

Preliminary Review: Tree Protection and Laneway Suites

Date: November 22, 2019

To: Planning and Housing Committee

From: General Manager, Parks, Forestry and Recreation

Wards: All

SUMMARY

The purpose of this report is to provide a response to the motion adopted by City Council at its June 26, 2018 meeting, requesting that General Manager Parks, Forestry, and Recreation, in consultation with relevant City Divisions, to report on the appropriateness of amending Toronto Municipal Code Chapter 813 regarding the criteria for private tree protection, particularly with respect to laneway housing applications.

In June 2018, City Council directed the General Manager, Parks Forestry and Recreation to refuse permits to injure or remove healthy trees associated with laneway suites. This direction provides Urban Forestry the authority to protect trees without requiring an amendment to the tree protection by-law.

As directed by City Council, and in consultation with City Planning, Urban Forestry will continue to advise applicants to meet with City Planning and Urban Forestry staff to consider how laneway suite designs can be amended to protect trees. Urban Forestry will work with City Planning to monitor laneway suite applications over the next two years or 100 applications, and review and recommend any necessary revisions to the policy, zoning and guidelines, and/or other changes to improve implementation.

The General Manager, Parks Forestry and Recreation recommends that no changes to Toronto Municipal Code Chapter 813 be made at this time.

RECOMMENDATIONS

The General Manager, Parks Forestry and Recreation recommends that:

1. City Council receive this report for information.

FINANCIAL IMPACT

There are no financial implications resulting from the receipt of this report.

DECISION HISTORY

In June 2018, City Council amended the Official Plan to allow for the as-of-right construction of laneway suites in the Toronto and East York District. Council adopted a number of recommendations including:

- Direct the General Manager Parks, Forestry, and Recreation, in consultation with relevant City Divisions, to report back to the Toronto and East York Community Council in the 4th quarter of 2019, on the appropriateness of amending Toronto Municipal Code Chapter 813 regarding the criteria for private tree protection, particularly with respect to laneway housing applications (TE 33.3.12).
- Direct the Chief Planner and Executive Director, City Planning, to monitor the implementation of the proposed Official Plan Amendment 403, in Part 1 above, and the proposed Zoning By-law Amendment in Part 2 above, and the "Changing Lanes: Laneway Suite Design and Process Guidelines", and to report to the Toronto and East York Community Council by the earlier of two (2) years following the date the proposed Official Plan Amendment 403, in Part 1 above, and the proposed Zoning By-law Amendment, in Part 2 above coming into full force and effect, or following the issuance of the 100th building permit for the construction of new laneway suites, to review and recommend any necessary revisions to the policy, zoning and guidelines, and/or other changes to improve implementation. (TE 33.3.4)
- Direct the General Manager, Parks, Forestry, and Recreation to refuse, at the General Manager's discretion, a permit to injure or destroy a healthy tree protected under Municipal Code Chapter 813 or Municipal Code Chapter 658, received as part of an application to construct a laneway suite, and to advise the applicant to meet with City Planning and Urban Forestry staff to consider how the design of suite can be amended to protect the healthy By-law tree in question. (TE33.3.11)

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TE33.3>

In July 2019, City Council amended the Official Plan to allow for the as-of-right construction of laneway suites across the city of Toronto.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PH7.1>

Following this decision, this report is now being brought forward to the Planning and Housing Committee, rather than Toronto and East York Council as per consultation with City Clerk's office.

In March 2018, City Council received a report outlining the tree protection through Committee of Adjustment process. This report included information about City's tree by-laws and applicable laws under the Building Code Act.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.PE25.1>

In December 2015, City Council adopted a report outlining tree by-law revisions. This report included by-law amendments to issue permits when development is considered as-of-right.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PE8.5>

COMMENTS

Background

By-laws to protect trees as well as ravines and natural features were created with the intent of deterring unnecessary injury and removal of trees and natural features and to promote tree preservation. City of Toronto *Municipal Code, Chapter 813, Trees* provides for the protection of City-owned trees of all diameters and trees on private property having a diameter at breast height of 30 centimetres or greater. City of Toronto *Municipal Code, Chapter 658, Ravine and Natural Feature Protection* provides for the protection of all trees and natural features in designated areas of the city. These by-laws are collectively referred to as the "tree by-laws".

The tree by-laws are governed by Section 104 of the *City of Toronto Act*, which grants the City the authority to enact by-laws prohibiting or regulating the destruction or injury of trees. Through the development review process, the tree by-laws exist within the framework of the Ontario *Planning Act* and Toronto's *Official Plan*. The policies within the Official Plan strive to balance economic, social and environmental factors.

