

**MEMORANDUM**

February 3, 2020

TO: Transportation and Environment Committee  
FROM: Jeff Zyontz, Senior Legislative Analyst  
SUBJECT: Bill 41-19, Tree Canopy Fees - Exemptions  
PURPOSE: Worksession – Committee to make recommendations on Bill

**Expected Participants**

Stan Edwards, Chief, Division of Environmental Policy & Compliance,  
Department of Environmental Protection  
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.<sup>1</sup>

**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

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<sup>1</sup> MoCoTreeCanopy

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.<sup>2</sup> 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.<sup>3</sup>

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.

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.

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

<sup>3</sup> Section 55-5(i).

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 sponsor will recommend an amendment in Committee to keep Bill 41-19 within the scope of the advertisement. The amendment will retain all current provisions of Section 55-5 and will add as an exemption fees required by this Chapter due to the activities of a public use.

This packet contains:

	<u>Circle #</u>
Bill 41-19 with amendments from the Bill as introduced	1
Legislative Request Report	4
Fiscal Impact Statement	5

F:\LAW\BILLS\1941 Tree Canopy - Airports\T&E Memo.Docx

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

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Lead Sponsor: Councilmember Rice

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**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

<b>Boldface</b>	<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*

<b>DESCRIPTION:</b>	Bill 41-19 would amend tree canopy fee exemptions to include land disturbances by any public use airport.
<b>PROBLEM:</b>	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.
<b>GOALS AND OBJECTIVES:</b>	To eliminate future tree canopy fees for public airports and refund any fees paid since January 1, 2017.
<b>COORDINATION:</b>	Department of Permitting Service and Department of Environmental Protection
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Jeffrey L. Zyontz, Senior Legislative Analyst
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	Not applicable.
<b>PENALTIES:</b>	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 *MAC*

**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.

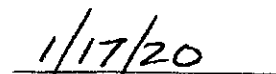
**13. Other fiscal impacts or comments.**

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

  
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.**

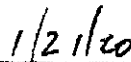
Since Bill 41-19 would reduce revenues to the Tree Canopy Fund by \$23,000 per year from payments of the fee by landowners, the economic impact on employment, spending, savings, investment, incomes, and property values in the County would not be significant. Therefore Bill 41-19 would have neither a 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

  
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Date