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**Audit of the Urban Forestry Administration
of the District Department of Transportation**

September 12, 2011

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Executive Summary

The Urban Forestry Administration (UFA) is responsible for the management of the Urban Forest Preservation Act. The Council of the District of Columbia enacted the Urban Forest Preservation Act (Act) in 2003 to preserve the District's urban forest. The Act established a Tree Fund to plant new trees and to fund an Income Contingent Program to assist low income households with the removal of hazardous trees. The Act also protected most trees with a circumference greater than 55 inches, referred to as Special Trees. A permit is required to remove Special Trees. Failure to obtain a Special Tree removal permit can result in fines. Money collected from Special Tree removal permits and fines is to be deposited into the Tree Fund.

The objectives of this audit were:

- To determine if the Tree Fund was effectively used to achieve the purposes of the Urban Forest Preservation Act; and
- To review the operations and performance of the Urban Forestry Administration regarding the implementation of the Urban Forest Preservation Act.

The following are key findings from the audit:

- 1. The Urban Forestry Administration did not adequately review Tree Fund expenditures and deposits. (Page 4)**
- 2. The Urban Forestry Administration used the Tree Fund for unauthorized purposes. (Page 5)**
- 3. The Urban Forestry Administration did not effectively manage the Income Contingent Program. (Page 5)**
- 4. Fines for violations of the Urban Forest Preservation Act were not deposited into the Tree Fund. (Page 8)**

To address the key audit findings, we recommend that the Council of the District of Columbia:

- | |
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| <ol style="list-style-type: none">1. Transfer the administration and management of the Tree Fund to the District Department of the Environment.2. Transfer the Income Contingent Program to the District Department of the Environment. |
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Until the Tree Fund and Income Contingent Program are transferred to the District Department of the Environment, we recommend that the Urban Forestry Administration:

- 1. Implement written policies and procedures for the administration and management of the Tree Fund that include regular reviews of Tree Fund expenditures and deposits.**
- 2. Along with the Office of the Chief Financial Officer, establish a system for dollar-for-dollar tracking of Tree Fund money to ensure that funds are only used for authorized uses.**
- 3. Take steps to effectively implement written policies and procedures for the management of the Income Contingent Program.**
- 4. Establish and implement written procedures for collection of fines for violations of the Urban Forest Preservation Act.**

Conclusion

The Council of the District of Columbia enacted the Urban Forest Preservation Act (Act) to preserve the District's urban forest. The Act established a Tree Fund. The Tree Fund was to be used to plant new trees, and assist District homeowners with the removal of hazardous trees on their property. The Urban Forestry Administration (UFA) was responsible for the management of the Tree Fund.

Our audit found that the Urban Forestry Administration did not properly manage the Tree Fund. Specifically, UFA did not monitor the Tree Fund to ensure that fines for violations of the Urban Forest Preservation Act were properly deposited. UFA also did not make certain that expenditures of money from the Tree Fund were consistent with the purposes of the Tree Fund. Additionally, the Tree Fund was used improperly to pay for UFA programs that did not involve planting new trees or removing hazardous trees.

More effective management of the Tree Fund by UFA could have increased the number of new trees that were planted and protected more District homeowners from property damage caused by hazardous trees. To properly manage the Tree Fund, UFA should have:

- implemented written procedures for the management of the Tree Fund;**
- regularly reviewed Tree Fund deposits and expenditures; and**
- implemented an effective plan to use the Tree Fund to plant new trees and remove hazardous trees from private property.**

To improve the management of the Tree Fund, and to ensure the consistent planting of new trees, and the timely removal of hazardous trees on private property, the administration of the Tree Fund and the Income Contingent Program should be moved from the Urban Forestry Administration to the District Department of the Environment (DDOE).

When the Council of the District of Columbia enacted the Urban Forest Preservation Act, the Council described the District's urban forest as one of the District's "great natural resources." The administration of the Tree Fund and the Income Contingent Program by the District Department of the Environment will ensure that one of the District's "great natural resources" is properly protected.

Introduction

In response to a request from Councilmember Mary M. Cheh, we conducted an audit of the Urban Forestry Administration of the District Department of Transportation.

Objectives, Scope, and Methodology

The objectives of this audit were:

- To determine if the Tree Fund was effectively used to achieve the purposes of the Urban Forest Preservation Act; and
- To review the operations and performance of the Urban Forestry Administration (UFA) regarding the implementation of the Urban Forest Preservation Act.

Audit Timeframe

The audit period covered fiscal year 2005 through fiscal year 2011, as of January 31, 2011.

Audit Standards

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In conducting the audit, we reviewed: (1) the Urban Forest Preservation Act; (2) UFA policies and procedures; (3) Tree Fund deposits and expenditures; (4) UFA contracts for tree removal, pruning, and planting; (5) UFA records of Special Tree removal permits; (6) relevant literature on urban tree management and urban tree management data from other jurisdictions; and (7) relevant District laws, rules, and regulations. To gain an understanding of UFA operations, we interviewed UFA's Associate Director, Deputy Associate Director, Supervisory Forester, and Program Analyst/Inspector. We also interviewed Watershed Protection Specialists from the District Department of the Environment (DDOE), and representatives of Casey Trees, a D.C.-based non-profit environmental organization. The Auditor also conducted field inspections, and interviewed participants in UFA programming.

Agency Accomplishments

The Urban Forestry Administration (UFA) reported the following information:

1. In 2008, it took UFA an average of 606 days to remove a tree and 591 days to plant a tree. In 2011, it took UFA an average of 15 days to remove a tree, and 10 days to plant a tree.
2. UFA is on track to maintain a 5-6 year tree inventory rotation; this standard falls in the industry standard of 5-7 years.
3. Since June 2006, UFA has been using an electronic work order management system (Cityworks) to process service requests received from the Mayor's Call Center coupled with field-based tablet computers. The program was initiated exclusively at UFA using internal staff. Cityworks is now a DDOT-wide work order management system used by all five administrations based on UFA's implementation.
4. In 2005, UFA hired a doctoral degreed Deputy Associate Director with direct knowledge of urban forestry and horticulture, and experience in plant pathology and community outreach.
5. UFA developed an electronic form for use on government-issued blackberries to check agency vehicles in and out and to track mileage, moving away from a paper-based process.
6. In June 2010, UFA completed and submitted the "District of Columbia Assessment of Urban Forest Resources and Strategy." This document, submitted to the U.S. Forest Service, provides an assessment of present urban forest conditions in the District and provides a strategy and plan to maximize the use of funds to meet that strategy.
7. UFA outreach staff developed public volunteer projects that offer on-the-ground experiences in urban street tree stewardship and planting; these projects have included 9/11 Day of Service (Deanwood), Make a Difference Day (Anacostia), and Martin Luther King, Jr. Day of Service (Pope Branch Park, SE).

