



SUBJECT

Bill 41-19, Tree Canopy Fees - Exemptions
Lead Sponsor: Councilmember Rice

EXPECTED ATTENDEES

Keith Miller, Executive Director, Revenue Authority

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Approve or amend the recommendation of the T&E Committee

DESCRIPTION/ISSUE

Bill 41-19 would amend tree canopy exemptions to include land disturbances by any public use airport. This would be an expansion of the current exemption which is limited to intrusions into navigable airspace.

SUMMARY OF KEY DISCUSSION POINTS

- Bill 41-19 would have a January 1, 2017 effective date. This would allow for a refund of tree canopy fees paid by public airports on or after that effective date.
- As introduced, Bill 41-19 was advertised as an amendment to tree canopy fees. The text of the Bill would create an exemption from all aspects of the tree canopy law. The Committee recommended amendments to keep Bill 41-19 within the scope of the advertisement as follows.
 - delete the proposed general exemption for all public use airports from the entire Tree Canopy Law;
 - retain the existing provision in §55-5(i) except for the last redundant phrase; and
 - add a new provision to exempt public use airports from Tree Canopy Law fees.

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MEMORANDUM

February 20, 2020

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst

SUBJECT: Bill 41-19, Tree Canopy Fees - Exemptions

PURPOSE: Action – Roll call vote required on Bill

Transportation and Environment Committee recommendation (3-0): Approve Bill with amendments

The Committee (3-0) recommend approval of Bill 41-19 with amendments to:

- 1) delete the proposed general exemption for all public use airports from the entire Tree Canopy Law;
- 2) retain the existing provision in §55-5(i) except for the last redundant phrase; and
- 3) add a new provision to exempt public use airports from Tree Canopy Law fees.

Expected Participants

Keith Miller, Chief Executive Officer, Revenue Authority

Bill Summary

Bill 41-19 would amend tree canopy fee exemptions to include land disturbances by any public use airport. Public airports require areas cleared of trees for runways and airport operations. When airports expand, tree clearing is unavoidable. Even though public airports have public benefits, tree canopy fees are a financial disincentive to an airport's expansion. The current exemption for a Federal Aviation Administration determination that trees would be a hazard to aviation, does not cover all airports and does not cover all circumstances at all airports.¹

¹ MoCoTreeCanopy

Public Hearing

A public hearing was held on January 21, 2020. Testimony by the operator of a public use airport supported Bill 41-19. There was no other testimony.

Fiscal Impact

The fees collected from public use airports since January 1, 2017 (the effective date of Bill 41-19 as introduced), totals \$69,250. That averages to just over \$23,000 per year. The loss in fees represent approximately 2.8 percent of total tree canopy revenue since 2017. The proposed exemption reduces the amount of funding available for tree planting from the Tree Canopy Conservation Fund. The known refund of fees will result in 144 fewer trees planted.² If the rate of fee loss continues at the same rate on an annual basis, the number of trees that can be planted by the Conservation Fund will be reduced by 44 per year.

Issues

Why is the intended exemption from fees for public use airport not already addressed in the current tree canopy law?

The Tree Canopy chapter of the current code exempts:

cutting or clearing any tree by an existing airport currently operating with all applicable permits to comply with applicable provisions of any federal law or regulation governing the obstruction of navigable airspace if the Federal Aviation Administration has determined that the trees create a hazard to aviation.³

Not all airports can get a determination by the Federal Aviation Administration (FAA) that nearby trees will create a hazard to aviation. Only public use airports that are included in the National Plan of Integrated Airport Systems (NPIAS) can get such determination. Only 1 of the 2 public use airports in the County are classified as NPIAS.

Why is the amendment limited to public use airports?

There are both public and private airports. A public use airport is an airport available for use by the general public without a requirement for prior approval by the airport owner or operator. A private, or executive airport is a privately-owned location that maintains an airfield, air strip, or runway for private use by its owner or owners. A private airport is not open for use by the public.

There are 11 facilities in Montgomery County listed for aircraft by the FAA; only 3 are airports and 8 are helipads. Of the 3 airports, 2 are public use airports; the Montgomery County Airpark and Davis Airport.

² The Department of Environment Protection estimates the cost is \$480 per tree.

³ Section 55-5(i).

Only public use airports benefit the general public.

Why should the proposed amendment be limited to tree canopy fees?

As introduced, Bill 41-19 was advertised as an amendment to tree canopy fees. There are 3 requirements in the Tree Canopy Law:

- 1) additional information on a sediment control permit;
- 2) tree planting or a payment to the Tree Canopy Conservation Fund; and
- 3) an allowance for on-site inspections.

The text of the Bill would create an exemption from all aspects of the tree canopy law for all public use airports. The current exemption for NPIAS airports is from all aspects of the Tree Canopy law. The advertised exemption is only for fees required of public use airports.

The Committee recommended amendments in Committee to keep Bill 41-19 within the scope of the advertisement. The amendments to;

- 1) delete the general exemption for all public use airports,
- 2) retain current provisions of Section 55-5(i) with a deletion of the last redundant phrase, and
- 3) add an exemption fee required by the Tree Canopy Law due to activities of a public use.

