


Government of the District of Columbia
Office of the Chief Financial Officer



Fitzroy Lee
Acting Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Fitzroy Lee 
Acting Chief Financial Officer

DATE: April 1, 2022

SUBJECT: Fiscal Impact Statement – Urban Forest Preservation Authority
Amendment Act of 2022

REFERENCE: Bill 24-444, Draft Committee Print as provided to the Office of Revenue
Analysis on March 9, 2022

Conclusion

Funds are sufficient in the fiscal year 2022 budget and the fiscal year 2023 through fiscal year 2026 proposed budget and financial plan to implement the bill.

Background

The District Department of Transportation's (DDOT) Urban Forestry Division (UFD) is responsible for enhancing and protecting the District's tree canopy on behalf of the Mayor. This includes issuing permits for the removal of special trees¹ and enforcing a prohibition on the removal of heritage trees.² A special tree is one with a circumference between 44 inches and 100 inches, while a heritage tree is one with a circumference of 100 inches or larger. UFD determines whether a tree is hazardous, a species designated for removal, or, in the case of a special tree, the applicant has paid into the Tree Fund.³ An applicant may also seek approval from UFD to relocate a heritage tree. UFD can issue a fine of at least \$300 per inch of circumference for any unauthorized removal of a special or heritage tree.

The bill expands the Mayor's enforcement authority to include issuing a stop work order whenever the agency determines that any construction or other work about to commence or underway violates

¹ Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code § 8-651.04).

² D.C. Official Code § 8-651.04a.

³ D.C. Official Code § 8-651.07.

the District's tree removal laws and regulations protecting special and heritage trees, including their critical root zones.⁴ The bill details the information that must be included in the stop work order, including the specific areas of the property that are covered by the order, and how it must be delivered. The bill also authorizes the Mayor to issue a warning notice prior to issuing a stop work order. The bill gives the recipient of a stop work order ten business days to request a Mayoral review of the order and the Mayor fifteen business days to complete the review. The Mayor can lift the stop work order if she feels that the conditions have been corrected; the order will be lifted automatically if she fails to respond to a request for review within the required fifteen days. An individual can appeal within ten business days of a final decision by the Mayor to the Office of Administrative Hearings (OAH). Additionally, if an individual violates or will imminently violate a stop work order, the Attorney General can seek injunctive relief in the Superior Court of the District of Columbia.

The Mayor may also revoke a building, sheeting, shoring, razing, grading, demolition, or related permit if she finds that a special or heritage tree has been harmed by the negligent, willful, or reckless actions of any individual. If this determination is made, the bill prohibits the Mayor from issuing any further building permits for three years to the offending property owner, applicant, contractor, construction manager, design professional, or other responsible officer. The bill also authorizes the Mayor to revoke any occupational or professional license⁵ for at least two years. An individual can also appeal to OAH a Mayoral action to revoke a permit, license, or opportunity to obtain a permit within 30 days of the revocation or refusal to issue a permit. The bill details the conditions under which OAH can grant an appeal. The Mayor can impose three times the allowable damages upon any individual who hires a person or firm that does not have the appropriate occupational or professional licenses or that violates tree removal laws and regulations.

The bill also requires the applicant for a construction permit to provide a declaration that identifies all trees, including any special or heritage trees, located on the property subject to the permit application and any trees located adjacent to the property whose critical root zone extends into the property. If the Mayor reviews the declaration and determines that the work could disturb the critical root zone of a special or heritage tree, or the tree itself, the applicant must submit a Tree Preservation Plan (Plan) for approval. The Plan must include a site plan and show how the applicant will protect the special and/or heritage trees and their critical root zones. If a Plan is required, the Mayor should not issue a permit until the Plan has been approved.

Financial Plan Impact

Funds are sufficient in the fiscal year 2022 budget and the fiscal year 2023 through fiscal year 2026 proposed budget and financial plan to implement the bill. The bill establishes a process for the Mayor to be more proactive in identifying impacts on special and heritage trees during the construction permitting process and gives DDOT, as the Mayor's enforcement agency for tree laws and regulations, expanded enforcement authority to issue stop work orders.

The Department of Consumer and Regulatory Affairs (DCRA) issues construction permits on behalf of the District and would be responsible for ensuring that applicants file the bill's required tree-related declarations during the permitting process. DDOT and UFD will review these declarations and determine whether a Plan is needed. DCRA will issue a permit once the Plan is approved and all

⁴ The bill defines a critical root zone as the area of soil encircling a tree that is measured by multiplying the tree's diameter, measured in inches, by a factor of no less than 18.

⁵ Licenses issued pursuant to Subchapter I-B of Chapter 28 of Title 47.

other approvals are made. Since these reviews will occur concurrently with other interagency reviews of permit elements, they should not impose a significant delay on the permitting process. DCRA and DDOT can absorb the cost of reviewing the declarations and any subsequent Plans within their agencies' existing budgeted resources.

DDOT will be responsible for issuing stop work orders when necessary and working with DCRA to revoke or prevent permit issuances if DDOT determines the violation was negligent, willful, or reckless. If a decision is made to revoke a permit, DCRA must ensure that occurs and must track a two-year prohibition on professional and occupational licenses for contractors or the property owner, as required in the bill. If an individual wants to appeal either a stop work order or a permit revocation or suspension, they can file an appeal at OAH. DDOT can absorb any costs associated with issuing a stop work order and the related coordinating activities with DCRA and OAH within the DDOT's existing budgeted resources. DCRA can also absorb any of these activities with the agency's existing budgeted resources. Because the bill establishes the opportunity for DDOT to be more proactive in its review of construction projects and their impacts on related special and heritage trees, the number of appeal cases that flow to OAH should be limited. OAH could expect a handful of cases each year and the agency can absorb the costs of hearing those cases within the agency's existing budgeted resources.