For their time, information, insight, and cooperation during the audit process, we want to thank the staff of the Urban Forestry Administration, including: John Thomas, Associate Director; Monica Lear, Deputy Associate Director; Earl Eutsler, Supervisory Forester; and Carlson Klapthor, Program Analyst/Inspector. We also want to thank Steve Saari and Josh Burch, Watershed Protection Specialists from the District Department of the Environment (DDOE). Additionally, we are grateful to Mark Buscaino, Executive Director, and Michael Galvin, Deputy Director, from Casey Trees, a D.C.-based non-profit environmental organization.

Background

The Urban Forestry Administration (UFA) maintains all street trees in the District of Columbia. Street trees are located between the curb and sidewalk and in traffic medians. In addition, the Urban Forestry Administration is responsible for the administration of the Urban Forest Preservation Act (Act).

The Council of the District of Columbia enacted the Act in 2003 to preserve the District's urban forest.¹ When the Act was passed, the Council described the District's urban forest as one of the District's "great natural resources." In the Act, the Council described the benefits of a healthy urban forest that include improved air quality, reduced storm-water runoff, aesthetics, cooler temperatures, and increased property values.

The Act also prevents the removal of mature healthy trees called Special Trees. Special Trees are trees with a circumference greater than 55 inches. Residents can only remove a Special Tree if:

- The tree is hazardous or a species of weed tree; or
- The Urban Forestry Administration issues a Special Tree removal permit.

To obtain a Special Tree removal permit from UFA, residents must agree to either plant a quantity of replacement trees that equals or exceeds the circumference of the Special Tree, pay \$35 for each inch of the total circumference of the Special Tree, or a combination of both. Money collected for Special Tree removal permits is deposited into the Tree Fund. Under the Act, failure to obtain a Special Tree removal permit can result in fines. Fines collected for violation of the Act are also deposited into the Tree Fund.

UFA is responsible for maintaining the Tree Fund. Total Tree Fund revenue for the audit period was \$640,666. UFA is to use the Tree Fund to plant new trees and support the Income Contingent Program for Hazardous Tree Removal (Income Contingent Program). The Income Contingent Program assists low income homeowners with the removal of hazardous trees. Regulations limit UFA's spending on the Income Contingent Program to 15 percent of the Tree Fund balance from the prior year.

¹ The full text of the Urban Forest Preservation Act is included at the conclusion of the report.



More Money Would Have Been Available to Plant New Trees and Remove Hazardous Trees if the Urban Forestry Administration More Effectively Managed the Tree Fund Account

The Urban Forestry Administration was required to use the Tree Fund to plant trees and pay for the Income Contingent Program. Our review of the Tree Fund found:

- **The Urban Forestry Administration did not adequately review Tree Fund expenditures and deposits; and**
- **The Urban Forestry Administration used the Tree Fund for unauthorized purposes.**

UFA did not have accurate information regarding the amount of money in the Tree Fund. Therefore, UFA could not effectively use the Tree Fund to plant trees.

The Urban Forestry Administration Did Not Adequately Review Tree Fund Expenditures and Deposits

The Urban Forestry Administration is responsible for the proper management and administration of the Tree Fund. However, we found that UFA did not regularly review Tree Fund deposits or expenditures for accuracy.

Our review of the Tree Fund account showed that \$325,000 deposited into the Tree Fund was improperly recorded as deferred revenue from fiscal year (FY) 2008 to FY 2010. Deferred revenue is revenue that is paid after a service is provided. Since UFA recorded the \$325,000 as deferred revenue, UFA records were inaccurate and incomplete.

We also found that UFA improperly used money from the Tree Fund to pay a \$13,108 bill from the District of Columbia Water and Sewer Authority (WASA).

UFA improperly recorded \$325,000 as deferred revenue and used the Tree Fund to pay a WASA bill because UFA did not have written policies and procedures for the administration and management of the Tree Fund. Additionally, UFA did not regularly review Tree Fund expenditures and deposits for accuracy.

We recommend that the Urban Forestry Administration:

Implement written policies and procedures for the administration and management of the Tree Fund that include regular reviews of Tree Fund expenditures and deposits.

The Urban Forestry Administration Used the Tree Fund for Unauthorized Purposes

The Tree Fund was established to plant new trees. While the Urban Forestry Administration created a designated account for Tree Fund money, UFA did not establish a system to properly manage the Tree Fund account. UFA moved money from the Tree Fund account to a different UFA account. As a result, money from the Tree Fund account was commingled with other UFA accounts. UFA used money in the commingled account for purchases that were inconsistent with the purpose of the Tree Fund, such as tree removal and ginkgo tree treatments. As a result of UFA's commingling of funds, neither UFA, nor the Auditor, could determine the specific amounts of Tree Fund money spent on tree removal, ginkgo tree treatments, and tree planting.

Although UFA used some of the commingled funds to support a Tree Fund purpose of planting new trees, UFA did not maintain detailed records that included specific locations of where new trees were planted. Additionally, UFA could not verify whether new trees planted with Tree Fund money were alive. Since UFA commingled Tree Fund money with other UFA accounts, and UFA did not record the location of trees planted with Tree Fund money, neither UFA, nor the Auditor, could determine if UFA achieved the purpose of the Urban Forest Preservation Act, which was to preserve the District's urban forest.

We recommend that the Urban Forestry Administration and the Office of the Chief Financial Officer:

Establish a system for dollar-for-dollar tracking of Tree Fund money to ensure that UFA only uses funds for authorized uses.

