



STAFF REPORT ACTION REQUIRED

Amendments to Municipal Code Respecting Dangerous Trees, Standards to Limit Entry to Vacant Buildings and Fencing of Hazardous Land Under the *City Of Toronto Act, 2006*.

Date:	June 17, 2008
To:	Licensing & Standards Committee
From:	City Solicitor Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	

SUMMARY

This report proposes amendments to the Municipal Code respecting dangerous trees and dangers posed by vacant buildings and hazardous land under the *City of Toronto Act, 2006*. These amendments would permit the City to remedy certain unsafe or potentially unsafe conditions and to recover its expenses of doing so in a manner that is more expeditious and less costly than under the procedures that apply to the enforcement and recovery of expenses in respect of Emergency Orders under the provisions of the *Building Code Act, 1992*.

RECOMMENDATIONS

The City Solicitor and the Executive Director of Municipal Licensing and Standards recommend that:

- (1) the Municipal Code be amended, under the authority of the *City of Toronto Act, 2006*, to permit the City to remedy certain unsafe or potentially unsafe conditions by:

- (a) amending Chapter 813, Trees, to require owners or persons in charge of any premises to remove decayed, damaged or dangerous trees or branches that pose a danger to persons or property as described in section 105.1 of the *City of Toronto Act, 2006*;
 - (b) re-enacting the standards to protect against entry into vacant buildings, as defined in the *Building Code Act, 1992* and set out in Chapter 629, Property Standards, in a new or other Municipal Code Chapter;
 - (c) requiring fencing of hazardous land;
 - (d) providing for rights of entry, notice, remedial action and adding costs incurred to the tax roll in accordance with section 105.1 of the *City of Toronto Act, 2006* and otherwise in accordance with the general provisions pertaining to rights of entry (section 376), remedial action and addition of costs to the tax roll (section 386) as necessary to deal with unsafe and potentially unsafe conditions.
- (2) the City Solicitor be authorized to introduce the necessary Bills amending the Municipal Code in accordance with Recommendation (1)
 - (3) Former City of Toronto Municipal Code, Chapter 331, Trees, Article II Dangerous Trees, be repealed.
 - (4) Municipal Code Chapter, 629, Property Standards, be amended as necessary

FINANCIAL IMPACT

The recommendations will enable City Divisions to recover certain remediation costs for specific types of emergency work more effectively than at present where it is more difficult to recover for the reasons set out in this report and, in particular, by the current need to utilize legal resources in court applications for, in many cases, relatively small sums of money. While the City would lose the benefit of priority lien status for certain work, it would still be able to add such expenses to the tax roll. Overall, the financial implications are minimal and the City will be in a better position to recover some of its remediation costs more efficiently.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact statement.

ISSUE BACKGROUND

The Municipal Licensing and Standards Division (“ML&S”) on occasion has to conduct emergency repairs to private property in situations in which the state of neglect or

disrepair of the property could pose an immediate threat to the health and safety of persons.

At present, ML&S conducts these repairs by issuing Emergency Orders which are authorized by s.15.7 of the *Building Code Act, 1992*. The type of work which is often performed pursuant to these Emergency Orders includes removing trees which are in danger of falling on adjacent buildings, boarding up of vacant buildings and fencing off dangerous property.

Under sections 7 and 8 of the *City of Toronto Act, 2006* (“COTA”), the City has broad general powers to enact by-laws in respect of these subject matters. However, one of the limitations on these general powers is that if the City has the power to pass a by-law under these general provisions and also under a specific provision of COTA or another Act (for example the *Planning Act*, or *Building Code Act, 1992*), the procedural requirements and limitations that apply to the specific provision also apply. Generally, therefore, the procedural requirements for property standards by-laws and the issuance of Emergency Orders under the *Building Code Act, 1992* would apply to the City.

Despite that, subsection 11(5) of COTA does provide for certain specific exceptions allowing for the use of COTA’s general powers in respect of, among other matters, by-laws respecting fences, standards to prevent entry into vacant buildings, and removal of dangerous trees, with the last two provisions reflecting special legislation of the former area municipalities. These specific exceptions therefore allow for consideration of by-law emergency procedures under COTA for work in respect of these provisions which would avoid the cumbersome procedures under the provisions of the *Building Code Act, 1992*.

