

Fees for Solicitor Services (Limiting Distance Agreements) Provided by the City Solicitor to Outside Parties

Date: June 18, 2019
To: Executive Committee
From: City Solicitor
Wards: All

SUMMARY

This report identifies the need to implement a fee for services provided to outside parties by the City Solicitor in relation to limiting distance agreements in order to ensure consistency with the City Council approved user fee policy.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council approve the fee set out in Appendix A to this report;
2. City Council amend Toronto Municipal Code Chapter 441, Fees and Charges, to add the fee set out in Appendix A to this report; and
3. City Council direct the revenue collected from the provision of services associated with the fee set out in Appendix A to this report be allocated to the Legal Services Division's budget.

FINANCIAL IMPACT

Over the last five years, the City Solicitor's office has assisted in the processing of approximately ten (10) to fifteen (15) limiting distance agreements per year and generally spent between two (2) to eight (8) hours working on each agreement. Accordingly, it is expected that some limited amount of revenue will be generated, likely in the range of \$10,000 to \$20,000 per annum, depending on the volume of requests for limiting distance agreements.

Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting held on September 26 and 27, 2011, City Council adopted the user fee policy set out in Appendix 1 to the report dated September 9, 2011 from the City Manager and Deputy City Manager and Chief Financial Officer (the "User Fee Policy"). The User Fee Policy is found in Appendix 1 of the following link:

<http://www.toronto.ca/legdocs/mmis/2011/ex/bgrd/backgroundfile-40701.pdf>

ISSUE BACKGROUND

User Fee Policy

The purpose of the User Fee Policy is to provide a framework to ensure a consistent approach for establishing user fees across City Programs and Local Boards. The policy promotes recovery of the full cost of services for which user fees are charged, to the extent that there is no conflict with the City's policy objectives and priorities. A principle of the policy is to determine services provided by the City that confer benefits on individuals, identifiable groups or businesses and to set a user fee to recover the cost of providing the service.

Consistent with best practices for user fees, the User Fee Policy provides that user fees should be set to recover the full cost from those who receive a direct benefit from the service; or where the service is performed at the request of, or for the convenience of the recipient.

Limiting Distance Agreements

The purposes of the Ontario Building Code (the "OBC") include health, safety, and the fire protection of buildings. In relation to those purposes and among other things, the OBC provides for specifications and requirements that protect against the risk of fire being transmitted from a building on one property to a building on another property. Some of those specifications and requirements relate to the required distance between a building and the property line of the property upon which the building is located. That distance is referred to as the limiting distance in the OBC. The required limiting distance is dependent on several factors, including the percentage of unprotected openings on the exposing building face, defined terms in the OBC.

The default position set in the OBC is for the required limiting distance for an exposing building face to be measured to the property line of the property. This is meant to ensure that a property owner who proposes the building has all of the necessary property rights to ensure that there will be no buildings erected in the required limiting distance area.

If certain requirements are met, including the entering into of a limiting distance agreement in accordance with the OBC and registration of that agreement on title of the affected properties, the required limiting distance for an exposing building face may be measured beyond the property line of the property. In simple terms, the OBC provides

some flexibility to owners of property to place buildings closer to the property line of a property than otherwise allowed by the OBC if the relevant adjacent land owner commits to not build on their own land within the proposed limiting distance area. A limiting distance agreement is the OBC's mechanism by which it allows this flexibility. Where a limiting distance agreement is entered into in accordance with the OBC and is registered against the title of a property, the limiting distance for exposing building faces shall be measured to the point referred to in the agreement.

The OBC has the following requirements for a limiting distance agreement:

- the owners of the properties on which the limiting distance is measured and the local municipality must be parties to the agreement;
- the agreement must be registered against the title of the properties to which it applies;
- each owner must covenant that, for the benefit of land owned by the other covenantors, the owner will not construct a building on his or her property unless the limiting distance for exposing building faces in respect of the proposed construction is measured in accordance with the agreement;
- the covenants contained in the agreement must run with the lands, and the agreement shall be binding on the parties and their respective heirs, executors, administrators, successors and assigns;
- the agreement shall not be amended or deleted from title without the consent of the municipality; and,
- the owners of the properties must comply with such other conditions as the municipality considers necessary, including indemnification of the municipality by the other parties.

In Toronto, especially in the downtown core, there are numerous developments that request and benefit from limiting distance agreements. The benefits accrue to the land owners but there is a service that the City provides to facilitate the processing of the limiting distance agreement. The typical requester of this service is a land owner that is seeking to intensively develop a parcel of land.

Pursuant to section 20 of Chapter 363, Building Construction and Demolition, of the Toronto Municipal Code, City Council has delegated the authority to approve the entering into and execution of limiting distance agreements to the Chief Building Official and the Deputy Chief Building Officials where the following conditions are met:

- A. No land that is owned by the City is affected by the agreement.
- B. The agreement does not impose any obligations on the City.
- C. The agreement is satisfactory to the City Solicitor.

Accordingly, the City Solicitor is involved in reviewing and advising on limiting distance agreements where the City is not the owner of any land affected by the agreement. While the numbers vary from year to year, the City Solicitor's office has assisted in the processing of approximately ten (10) to fifteen (15) limiting distance agreements each year over the last several years. The volume could increase with development and intensification pressures. The amount of time spent on reviewing a limiting distance agreement varies by project and is influenced by how familiar the property owners' legal counsel is with limiting distance agreements and the complexity of the project. The amount of time spent on each file generally falls within the range of two (2) to eight (8) hours.

There is currently no user fee approved or imposed for the solicitor services being provided by the City Solicitor for limiting distance agreements requested by outside parties where the City is not the owner of any land affected by the agreement.

COMMENTS

Charging a full service cost user fee for the solicitor services being provided by the City Solicitor for limiting distance agreements requested by outside parties where the City is not the owner of any land affected by the agreement is entirely consistent with the User Fee Policy. The benefits of these limiting distance agreements accrue to private property owners and the agreements are drafted at their request.

The proposed fee for the solicitor service is an hourly rate of \$231.00 to be adjusted annually and as further set out in Appendix A to this report. The proposed fee is justified on the basis of the cost of solicitor services to the City and the rates that the City uses for other solicitor service fees provided in Chapter 441 of the Municipal Code. The proposed fee is meant to provide 100% full service cost recovery. The expected annual revenue will be approximately \$10,000.00 - \$20,000.00, depending on the volume of the limiting distance agreements submitted.

CONTACT

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SIGNATURE

Wendy Walberg, City Solicitor

ATTACHMENTS

Appendix A – Proposed Fee

Appendix A – Proposed Fee

Ref. No.	I	II	III	IV	V	VI
	Service	Fee Description	Category	Fee Basis	Fee	Annual Adj.
21	Solicitor	Limiting Distance Agreement Review (City not an owner of land) Solicitor Services	Full cost recovery	Per hour	\$231.00	Yes