The Urban Forestry Administration Did Not Effectively Manage the Income Contingent Program

Hazardous trees must be removed in a timely manner to avoid injuries to individuals and damage to property. The Income Contingent Program (Program) required UFA to inspect a homeowner's tree within 30 calendar days after the homeowner submitted a program application to UFA.

Of the 11 homeowners who submitted program applications between January 2010 and December 2010, we found that UFA inspected 4 homeowners' trees within the required 30 day period. We also found that UFA's records for the Program were inaccurate and incomplete. For example, UFA recorded the nonexistent date of September 31, 2010, as the date 2 program applications were received. UFA records for the Program also stated that UFA inspections of hazardous trees occurred on weekends. However, according to UFA officials, the Program's hazardous tree inspections were conducted during business hours, not on weekends.

We also found that UFA did not have written procedures that detailed the steps UFA employees must take to comply with the Income Contingent Program deadlines, nor was there consistent record-keeping. Our review found that UFA did not consistently record the dates when UFA:

- received Program applications;
- approved applicants to participate in the Program;
- scheduled an arborist to inspect the applicants' trees; and
- notified homeowners that their tree was or was not hazardous.

As a result, there were insufficient records to document that UFA met the Income Contingent Program deadlines. According to UFA, as a result of the audit, UFA drafted policies and procedures to manage the Program.

What this means to you:
If you had a hazardous tree on your property and could not afford to remove it, UFA may not have provided a timely response to your interest in the Income Contingent Program.

We found that few District residents used the Income Contingent Program. The Program began in January 2010; however, during the scope of our audit, UFA only approved 8 homeowners to participate in the Program. UFA was allowed to spend 15 percent of the Tree Fund balance from the prior year on the Program. In FY 2010, this amounted to \$32,658. We found that in FY 2010, UFA only spent \$7,500 to remove hazardous trees

under the Program. In Fiscal Year 2011, \$10,274 was available to remove hazardous trees, but at the time of the audit, UFA only spent \$6,050. Additionally, we found that UFA did not have a plan to promote the Program.

We found that District homeowners did not participate in the Program because UFA did not aggressively promote the Program. UFA did not partner with the District Department of the Environment (DDOE) or Casey Trees, a D.C.-based non-profit environmental organization, to inform District residents about the Program. UFA did not include information about the Program on the UFA website or develop a brochure encouraging residents to apply to the Program. According to UFA, the Program was not promoted because it was new. UFA plans to develop a public awareness campaign to promote the Program.

For the homeowners that had hazardous trees removed under the Program, we found that UFA did not have a valid contract for the removal of the hazardous trees on private property. While UFA had a contract with C&D Tree Service for the removal of street trees on public property, UFA did not have a contract with C&D Tree Service for the removal of trees on private property. However, UFA authorized \$13,550 in payments to C&D Tree Service for the removal of hazardous trees on private property. Without a valid contract for tree removal on private property, neither the Auditor, nor UFA, could: properly determine if C&D Tree Service provided all of the agreed-upon services; determine whether the \$13,550 in authorized payments was appropriate; or hold C&D Tree Service accountable for delivery of these services.

Since the Income Contingent Program is an important part of the Urban Forest Preservation Act, homeowner participation is vital to the success of the Program. We found that the District Department of the Environment (DDOE) has established effective promotion programs to inform residents about the importance of planting and protecting trees on private property. According to DDOE, to increase participation in the Income Contingent Program, the Program should be moved from the Urban Forestry Administration to DDOE. Since the Tree Fund pays for the Income Contingent Program and planting trees, DDOE should be responsible for the administration and management of the Tree Fund.

To ensure that homeowners participate in the Income Contingent Program, we recommend that the Council of the District of Columbia:

Transfer the administration and management of the Tree Fund to the District Department of the Environment.

Transfer the Income Contingent Program to the District Department of the Environment.

Until the Tree Fund and Income Contingent Program are transferred to DDOE, we recommend that the Urban Forestry Administration:

Take steps to effectively implement written policies and procedures for the management of the Income Contingent Program.

Obtain a valid contract for the removal of hazardous trees on private property.

Fines for Violations of the Urban Forest Preservation Act Were Not Deposited into the Tree Fund

The Urban Forestry Administration is responsible for identifying persons or non-governmental entities that remove or destroy Special Trees without Special Tree removal permits. When a possible violation of the Urban Forest Preservation Act is identified, UFA's staff issues a notice of violation to the individual or non-governmental entity. UFA transmits a copy of the notice of violation to the D.C. Office of Administrative Hearings (OAH). The person or non-governmental entity that was issued the notice of violation can either: admit to the violation by paying the fine; admit with explanation by mail; or deny the violation by attending a hearing held by the Office of Administrative Hearings to determine whether the Act was violated. If OAH determines that the Act was violated, OAH collects the fine and deposits the payment into the Tree Fund.

During the review period, there were 3 instances where OAH determined that the Act was violated and issued fines totaling \$30,148. We found that \$20,100 of this amount was not deposited into the Tree Fund. However, according to UFA, OAH did not provide UFA with a written notification of judgment. In another instance, an individual admitted to the violation and paid the fine of \$8,260,² but this amount was also not deposited into the Tree Fund. Together, we found a total loss of \$28,360 (\$20,100 + \$8,260) to the Tree Fund.

Fines were not always collected and deposited into the Tree Fund because UFA did not have written policies and procedures to:

- monitor the collection of fines by OAH; and
- confirm that fines for violation of the Act were properly deposited into the Tree Fund.

As a result of UFA's failure to implement written policies and procedures for the collection of Act violations, UFA did not record and deposit \$28,360 in fines into the Tree Fund. Without complete deposits to the Tree Fund, UFA did not have all the resources to plant new trees and administer the Income Contingent Program.

We recommend that the Urban Forestry Administration:

Establish and implement written procedures for collection of fines for violations of the Urban Forest Preservation Act.

² The payment of \$8,260 was made outside of the scope of the audit period.



