubs. Since Black and Latinx residents experience higher rates of housing burden, the displacement of potential affordable housing units could worsen racial and social disparities in housing in the County.

---

### RECOMMENDED AMENDMENTS

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>37</sup> OLO finds that ZTA 21-09 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 options could be considered and paired with enacting ZTA 21-09 that would require and/or encourage biohealth firms seeking to create or expand biohealth campuses to:

- **Enter into Community Benefit Agreements.**<sup>38</sup> A community benefit agreement would reflect the commitment that biohealth firms make to the public as a condition of having their applications to develop biohealth campuses approved. Community benefit agreements can commit to providing affordable housing, workforce training, job placement services, or other benefits that are agreed upon with community partners. Community benefit agreements should require biotech firms to report data disaggregated by race, ethnicity and place that describes the impact of their community benefit agreement to the public at large on a regular basis.
- **Invest in Biohealth Workforce Development Opportunities for BIPOC Residents.**<sup>39</sup> To ensure growth in the biohealth industry benefits a cross-section of communities and reduces disparities in the biohealth workforce by race and ethnicity, biohealth firms seeking biohealth campuses 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 should be encouraged to partner with community members, education institutions and non-profit partners to design and deliver programs. Biohealth firms could also be required to report outcomes disaggregated by race, ethnicity, and place to the public.
- **Invest in Underrepresented BIPOC Small Businesses.**<sup>40</sup> To ensure that BIPOC businesses benefit from expansion of biotech business opportunities, biotech firms seeking biotech campuses could be encouraged or required 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, biohealth firms could be encouraged to use BIPOC businesses as vendors to deliver goods and services on biohealth campuses and/or to employees. Biohealth firms could also be required to report outcomes disaggregated by race, ethnicity, and place to the public.
- **Locate Biohealth Campuses in BIPOC Communities.**<sup>41</sup> To begin to correct for the land use inequities that fostered the mismatch between BIPOC communities and employment centers, biohealth firms developing biohealth campuses could be required or encouraged to locate their campuses in these areas. If required, ZTA 21-09 could be amended to only allow biohealth campuses in Opportunity Zones. If encouraged, the County could consider offering incentives to biohealth firms to locate their campuses in BIPOC communities. Locating biohealth campuses in BIPOC

# RESJ Impact Statement

## Zoning Text Amendment 21-09

communities could help bring BIPOC communities into the economic mainstream, helping to ensure that Black, Latinx and Indigenous residents benefit from growth in the biohealth industry. Locating biohealth campuses in BIPOC communities could also foster economic development in such communities and help to launch activity centers: “(S)tarting points for public, private, and civic sector leaders – in partnership with communities – to leverage transformative placemaking investments that increase public access to public and private amenities, promote innovation and productivity, efficiently use infrastructure, and more equitably spread the economic, health, and social benefits of proximity.”<sup>42</sup>

---

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

---

<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> 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>4</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>5</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>6</sup> Tyler Quinn-Smith, Zoning for Equity: Raising All Boats. Smart Growth America

<sup>7</sup> Lance Freeman, Build Race Equity Into Zoning Decisions, Brookings Institution

<sup>8</sup> Tyler Quinn-Smith

<sup>9</sup> Lance Freeman

<sup>10</sup> Ibid

<sup>11</sup> Kathleen McCormick, Planning for Social Equity, Land Lines, Winter 2017

<sup>12</sup> Tony Arnold, “Land-Use Regulation: What’s It Worth Anyway?” Urban Institute

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</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>16</sup> National Equity Atlas, <https://nationalequityatlas.org/indicators/Unemployment#/?geo=04000000000024031>

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Ibid

# RESJ Impact Statement

## Zoning Text Amendment 21-09

- <sup>21</sup> Field Note, 2020-2, December 2020 – Turning the Floodlights on the Root Causes of Today’s Racialized Economic Disparities: Community Development Work at the Boston Fed Post-2020, Regional and Community Outreach
- <sup>22</sup> Stephen Roblin, COVID-19 Recovery Outlook: Minority-Owned Businesses, Office of Legislative Oversight, September 21, 2020
- <sup>23</sup> Alicia Robb, "Minority-Owned Employer Businesses and their Credit Market Experiences in 2017," Office of Advocacy U.S. Small Business Administration, July 22, 2020 cited by Stephen Roblin
- <sup>24</sup> Jupiter Independent Research Group, Racial Equity Profile Montgomery County, OLO Report 2019-7, Office of Legislative Oversight, July 15, 2019
- <sup>25</sup> American Community Survey, 1 Year Estimates, 2019, Table S0201
- <sup>26</sup> Jupiter Independent Research Group
- <sup>27</sup> W.M. Byrd and L.A. Clayton, Race, medicine, and health care in the United States: a historical survey, 2001, National Medical Association. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2593958/>
- <sup>28</sup> Ibid
- <sup>29</sup> Harriet Washington, Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present, Doubleday, 2007.
- <sup>30</sup> Richard Fry, Brian Kennedy, and Cary Funk, STEM Jobs See Uneven Progress in Increasing Gender, Racial, and Ethnic Diversity, Pew Research Center, April 1, 2021
- <sup>31</sup> Coqual/Bio: Measuring Diversity in the Biotech Industry: Advancing Equity and Inclusion, Second Annual Report, July 2021
- <sup>32</sup> TEconomy/Bio: Investment, Innovation, and Job Creation is Growing in U.S. Bioscience Industry, 2018
- <sup>33</sup> Biomedical Salary in Maryland, ZipRecruiter, November 2021. <https://www.ziprecruiter.com/Salaries/Biomedical-Salary--in-Maryland>
- <sup>34</sup> SelectUSA, Biopharmaceutical Spotlight: The Biopharmaceutical Industry in the United States
- <sup>35</sup> Genetic Engineering and Biotechnology News: The 10 U.S. Biopharma Clusters – Pandemic Reshuffles the Bottom of GEN’s Regional Rankings But Not the Top for Now, March 10, 2021
- <sup>36</sup> Genetic Engineering and Biotechnology News
- <sup>37</sup> Montgomery County Council, Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee - Established
- <sup>38</sup> Tyler Quinn-Smith
- <sup>39</sup> Andre Perry and Carl Romer, To Expand the Economy Invest in Black Businesses, Brookings, December 2020; Sarah Treuhart and Victor Rubin, Economic Inclusion: Advancing an Equity Driven Growth Model, Big Ideas for Jobs, Policy Link, 2012; and Donnie Charleston, “How States Can Support Shared Prosperity by Promoting Quality Jobs,” Shared Prosperity Partnership, Urban Institute, March 2020
- <sup>40</sup> Ibid
- <sup>41</sup> Ibid
- <sup>42</sup> Tracy Hadden Loh and Hanna Love, Why ‘activity centers’ are the building blocks of inclusive regional economies, Brookings Institution, March 8, 2021