This packet contains:

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Bill No. 41-19
Concerning: Tree Canopy Fees - Exemptions
Revised: 1/27/2020 Draft No. 5
Introduced: December 10, 2019
Expires: June 10, 2021
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Rice

AN ACT to:

- (1) amend tree canopy fee exemptions to include land disturbances by any public use airport;
and
- (2) generally amend the provisions for tree canopy fee exemptions.

By amending

Montgomery County Code
Chapter 55, Tree Canopy
Section 55-5

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

The County Council for Montgomery County, Maryland approves the following A

1 **Sec. 1 Section 55-5 is amended as follows:**

2 **Sec. 55-5. Exemptions.**

3 This Chapter does not apply to:

- 4 (a) any activity that is subject to Article II of Chapter 22A;
- 5 (b) any commercial logging or timber harvesting operation with an approved
6 exemption [from]under Article II of Chapter 22A;
- 7 (c) any tree nursery activity [performed with an] approved under Section 19-
8 48 Soil Conservation and Water Quality Plan [as defined in Section
9 19-48];
- 10 (d) cutting or clearing trees in a public utility right-of-way for the
11 construction or modification of electric generation facilities approved
12 under the Maryland Code Public Utilities Article if:
- 13 (1) the person cutting or clearing the trees [has] obtained a certificate
14 of public convenience and necessity required under Sections 7-207
15 and 7-208 of the Public Utilities Article; and
- 16 (2) the cutting or clearing of forest or tree canopy [is conducted so as
17 to minimize] minimizes the loss of both;
- 18 (e) routine maintenance of a public utility right-of-way, and cutting or
19 clearing any tree by a public utility as necessary to comply with
20 applicable vegetation management requirements, to maintain, repair,
21 replace, or upgrade any public utility transmission or distribution line, or
22 for a new transmission or distribution line;
- 23 (f) any activity conducted by[[:
- 24 (1)] the County Parks Department; [[or
- 25 (2) any public use airport;]]

- 26 (g) routine or emergency maintenance of an existing stormwater
 27 management facility, including an existing access road, if the person
 28 performing the maintenance [has] obtained all required permits;
- 29 (h) any stream restoration project if the person performing the work [has]
 30 obtained all necessary permits;
- 31 (i) [cutting or clearing any tree by an existing airport currently operating
 32 with all applicable permits to comply with applicable provisions of any
 33 federal law or regulation governing the obstruction of navigable airspace
 34 if the Federal Aviation Administration has determined that the trees
 35 create a hazard to aviation] cutting or clearing any tree by an existing
 36 airport currently operating with all applicable permits to comply with
 37 applicable provisions of any federal law or regulation governing the
 38 obstruction of navigable airspace;
- 39 (j) any public use airport's obligation to pay fees under subsection 55-6(d);
 40 [(j)] (k) cutting or clearing any tree to comply with [applicable provisions of]
 41 any applicable federal, state, or local law governing the safety of dams;
- 42 [(k)] [(j)] (l) any development activity permitted as a small land
 43 disturbing activity under Section 19-5B; or
- 44 [(l)] [(k)] (m) any non-coal surface mining conducted [in accordance
 45 with] under applicable state law.

46 **Sec. 2. Effective Date.**

47 This Bill is effective on January 1, 2017 and applies to any fees paid on or after that
 48 date.

LEGISLATIVE REQUEST REPORT

Bill 41-19

Tree Canopy Fees - Exemptions

DESCRIPTION:	Bill 41-19 would amend tree canopy fee exemptions to include land disturbances by any public use airport.
PROBLEM:	Public airports require areas cleared of trees for runways and airport operations. When public airports expand, tree clearing is unavoidable. Even though public airports have public benefits, tree canopy fees are a financial disincentive to an airport's expansion. The current exemption for a Federal Aviation Administration determination that trees would be a hazard to aviation, does not cover all airports and does not cover all circumstances at all airports.
GOALS AND OBJECTIVES:	To eliminate future tree canopy fees for public airports and refund any fees paid since January 1, 2017.
COORDINATION:	Department of Permitting Service and Department of Environmental Protection
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Jeffrey L. Zyontz, Senior Legislative Analyst
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	Not applicable



ROCKVILLE, MARYLAND

MEMORANDUM

January 22, 2020

TO: Sidney Katz, President, County Council

FROM: Richard S. Madaleno, Director, Office of Management and Budget *RSM*
Michael Coveyou, Acting Director, Department of Finance *MC*

SUBJECT: FEIS for Bill 41-19, Tree Canopy Fees - Exemptions

Please find attached the Fiscal and Economic Impact Statements for the above-referenced legislation.