There Would Have Been More Money in the Tree Fund if All Contractors Paid For Special Tree Removal Permits

As part of the modernization of D.C. Public Schools, it was necessary for contractors to cut down Special Trees. We found that the Urban Forestry Administration did not require all contractors to obtain Special Tree removal permits.

The Urban Forestry Administration Did Not Require Whiting-Turner to Obtain a Special Tree Removal Permit

Our review showed that one contractor, Whiting-Turner, did not obtain a Special Tree removal permit for Special Trees removed during the modernization of Stoddert Elementary School (Stoddert). According to an email from Whiting-Turner to UFA, the cost for a Special Tree removal permit for Stoddert was **\$150,000**. The \$150,000 cost for the Stoddert Special Tree removal permit was based on a rate of \$35 for each inch of circumference of the removed Special Trees. The total inches of circumference for the Stoddert Special Tree removal permit was 4,285 inches (\$150,000 Cost of the Special Tree removal permit / \$35 = 4,285 inches of circumference).

Whiting-Turner did not pay the **\$150,000** fee to obtain a Special Tree removal permit nor plant replacement trees because Whiting-Turner claimed it was a governmental entity. Governmental entities are not required to obtain Special Tree removal permits. However, Whiting-Turner was a contractor, not a governmental entity.

What this means to you:

**It costs \$270 to plant 1 tree.
555 trees could have been
planted with \$150,000. Since
UFA did not collect \$150,000,
the District has 555 fewer trees
than it should have.**

The fine for failing to obtain a Special Tree removal permit is \$100/inch of circumference. Since the total inches of circumference for the Stoddert Special Tree removal permit is 4,285 inches, the fine for Whiting-Turner failing to obtain a Special Tree removal permit is **\$428,500** (4,285 inches of circumference X \$100 = \$428,500).

We recommend that the Office of the Chief Financial Officer:

Fine Whiting-Turner in the amount of \$428,500 for failing to obtain a Special Tree removal permit for the removal of Special Trees during the modernization of Stoddert Elementary School.

We recommend that the Urban Forestry Administration:

Consistently implement the requirement that non-governmental entities obtain Special Tree removal permits.

Conclusion

The Council of the District of Columbia enacted the Urban Forest Preservation Act (Act) to preserve the District's urban forest. The Act established a Tree Fund. The Tree Fund was to be used to plant new trees, and assist District homeowners with the removal of hazardous trees on their property. The Urban Forestry Administration (UFA) was responsible for the management of the Tree Fund.

Our audit found that the Urban Forestry Administration did not properly manage the Tree Fund. Specifically, UFA did not monitor the Tree Fund to ensure that fines for violations of the Urban Forest Preservation Act were properly deposited. UFA also did not make certain that expenditures of money from the Tree Fund were consistent with the purposes of the Tree Fund. Additionally, the Tree Fund was used improperly to pay for UFA programs that did not involve planting new trees or removing hazardous trees.

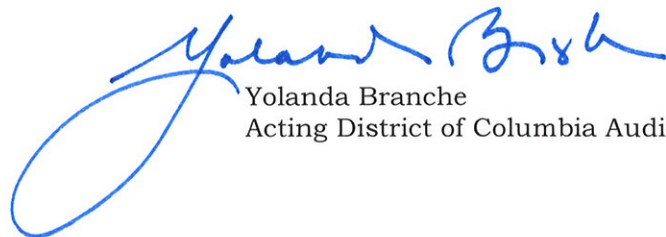
More effective management of the Tree Fund by UFA could have increased the number of new trees that were planted and protected more District homeowners from property damage caused by hazardous trees. To properly manage the Tree Fund, UFA should have:

- **implemented written procedures for the management of the Tree Fund;**
- **regularly reviewed Tree Fund deposits and expenditures; and**
- **implemented an effective plan to use the Tree Fund to plant new trees and remove hazardous trees from private property.**

To improve the management of the Tree Fund, and to ensure the consistent planting of new trees, and the timely removal of hazardous trees on private property, the administration of the Tree Fund and the Income Contingent Program should be moved from the Urban Forestry Administration to the District Department of the Environment (DDOE).

When the Council of the District of Columbia enacted the Urban Forest Preservation Act, the Council described the District's urban forest as one of the District's "great natural resources." The administration of the Tree Fund and the Income Contingent Program by the District Department of the Environment will ensure that one of the District's "great natural resources" is properly protected.

Sincerely,



Yolanda Branche
Acting District of Columbia Auditor

Summary of Potential Increased Revenue and Improved Efficiency Resulting From the Audit

Finding	Recommendation	Potential Increased Revenue	Potential Improved Efficiency
The Urban Forestry Administration did not adequately review Tree Fund expenditures and deposits.	UFA should implement written policies and procedures for the administration and management of the Tree Fund that include regular reviews of Tree Fund expenditures and deposits.		X
The Urban Forestry Administration used the Tree Fund for unauthorized purposes.	Along with the Office of the Chief Financial Officer, UFA should establish a system for dollar-for-dollar tracking of Tree Fund money to ensure that UFA only uses funds for authorized uses.		X
The Urban Forestry Administration did not effectively manage the Income Contingent Program.	The Council of the District of Columbia should transfer the administration and management of the Tree Fund to the District Department of the Environment.		X
	The Council of the District of Columbia should transfer the Income Contingent Program to the District Department of the Environment.		X
	UFA should take steps to effectively implement the written policies and procedures for the management of the Income Contingent Program.		X
	UFA should obtain a valid contract for the removal of hazardous trees on private property.		X

Finding	Recommendation	Potential Increased Revenue	Potential Improved Efficiency
Fines for violations of the Urban Forest Preservation Act were not deposited into the Tree Fund.	UFA should establish and implement written procedures for collection of fines for violations of the Urban Forest Preservation Act.		X
UFA did not require Whiting-Turner to obtain a Special Tree removal permit.	The Office of the Chief Financial Officer should fine Whiting-Turner in the amount of \$428,500 for failing to obtain a Special Tree removal permit for the removal of Special Trees during the modernization of Stoddert Elementary School.	\$428,500*	
	UFA should consistently implement the requirement that non-governmental entities obtain Special Tree removal permits.	X	X
TOTAL		\$428,500	

* Special Tree removal permits issued at a rate \$35.00 for each inch of circumference (D.C. Code, Section 8-651.04(3)). A Special Tree removal permit for \$150,000 at \$35/inch of circumference equals 4,285 inches of circumference. The fine for failing to obtain a Special Tree removal permit is \$100/inch of circumference. (D.C. Municipal Regulations, Section 24-3704.1). 4,285 inches of circumference at a rate of \$100/inch of circumference equals \$428,500.