COMMENTS

The Present Situation in Connection with Recovery of Expenses under Emergency Orders

The costs incurred by ML&S in the course of issuing Emergency Orders are often for relatively small amounts. For example, costs expended in boarding up vacant buildings can be for a few hundred dollars. Based on the provisions in the *Building Code Act, 1992*, Emergency Orders must be confirmed by a Court Application to the Ontario Superior Court of Justice. Only after an Emergency Order is confirmed by the Superior Court can the City recover the expenses by adding the costs to the appropriate property tax account.

These Superior Court applications are costly and time consuming for City staff. They involve issuing a Notice of Application, preparing supporting affidavit materials, personally serving the materials on the property owner and attending in court. The expenses (usually in the range of \$300.00 - \$500.00) and time expended (minimum of 20 hours of legal time plus time spent by ML&S staff) to pursue these court applications often far exceeds the amounts spent on the Emergency Orders that the City is seeking to recover. Further, concerns have been expressed to us by the courts in having these

matters, which involve small amounts, going before Superior Court Judges. Also, many times it is difficult to personally serve property owners with the court materials as they do not live at the property and have not been looking after it in any event.

Alternate Process to Recover Expenses

For many years the City under specific property maintenance provisions of the former Municipal Acts recovered expenses incurred in the course of shovelling snow, cutting long grass and weeds, and clearing debris from properties by directly adding the costs to the appropriate property tax account. The legislative authority to add these types of expenses to the property tax account without an Application to Superior Court was contained in the *Municipal Act, 2001* and is continued under COTA. The City has by-laws in place that permit the City to carry out such work and add the costs expended to the tax account.

In addition, the former City of Toronto had the power to directly add expenses related to removing dangerous trees to the appropriate property tax account without requiring the use of Emergency Orders.

COTA also grants the City additional powers to enact specific property maintenance provisions to deal with potential safety concerns and, specifically, to directly add expenses to the appropriate property tax account if the work conducted relates to fences, boarding up of vacant buildings and removing dangerous trees without requiring the use of Emergency Orders and following the procedure for confirmation set out in the *Building Code Act, 1992*.

It is recommended that for these types of expenses the City amend its by-laws to allow ML&S to carry out such work and add the costs to the relevant tax account. By doing so the City would not need to issue Emergency Orders using the procedures under the *Building Code Act, 1992*.

There would be some differences in the remedies available to the City under COTA as opposed to the *Building Code Act, 1992*. Under the provisions applicable to Emergency Orders under the *Building Code Act, 1992*, there are explicit provisions authorizing a right of entry and allowing for priority lien status for expenses confirmed by the Superior Court judge. Under its own by-laws, the City would need to rely on the general rights of entry and the City's expenses would not have priority lien status (although they could be added to the tax roll). The one exception to this is in respect of dangerous trees where section 105.1 of COTA provides for an explicit right of entry without notice and priority lien status in respect of dangerous trees.

Despite these differences, the benefits of avoiding the cumbersome procedures under the *Building Code Act, 1992* outweigh any disadvantages.

Pursuant to Section 386 of COTA, if the City has authority to direct a person to do a matter or thing, the City may also provide that in default of it being done, the matter or thing shall be done at the person's expense and the costs can be added to the tax roll. The proposed by-law amendments will provide that ML&S will first issue an order to the owner directing the person to carry out the work themselves. If the owner fails to do the work, the City can do it and recover its costs. In an emergency situation where it is not practical in the circumstances of the emergency situation to provide notice to the owner or where reasonable efforts to notify the owner have been unsuccessful, ML&S will simply post its order at the property in a conspicuous place and comply with any notice provisions of COTA.

CONCLUSION

For the reasons set out in this report, it is recommended that City Council authorize the proposed by-law amendments to facilitate the City recovering certain costs expended in connection with particular types of emergency work on private property.

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