RSM:cm

c: Andrew Kleine, Chief Administrative Officer
Fariba Kassiri, Deputy Chief Administrative Officer
Caroline Sturgis, Assistant Chief Administrative Officer
Debbie Spielberg, Special Assistant to the County Executive
Dale Tibbitts, Special Assistant to the County Executive
Lisa Austin, Office of the County Executive
Barry Hudson, Director, Public Information Office
Hadi Mansouri, Acting Director, Department of Permitting Services
Rob Hagedoorn, Department of Finance
Dennis Hetman, Department of Finance
David Platt, Department of Finance
Monika Coble, Office of Management and Budget
Richard Harris, Office of Management and Budget
Chrissy Mireles, Office of Management and Budget
Gary Nalven, Office of Management and Budget

Fiscal Impact Statement
Bill 41-19, Tree Canopy Fees - Exemptions

1. Legislative Summary

The Montgomery County Code requires landowners to pay a fee when clearing a tree from their property without replacing it, with some specified exceptions listed in Chapter 55, which includes an exemption for the navigable airspace of airports. Bill 41-19 would amend the tree canopy fee exemptions to include land disturbances by any public use airport rather than just those which affect navigable airspace.

The scope of the current exemption is determined by the Federal Aviation Administration, but their review does not cover all circumstances in which an airport may need to clear a tree (such as expansion) and does not cover all airports. To the extent that tree canopy fees are a disincentive for a Montgomery County-based airport to expand, the bill seeks to end that disincentive.

Tree canopy fees are paid into the Tree Canopy Conservation Fund where their use is restricted to planting trees through the Tree Montgomery Program.

Bill 41-19 has an effective date of January 1, 2017 and provides for refunding the tree canopy fees that were collected from public use airports since that date. The fee revenues collected from public use airports since January 1, 2017, totals \$69,250.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes sources of information, assumptions, and methodologies used.

Revenues to the Tree Canopy Fund are estimated to be reduced by approximately \$23,000 per year under Bill 41-19, based on revenues collected from public use airports since January 1, 2017 to date. This represents approximately 2.8 percent of total tree canopy fee revenue, which averaged \$833,000 in FY18 and FY19.

The reduction impacts the amount of funding available for tree planting from the Tree Canopy Conservation Fund. It is estimated that reducing the revenue to the Tree Canopy Program by \$23,000 equates to 48 fewer trees planted per year; a cost of \$480 per tree.

One of the county's public use airports recently completed a runway expansion and tree removal and such properties may not continue at the same rate as it has since January 1, 2017. As such, the estimated reduction in revenue is on the high end.

Expenditures are unlikely to be impacted by the legislation. Minimal staff time would be required to process the refunds authorized under Bill 41-19 and can be absorbed within the existing complement.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Bill 41-19 is estimated to reduce tree canopy fee revenue and Tree Montgomery expenditures by \$23,000 per-year for the next 6 fiscal years.

Impact of Bill 41-19 on Revenue and Expenditures

	FY21	FY22	FY23	FY24	FY25	FY26
Tree Canopy Fee Revenue	-23,000	-23,000	-23,000	-23,000	-23,000	-23,000
Tree Montgomery Expenditures	-23,000	-23,000	-23,000	-23,000	-23,000	-23,000

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable.

7. An estimate of the staff time needed to implement the bill.

There is minimal additional staff time needed to process tree canopy fee refunds; the work can be absorbed within the existing personnel complement.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable.

9. An estimate of costs when an additional appropriation is needed.

Not applicable.

10. A description of any variable that could affect revenue and cost estimates.

See Question #2 regarding the recent runway expansion.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

12. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

13. Other fiscal impacts or comments.

Not applicable.

14. The following contributed to and concurred with this analysis:

Linda Kobylski, Chief, Land Development Division, DPS


Priscilla Wong, Senior IT Specialist, DPS

Michelle Hwang, Senior Financial Specialist, DEP

Vicky Wan, Acting Chief, Strategic Services Division, DEP

Richard Harris, Fiscal and Policy Analyst, OMB

Gary Nalven, Fiscal and Policy Analyst, OMB


Richard S. Madaleno, Director
Office of Management and Budget

1/17/20
Date

**Economic Impact Statement
Bill 41-19, Tree Canopy Fees – Exemption**

Background:

This legislation would amend tree canopy fee exemptions to include land disturbances by any public use airport.

Public airports require the clearance of trees for runways and airport operations especially with the expansion of the airports. As such, tree canopy fees are a financial disincentive to airport expansion.

1. The sources of information, assumptions, and methodologies used.

There are no sources of information, assumptions, and methodologies used by the Department of Finance in the preparation of the economic impact statement.

2. A description of any variable that could affect the economic impact estimates.

According to the Fiscal Impact Statement (FIS) prepared by the Office of Management and Budget, the FIS states that revenues to the Tree Canopy Fund would be reduced by \$23,000 per year. That reduction would equate to less than 48 trees planted per year or \$480 per tree.

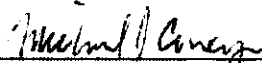
3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Since Bill 41-19 would reduce revenues to the Tree Canopy Fund by \$23,000 per year from payments of the fee by landowners, the economic impact on employment, spending, savings, investment, incomes, and property values in the County would not be significant. Therefore Bill 41-19 would have neither a positive nor negative economic impact.

4. If a Bill is likely to have no economic impact, why is that the case?

Bill 41-19 would have no significant economic impact on the employment, spending, savings, investment, incomes, and property values in the County.

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance.



Michael Coveyou, Acting Director
Department of Finance

1/21/20

Date