Agency Comments

On August 10, 2011, the District of Columbia Auditor submitted the report in draft form for review and comment to the Director of District Department of Transportation (DDOT). The Auditor received written comments from DDOT's Urban Forestry Administration (UFA) on August 25, 2011.

The written comments of UFA along with the Auditor's response to the comments are included in this report.

UFA Response to ODCA Draft Audit Report

Section 1 – Recommendations

1. ODCA: UFA should develop and implement written policies and procedures for the administration and management of the Tree Fund that include regular reviews of Tree Fund expenditures and deposits.

UFA Response: Agency agrees as well as submitted documents to this effect prior to this report, and has established a procedure for performing quarterly reviews of tree fund activity to ensure that all deposits were routed correctly by OCFO-DC Treasurer staff into the Tree Fund. Additionally, UFA took several steps to ensure that parties external to UFA that are involved in the handling of these types of transactions are more likely to process deposits appropriately. For instance, UFA updated the SOAR Journal deposit ticket used by the public space management office to more explicitly indicate the proper routing and indexing of Tree Fund deposits. UFA created a Tree Fund activity tracking report to be used by the public space management office's staff which tracks each permit they issue that required a deposit to the Tree Fund. UFA then reviews all permits with an associated Tree Fund contribution against both the public space management office's tracking sheet record as well as the OCFO's Tree Fund activity report on a quarterly basis. This intensive tracking of Tree Fund activity enables UFA to identify any errors or inconsistencies that may transpire by external groups. This monitoring effort has been in place since the beginning of 2011. UFA is proud to report that no Tree Fund deposits have been mis-routed, placed in a deferred revenue status, or otherwise mishandled since the implementation of this process. It should also be noted that all deposits owed to the Tree Fund over the life of this program, including those mis-routed in to DDOT's General Fund, have been added as revenue to the Tree Fund. DC Treasurer is responsible for taking the money and the transaction for all payments. The OCFO is responsible for making sure the deposits are not deferred and "realized" if they were not entered correctly by DC Treasurer. DDOT does not have access to funds that are in a deferred status until they are recognized by OCFO. DDOT provides a routing slip for these transactions to the applicant for payment and expects the other agencies to follow through with their process.

2. ODCA: Along with the OCFO, UFA should establish a system for dollar-for-dollar tracking of Tree Fund money to ensure that UFA only uses funds for authorized uses.

UFA Response: The law establishes that the Tree Fund may be used to plant trees, defray costs associated with implementing the law and assist homeowners in an income-contingent status with the



District Department of Transportation

removal of hazardous trees from their property. No funds have been used for other uses. Specifically the funds for the WASA payments were a mistake on a journaling of charges for water bills to DDOT. The OCFO was to charge the UFA operating fund not the Tree Fund and it charged the wrong project. This has been corrected by OCFO. UFA found no record of charges for tree removal and ginkgo spraying that are mentioned in the report. The ODCA failed to provide UFA with any documents to show this has occurred or that we could review and recommend they remove this from the report.

3. ODCA: The Council of the District of Columbia should transfer the administration and management of the Tree Fund to DDOE.

UFA Response: As a public space specific agency, DDOT has long had to reconcile the conflict of implementing the UFP Act, an operation which largely manages private property concerns. The first Associate Directors at UFA failed to separate the private from the public space issues and have created an act that doesn't fit one agency. UFA has suggested and a tried to get the act changed but it was not met with any support. The Urban Forest Preservation Act of 2003 needs to be changed to define a special tree as a tree that is 55 inches or greater and is not on public space. This would allow us to shift the full program to DDOE and still allow UFA to work with our permit system for all trees in public space. In many ways, the entire program would be better managed by DDOE, as they have regulatory oversight of the other major environmental categories on private property such as water and soil conservation. The tree bill is really best used for removal of less than 10 trees on a single property and DDOE should be protecting the ecosystems when 11 or more special trees are removed because the trees are only a small impact at this point and loss of habitat for trees, animals and erosion issues should be protected. UFA would focus on the loss of public space trees and making sure developers provide compensation through improved street box design, increase tree counts and better species selection. However, DDOT would object vigorously to shifting administration of only the Tree Fund to DDOE. If ODCA is suggesting that implementation of the entire UFP Act be transferred to DDOE than we would agree.

4. ODCA: The Council of the District of Columbia should transfer the Income Contingent Program to DDOE.

UFA Response: UFA tried to stop this piece from being started in DDOT because our agency has no mission on private property or the ability to establish income levels for programmatic support like DDOE has with energy. DDOT would object vigorously to shifting administration of only the Income Contingent Program to DDOE. It should be pointed out that at this time there are no certified arborists on staff at DDOE, and the implementation of this program would be impossible without sufficient numbers of appropriately trained staff. If ODCA is suggesting that implementation of the entire UFP Act be transferred to DDOE than we would agree.



5. ODCA: UFA should establish written procedures for the management of the Income Contingent Program.

UFA Response: 4 February 2011 UFA provided ODCA with several documents pertaining to the management of the Income Contingent Program. These included the SOP related to the implementation of the program, a standardized form for verifying current enrollment in an income contingent assistance program, a standardized notice of qualification form and a standardized notice of ineligibility. These documents supply a detailed description of how this program is to be implemented, and also provide the applicant with thorough documentation for their records. These documents fulfill the recommendation made by ODCA. However, as UFA had sent these documents to ODCA well in advance of the issuance of this draft report (6 months) it is our belief that this recommendation should be removed from the report. UFA would not object to language related to the development of these documents being added to the Introduction, Agency Accomplishments or Background sections of the report. However, it is not accurate to issue the audit report suggesting that at this time these policies and procedures still need to be established considering they have been in place for a duration approaching one full year. UFA met with the owner and contractor on all income contingent related services. UFA followed normal protocols and SOP's which are to review completed work prior to invoice approval and then approve the invoice. UFA would like this recommendation to reflect this as there is no documents to support the current statement that in is unclear to determine if work was completed. In addition UFA provided ODCA with the invoices during the review about 6 months ago.