The tree by-laws are not considered applicable law under the Ontario Building Code, and, as such, the Chief Building Official cannot withhold the issuance of a building permit where the applicant has complied with all other applicable law. The issuance of a permit under the *Building Code Act* does not remove the requirement of the owner to obtain tree permits, it instead allows building permits to be issued prior to the issuance of tree permits, which typically require a specialized review process by Urban Forestry. While the tree by-laws still apply in as-of-right situations, the intention of the by-law is not to impede development or frustrate planning approvals but rather to regulate tree injury and destruction while promoting maximum tree protection, retention and planting.

In response to the various City Council and Committee requests over the last several years, Urban Forestry has made amendments to tree by-laws in consultation with the City Solicitor, City Planning and Toronto Building which have strengthened the by-laws and provided mechanisms to improve customer service, improve response times and enhance enforcement. The purpose of these amendments was to improve

transparency and define authority for permitting of trees so that the tree by-laws align with, rather than frustrate, the *Official Plan*, the *Planning Act*, and the *Building Code Act*.

Tree Protection and Laneway Suites

The purpose of the Laneway Suites Official Plan and Zoning Amendment pilot project is to allow as-of-right development of laneway housing. The term "as-of-right" development refers to plans that comply with the Zoning By-law. In these situations, Toronto Building Division will issue building permits when all applicable laws have been satisfied.

Laneway housing is a form of secondary dwelling units that are important from a City planning perspective because they create additional housing options in low density neighbourhoods and increase the availability of rental housing. Laneway suites may replace existing ancillary structures such as garage in rear yards of residential properties adjacent to existing laneways. Such structures may have greater height (than garages), a footprint of up to up to 8 metres by 10 metres, full foundation and servicing provided from the main building.

Specifically under Chapter 813 Article III, Urban Forestry issues permits to facilitate as-of-right development when all opportunities for tree preservation have been exhausted. However, City Council adopted the City Planning recommendation included in the TE33.3.11 decision, and directed the General Manager, Parks, Forestry and Recreation to have Urban Forestry staff meet with applicants and City Planning to consider how laneway suite designs can be amended to protect trees and to refuse permits to remove healthy by-law protected trees to accommodate laneway housing. If the applicant is unable to amend the laneway suite design and protect a healthy tree after consultation with Urban Forestry and City Planning, Urban Forestry will deny the permit in accordance with Council decision, TE33.3.11.

In instances where a proposed laneway suite exceeds what is allowed by the zoning by-law, it is no longer considered as-of-right and the applicant is required to obtain approval from the Committee of Adjustment through a minor variance application process. In these cases, Urban Forestry also has the opportunity to apply the clauses included in the approved Official Plan amendment and object to the requested variances if healthy trees will be injured or removed. These Official Plan polices include the following clauses:

- Development of laneway suites should not result in the injury or removal of a healthy tree protected under tree protection by-law (Site and Area Specific Policy no. 546.1.b. iv); and
- A laneway suite should be located in such a way to avoid removal of an existing tree protected under tree protection by-law (Site and Area Specific Policy no. 546.1.d. iv).

Urban Forestry's current practice is to work with applicants during the application process to explore all possible options for tree protection, including alternate construction methods. If the applicant is unable to amend the laneway suite design and protect a healthy tree after consultation with Urban Forestry and City Planning, Urban Forestry will deny the permit in accordance with Council decision, TE33.3.11.

The applicant may appeal Urban Forestry's tree permit refusal to the appropriate district of Community Council. Under its own direction, Community Council may uphold the Urban Forestry permit refusal and direct the applicant to revise the proposal to the satisfaction of Urban Forestry, even though they may already hold a valid building permit.

An amendment to City of Toronto *Municipal Code, Chapter 813, Trees*, is not required to protect healthy private trees involved in laneway housing applications.

Monitoring Period

Following the direction of TE33.3.4 Urban Forestry will work with City Planning on its review of the pilot project, using the earlier of two years following the date the proposed Official Plan and Zoning By-law Amendment or following the issuance of the 100th building permit for the construction of new laneway suites, to recommend any necessary revisions to the policy, zoning and guidelines, and/or other changes to improve implementation,

As of August 2019, Urban Forestry is receiving notifications on all building permit applications related to laneway housing. This allows Urban Forestry to monitor the impact of the approved amendments to the Official Plan and Zoning By-law.

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SIGNATURE

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