6. ODCA: UFA should obtain a valid contract for the removal of hazardous trees on private property.

UFA Response: UFA is now working with the Office of Contracting & Procurement to either amend our existing contract or issue a blanket purchase agreement for work on private property. However, for a segment of trees addressed through this program our existing contract was valid as the tree(s) originated from the public parking area of the public space.

7. ODCA: UFA should establish and implement written procedures for collection of fines for violations of the Urban Forest Preservation Act.

UFA Response: As per Ms. Rhanes OAH has not received payment for two tickets (M100621 and U100072) but is bringing them to the attention of the judge now that UFA called them regarding the status of the deposits. The last ticket was paid and she could not provide any documentation o where it



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was deposited but is checking to see what can find so UFA can get the money routed back to the tree fund. The collection of fines related to violations of the UFP Act are handled by the Office of Administrative Hearings (OAH). OAH has jurisdiction to hear and decide notices of infraction issued by the UFA related to violations of the UFP Act. They are responsible for finding the party guilty, then setting a fine and then having the fine paid for with the DC Treasurer. UFA may or may not receive notice of any or all of these, at least in the past, but recent improvements have been seen. In an attempt to remind OAH of the requirement that they direct proceeds from these adjudicative processes to the Tree Fund UFA has drafted a memo stating such. This document will be attached to the evidentiary package we provide OAH related to any violation of the UFP Act. However, it is the responsibility of OAH to route proceeds from cases brought before them to the appropriate account. As mentioned in an above response, UFA has instituted a quarterly review of Tree Fund activity, which allows us to ensure that all deposits intended for the Tree Fund are routed appropriately. UFA is currently working with OAH and OCFO to have the money that was paid by two permittees routed back to the tree fund. The last violation has not been paid and we have asked OAH to provide us with a answer as to why and what is left for DDOT if they do not. Again, UFA strongly feels that OAH and DC Treasurer are responsible for collecting fees and fines and routing them to the correct funding source. It is hard with DOT's resources to have to correct other agencies process issues as well as UFA does not supervise staff at either OAH or DC Treasurer or OCFO so we can only request that they improve or correct issues once we are aware.

8. ODCA: UFA should develop and implement procedures for the collection of Special Tree removal permit fees before issuing Special Tree removal permits.

UFA Response: From the beginning of this program UFA has insisted that **payment be made prior to the issuance** of a Special Tree permit, where payment was required. UFA cannot determine exactly how ODCA arrived at the conclusion that this process occurred in the reverse. A review of the individual SOAR Journal Vouchers and Standard Deposit Tickets related to those applications that required payment confirm conclusively that payment was in fact received **before** the permit was issued. It may be that ODCA is misinterpreting data shown on certain OCFO Tree Fund activity reports. Specifically, the OCFO "Effective Date" cannot be misconstrued as the date the contribution was made to the Tree Fund. Instead, SOAR Journal Vouchers and District Treasury Deposit Tickets should be referenced when trying to determine the actual date that payment was received by the DC Treasurer. A review of these records demonstrates that payment was in fact received **before** permits were issued. Training was provided to DDOT staff in 2005 that detailed the process that should be followed for issuing all Special Tree permits. This training included specific instructions mandating that permits would only be issued after an

applicant produced an official deposit receipt totaling the amount shown in our permit system as being required.

9. ODCA: UFA should collect \$34,959 from the 11 residents that obtained Special Tree removal permits without paying the required permit fee.

UFA Response: Of the 11 permits identified by ODCA as not having contributed the required Tree Fund fee UFA has located the deposit records for 10 of these permits. These documents show this claim to be allegation to be false, and it should be removed from the report altogether. We have struggled to locate the deposit records for a single permit with a related fee of \$1645. By way of background, this particular permit was the second application processed by DDOT, and it is not entirely unreasonable to assume that the records are difficult to locate at this time as this was the first instance where a deposit was collected. Furthermore, UFA was not informed of this allegedly missing deposit until August 12, 2011. Had ODCA provided UFA with this information at an earlier date we would have a more reasonable time to locate the proof that this deposit was in fact received. UFA is confident that this deposit was collected prior to the issuance of the permit. It should be noted that UFA has been able to locate every deposit ODCA has alleged was not collected. Deposit receipt records for these permits are listed in the table below:

Permit Application	Tree Fund Deposit	Issued By	Deposit Record #
2050	\$1,925.00	Kisha Allen	2050. DRT 03825
2010	\$7,253.00	Kisha Allen	2010. DRT 03823
1979	\$2,327.00	Kisha Allen	1979. DRT 03821
1950	\$2,693.00	Duff McCully	1950. DRT 03829
1944	\$3,429.00	Duff McCully	1944. DRT 03829
1852	\$2,520.00	Kisha Allen	1852. DRT 03146
1706	\$2,590.00	Robert Corletta	1706. DRT 03847
1598	\$810.00	Michaud Gray	1598. DR 621513
1184	\$4,340.00	Kisha Allen	1184. DRT 01003
435	\$4,060.00	Kisha Allen	435. DRT 03845
2	\$1,645.00	Matthew Marcou	2. Additional research required and is happening now

10. ODCA: UFA should establish a policy to verify that Special Tree removal permit holders comply with permit terms by planting and watering replacement trees.



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UFA Response: UFA has instituted a series of policies that ensure compliance with the replacement planting component of Special Tree removal permits. These include a new requirement that applicants provide a planting plan in advance of the issuance of any Special Tree removal permit with an associated replanting requirement and providing explicit language detailing the applicant's replanting and reporting requirements. These planting plans are retained by UFA and then referenced when notification has been received from the permittee that the planting component has been completed. UFA is limited to 12 months to access the site so we can only suggest they follow best practices for care. UFA also feels that having a planting component is not effective in the UFPA and it should be all payments in lieu of tree removal. This is more efficient for staff and the District. Tree planting will be made a requirement in the new zoning regulations and UFA is concerned about how these two regs will match up. UFA has request the ability to change the UFPA for FY 12 with the Mayor.

11. ODCA: UFA and the OCFO should require Whiting-Turner to pay \$150,000 for the Special Tree removal permit for Special Trees removed during the modernization of Stoddert Elementary School.

UFA Response: *DDOT's Office of General Counsel has opined that D.C. Code § 8-651.04 does not apply to governmental entities, including D.C. government agencies and the contractors who perform work on their behalf, based on the plain language of the Code provision and the tenets of agency law.*

In addition, to the findings that UFA have received from the general council of DDOT, the contractor and OPFEM email indicates their legal council arrived at the same conclusion. Therefore this recommendation should be removed based on the legal opinion by GC of DDOT and supporting documents by OPFEM and its contractor.

Also UFA request the box charts about trees that could have been planted related to the two recommendations be removed for the above reasons.

12. ODCA: UFA should issue a notice of violation of the Urban Forest Preservation Act to Whiting-Turner in the amount of \$428,500 for failing to obtain a Special Tree removal permit for the removal Special Trees during the modernization of Stoddert Elementary School.



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UFA Response: *DDOT's Office of General Counsel has opined that D.C. Code § 8-651.04 does **not** apply to governmental entities, including D.C. government agencies and the contractors who perform work on their behalf, based on the plain language of the Code provision and the tenets of agency law.*

In addition, to the findings that UFA have received from the general council of DDOT, the contractor and OPFEM email indicates their legal council arrived at the same conclusion. Therefore this recommendation should be removed based on the legal opinion by GC of DDOT and supporting documents by OPFEM and its contractor.

Also UFA request the box charts about trees that could have been planted related to the two recommendations be removed for the above reasons.

13.ODCA: UFA should consistently implement the requirement that nongovernmental entities obtain Special Tree removal permits.

UFA Response: ODCA has no evidence to suggest that UFA has at any point *not* consistently implemented the requirement that nongovernmental entities obtain Special Tree removal permits. As such, ODCA should remove this recommendation from the report.

Summary of Recommendations Pertaining to the Urban Forestry Administration

Recommendation	Agency Agrees Date Agency will Implement Recommendation	Agency Disagrees Alternative Recommendation
UFA should implement written policies and procedures for the administration and management of the Tree Fund that include regular reviews of Tree Fund expenditures and deposits.	Agree. All steps were implemented prior to draft of Audit report.	
Along with the Office of the Chief Financial Officer, UFA should establish a system for dollar-for-dollar tracking of Tree Fund money to ensure that UFA only uses funds for authorized uses.		UFA disagrees. UFA did not provide an alternative recommendation.
UFA should effectively implement written policies and procedures for the management of the Income Contingent Program. ¹		
UFA should obtain a valid contract for the removal of hazardous trees on private property.		UFA disagrees. UFA did not provide an alternative recommendation.

¹ The draft audit report stated, "UFA should take steps to establish written policies and procedures for the management of the Income Contingent Program." However, based on UFA's comments to the draft report, the Auditor revised the recommendation because UFA drafted written policies and procedures.

UFA should establish and implement written procedures for collection of fines for violations of the Urban Forest Preservation Act.		UFA disagrees. UFA did not provide an alternative recommendation.
UFA should issue a notice of violation of the Urban Forest Preservation Act to Whiting-Turner in the amount of \$428,500 for failing to obtain a Special Tree removal permit for the removal of Special Trees during the modernization of Stoddert Elementary School. ²		UFA disagrees. UFA did not provide an alternative recommendation.
UFA should consistently implement the requirement that non-governmental entities obtain Special Tree removal permits.		UFA disagrees. UFA did not provide an alternative recommendation.

² As a result of UFA's comments regarding the draft audit report, the Auditor revised the recommendation in the final report to: "The Office of the Chief Financial Officer should fine Whiting-Turner in the amount of \$428,500 for failing to obtain a Special Tree removal permit for the removal of Special Trees during the modernization of Stoddert Elementary School."

ENROLLED ORIGINAL

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

2003 Supp.

West Group
Publisher

To establish an urban forest preservation program; to require a Special Tree removal permit and community notification prior to the removal or replacement of a tree with a circumference of 55 inches or more, to establish a Tree Fund to be used to plant trees and defray costs associated with the implementation of this act; to amend An Act For the preservation of the public peace and the protection of property within the District of Columbia to revise penalties for injuring trees on public space and private property; and to repeal section 847 of An Act To establish a code of law for the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Urban Forest Preservation Act of 2002".

TITLE I. URBAN FOREST PRESERVATION.

Sec. 101. Findings.

(a) The urban forest of the District of Columbia, growing on both public and private land, is one of the District's great natural resources.

(b) A healthy, vibrant urban forest provides numerous environmental benefits, including:

- (1) Heat island effect mitigation and reduced energy use;
- (2) Better air quality and reduced water pollution; and
- (3) Quieter and more beautiful neighborhoods.

(c) The trees comprising the urban forest have significant aesthetic value, which enhances property values and the quality of life in neighborhoods throughout the District.

Sec. 102. Definitions.

For the purposes of this title, the term:

- (1) "Circumference" means the linear distance around the trunk of a tree, when measured at a height of 4½ feet.
- (2) "Director" means the Director of the Department of Transportation.
- (3) "Hazardous tree" means a tree that, in the opinion of a certified arborist, is defective, diseased, dying, or dead and should be removed; poses a high risk of failure or

fracture with the potential to cause injury to people or damage to property and should be removed; or is causing damage to property or structures that cannot be mitigated in any manner other than removal of the tree. In any case, the Mayor shall have the authority to determine that a tree is not hazardous.

(4) "Public parking" means that area of public space devoted to open space, greenery, parks, or parking that lies between the property line, which may or may not coincide with the building restriction line, and the edge of the actual or planned sidewalk that is nearer to the property line, as the property line and sidewalk are shown on the records of the District.

(5) "Special Tree" means a tree with a circumference of 55 inches or more.

(6) "Top" means, as defined by the latest edition of the ANSI-A300 pruning standards, the unacceptable act of tree pruning resulting in the indiscriminate reduction of the tree's crown leading to disfigurement or death of the tree.

(7) "Tree Fund" means the Tree Fund established pursuant to section 107.

Sec. 103. Urban Forest Preservation Program.

(a)(1) There is hereby established an Urban Forest Preservation Program for the District of Columbia which shall be administered by the Mayor. The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall promulgate standards and regulations governing the administration of this program and the protection of trees.

(2) The regulations shall allow public utility companies regulated by the Public Service Commission to conduct utility construction, line maintenance, and emergency work within the District's rights-of-way without a Special Tree removal permit otherwise required by this title.

(b) The Mayor shall transmit the regulations prescribed in subsection (a) of this section to the Council no later than 270 calendar days following the effective date of this act for approval or disapproval, by resolution. These regulations and each revision of these regulations shall be transmitted to the Council for a 45-day review period, excluding Saturdays, Sundays, holidays and periods of Council recess, and deemed disapproved in the absence of Council action within the 45-day review period.

(c) The Mayor shall be responsible for preparing and annually updating a 5-year urban forest report and master plan.

Sec. 104. Preservation of Special Trees; permits; penalties.

(a) It shall be unlawful for any person or nongovernmental entity, without a Special Tree removal permit issued by the Mayor, to Top, cut down, remove, girdle, break, or destroy any Special Tree.

(b) The Mayor shall issue a Special Tree removal permit under this section where the applicant has:

(1) Shown that the Special Tree in question is a Hazardous Tree;

(2) Shown that the Special Tree in question is of a species that has been identified, by regulation, as appropriate for removal;

(3) Paid into the Tree Fund an amount equal to \$35 for each inch of the circumference of the Special Tree in question; or

(4) Averred in a signed Special Tree removal permit application that the applicant will plant, in compliance with the applicable regulations, a quantity of saplings whose aggregated circumference equals or exceeds the circumference of the Special Tree in question.

(c) The showings required by subsection (b) of this section may be satisfied by a combination of payments and plantings pursuant to subsection (b)(3) and (b)(4) of this section.

(d) A violation of subsection (a) of this section, or a failure to comply with the conditions contained in a Special Tree removal permit, shall constitute a violation subject to a fine of not less than \$100 per each inch of the circumference of the Special Tree in question.

Sec. 105. Notification requirements for removal of trees on public space.

(a) Unless the tree is a Hazardous Tree, before removing a tree on public space, the Director shall provide not less than 15 days written notice to the affected Advisory Neighborhood Commission, and shall set forth the reason for the proposed removal.

(b) Public utility companies shall provide not less than 20 days written notice to the Director or his or her designee prior to performing any work which affects trees on public space, except for permitted utility construction or emergency work conducted by a public utility company regulated by the Public Service Commission, as provided in section 103(a).

Sec. 106. Hazardous Trees

(a) Nothing in this title shall prohibit the Mayor or a property owner from immediately removing a Hazardous Tree.

(b) No property owner shall permit a tree or tree part, dead or alive, to stand on his or her property, including the public parking area associated with that property if it is a hazard to the public at-large, or endangers any public improvement or other public facility.

(c) If the Mayor identifies a tree hazard as described in subsection (b) of this section, the Mayor shall notify the property owner of the hazardous situation, and shall give the property owner not less than 10 days written notice, excluding Saturdays, Sundays, and legal holidays, to eliminate the hazard.

(d) Where the District has notified a property owner of a hazard and no action is taken by the property owner to eliminate the hazard, the Mayor may take corrective action to abate the hazard. The Mayor shall then send the property owner a bill for the cost of the abatement action including any administrative costs incurred by the District. If the bill remains unpaid after 60-days, it shall become a tax lien against the property.

Sec. 107. Tree Fund.

(a) There shall be established a fund designated as the Tree Fund, which shall be a sub-fund of the Local Road Construction and Maintenance Fund and separate from the General Fund of the District of Columbia. Monies deposited into the Tree Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this pursuant to an act of Congress. Donations, fees and penalties collected pursuant to this act or any rules established to implement this act shall be deposited into the Tree Fund. All receipts shall be deposited as soon as practicable. The Director shall maintain the fund in coordination with the Chief Financial Officer of the District of Columbia.

(b) The Fund shall be used to plant trees and for any associated costs incurred by the District in administering this title, and may include providing income contingent subsidies that assist District residents with the removal costs of hazardous trees in accordance with regulations provided for in section 103.

(c) The Chief Financial Officer shall submit to the Mayor and to the Council an annual statement of all receipts and disbursements for the Fund.

(d) Private voluntary donations to the Fund shall be tax deductible for purposes of District income and franchise taxes.

Sec. 108. Enforcement.

Civil fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this title, or any regulations issued under the authority of this title, pursuant to Titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code § 2-1801.01 *et seq.*) ("Civil Infractions Act").

TITLE II. PROTECTION OF TREES AS PROPERTY.

Sec. 201. Section 13 of An Act For the preservation of the public peace and the protection of property within the District of Columbia, approved July 29, 1892 (27 Stat. 324; D.C. Official Code § 22-3310), is amended to read as follows:

Amend
§ 22-3310

"Sec. 13. It shall be unlawful for any person willfully to top, cut down, remove, girdle, break, wound, destroy, or in any manner injure any vine, bush, shrub, or tree not owned by that person, or any of the boxes, stakes or any other protection thereof, under a penalty not to exceed, for each and every such offense:

(a) In the case of any tree 55 inches or greater in circumference when measured at a height of four and one half feet, \$15,000 or imprisonment for not more than 90 days, or both, or

(b) For vines, bushes, shrubs, and smaller trees, \$5,000 or imprisonment for not more than 30 days, or both."

ENROLLED ORIGINAL

Sec. 202. Section 847 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1327; D.C. Official Code § 22-3308) is repealed.

Repeal
§ 22-3308

TITLE III. FISCAL IMPACT STATEMENT, EFFECTIVE DATE.

Sec. 301. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 302. Effective Date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia