

Supplementary Report - Modernizing Chapter 489, Grass and Weeds to Streamline Processes and Support Biodiversity

Date: July 7, 2020

To: City Council

From: Executive Director, Municipal Licensing and Standards

Wards: All

SUMMARY

As directed by the Planning and Housing Committee on June 11, 2021, this is a supplementary report for Item PH24.3 Modernizing Chapter 489, Grass and Weeds to Streamline Processes and Support Biodiversity. This report responds to a directive from the Committee meeting to report directly to City Council to address the stakeholder concerns identified in the communications to the Planning and Housing Committee.

This report was written in consultation with Parks, Forestry and Recreation, the Indigenous Affairs Office, Transportation Services, and Legal Services.

FINANCIAL IMPACT

There are no current or known future year financial impacts arising from the recommendation contained in this supplementary report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

DECISION HISTORY

On June 11, 2021, the Planning and Housing Committee adopted, with amendments, Item PH24.3 Modernizing Chapter 489, Grass and Weeds to Streamline Processes and Support Biodiversity, requesting the Executive Director, Municipal Licensing and Standards to report directly to City Council to address the stakeholder concerns identified in the communications to the Planning and Housing Committee.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH24.3>

On May 20, 2021, Planning and Housing Committee deferred consideration of Item PH23.11 Modernizing Chapter 489, Grass and Weeds to Streamline Processes and Support Biodiversity until the June 11, 2021 Special Meeting of the Planning and Housing Committee.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH23.11>

COMMENTS

As directed by the Planning and Housing Committee on June 11, 2021, this is a supplementary report for Item PH24.3 Modernizing Chapter 489, Grass and Weeds to Streamline Processes and Support Biodiversity. This report responds to a directive from the Committee meeting to report directly to City Council to address the stakeholder concerns identified in the communications to the Planning and Housing Committee.

Public and Stakeholder Consultation

In developing the proposed amendments to Chapter 489, staff solicited stakeholder and public input on the natural garden exemption. From March 3 to 31, 2021 staff received feedback via email on whether individuals supported a proposal to remove the requirement for owners of private land to apply for a natural garden exemption. MLS received 455 emails from residents, and interested organizations and community groups. The vast majority of email responses (85%) supported removal of the natural garden exemption requirement. Only 3% of email responses were from individuals who did not support the proposal.

In order to review the bylaw through the lens of environmental stewardship, staff also undertook an engagement process with subject matter experts in the fields of botany and biodiversity. Staff held two roundtables with identified experts to discuss policy options for the review and gather feedback, and continued to have follow-up discussions after the deferral of the report to a later Committee date. Subject matter experts were supportive of removing the existing natural garden exemption process, and focusing enforcement on ecological and human health and safety concerns rather than aesthetics. These stakeholders also identified some concerns with the final staff proposal, which are addressed in the following sections.

Stakeholder Concerns

Following the Planning and Housing Committee's decision to defer consideration of Item PH23.11 until June 11, 2021, staff in Municipal Licensing and Standards (MLS) and Parks, Forestry and Recreations (PF&R) reviewed all written communications submitted on the item. Staff also continued to engage with key stakeholders, including Indigenous community members. The below summarizes concerns that staff heard, and responses to each of these concerns.

Prohibited plants species list

Stakeholders raised concerns about the proposed list of prohibited plant species, and felt that staff should conduct further consultation before finalizing this list. Following the deferral of the item to a special meeting of Planning and Housing Committee, staff took the opportunity to conduct further consultation on the list, in addition to research and consultation already completed. Staff conducted additional outreach and engagement with subject matter experts and the Indigenous community, and submitted a supplementary report with proposed changes.

Based on feedback received from stakeholders, staff recommended that Common burdock (*Arctium minus*) and Field bindweed (*Convolvulus arvensis*) be removed from the proposed list of prohibited plant species. While considered invasive, these species do not pose the same ecological and human health and safety threats as other plant species included on the proposed list. Neither plant is on the noxious weeds list designated under the Provincial Weed Control Act. Additionally, Common burdock is an edible plant with medicinal uses.

Removing these two species from the proposed prohibited plants list responds to feedback from a number of stakeholders who have advocated for a lean and enforceable list that focuses on the most harmful plant species within the City of Toronto. The proposed change establishes a targeted list, while supporting ecological and human health and safety in city neighbourhoods.

The final list was developed in consultation with internal partners who have experience inspecting properties under Chapter 489, colleagues who support ravine revitalization, as well as Toronto Public Health. Staff also consulted with 25 external experts and industry leaders.

It is still recommended that staff review the list on an ongoing basis, in consultation with experts to ensure accuracy and relevance. Staff are exploring establishing different ways to receive ongoing input and advice for this purpose. In particular, staff acknowledge that engagement with First Nations, Inuit and Métis knowledge carriers, and earth workers and land stewards, is critical in this work and that more needs to be done moving forward. Staff will continue to work towards building meaningful relationships and working together throughout implementation of the proposed changes and ongoing review of the prohibited plant list.

Enforcement

Complaints

Some stakeholders have suggested that the bylaw or enforcement protocols require that complainants identify a prohibited plant or safety issue before that complaint can be investigated.

When a resident submits any complaint through 311, they must specify a bylaw infraction in order for a service request to be created. MLS then assigns the file to a Bylaw Enforcement Officer for investigation, and encourages the complainant to submit additional information, such as photographs, if possible. However, this is not required as the intention of Chapter 489 is to regulate private property in a way that supports health

and safety, and does not regulate the way in which the public engages the City. MLS does not typically regulate how residents can submit complaints about a bylaw infraction. Staff are also concerned that not all residents have the technology to easily take and upload a photo and/or may not feel comfortable taking a picture of someone else's property.

Stakeholders also raised concerns with the advisory letter that has historically been automatically issued by the City to a property owner following receipt of a complaint related to grass and weeds. The automatic advisory letters have helped MLS manage the high volume of grass and weeds complaints received each year. The letter advises a property owner that a complaint has been received and provides information about complying with the bylaw, as well as the natural garden exemption process. Staff note that this advisory letter will be removed in the coming months as MLS continues to implement its divisional priority response model to ensure that issues regarding health and safety are addressed in a timely manner.

Fines for non-compliance

Some stakeholders have raised concerns with amendments to increase the maximum fines and introduce new fines (such as special fines equal to any economic gain obtained from noncompliance).

These amendments will update the offences section of the Bylaw to align with existing authorities under the City of Toronto Act, 2006. Aligning City bylaws with the City of Toronto Act, 2006 is a modernization initiative to ensure Chapter 489 has enforcement provisions that align with other recently-updated City bylaws, where these same updates have been made.

Bylaw Enforcement Officers will continue to focus on education first, informing residents of the rules and obligations of property owners/occupants. Additionally, enforcement has most often been focused on remedying overgrowth on neglected or vacant properties rather than natural gardens. Enforcement staff will continue to consider the circumstances when determining the appropriate and proportionate steps to support compliance with the bylaw. The updated language proposed in the report ensures enforcement staff have the current tools provided by the City of Toronto Act, 2006 at hand when electing how to proceed in each case.

Appeals process

Some stakeholders have raised concerns about the removal of the existing appeals process. Under the current system, if an application for a natural garden exemption is denied by MLS, the applicant may appeal the decision to the local Community Council. Since introducing this appeals process and fee in 2012, there have been no appeals taken to Community Council.

Under the proposed amendments to the bylaw, staff are recommending that the City of Toronto make it simpler for residents to have a natural garden by removing the requirement for property owners to apply for a natural garden exemption. This would mean the appeal mechanism would no longer be necessary.

Implementation

Stakeholders have raised further concerns related to enforcement practices, such as appropriate training for enforcement officers. Staff will continue to take stakeholder feedback into consideration as part of implementation planning, including when designing staff training and public education and communication materials.

Bylaw language and definitions

Turfgrass

The proposed amendments to Chapter 489 will require property owners to still maintain turfgrass so that it does not exceed 20 centimetres in height or length, as turfgrass requires a particularly high level of maintenance. Updating the maximum height provision to clarify that it applies to turfgrass responds to stakeholder and public feedback that use of the terms "grass and weeds" should be clarified as there are thousands of grass species.

Staff recommend that turfgrass be defined as "Ground cover primarily made up of various perennial grasses grown for lawns, of a type that forms a dense, uniform turf if mown". Some stakeholders feel that the proposed definition of turfgrass is too broad.

In addition to consultation with subject matter experts, MLS reviewed definitions from various sources and consulted with the University of Guelph's Turfgrass Institute on this definition. The proposed definition is intended to balance the need to define what constitutes a traditional lawn managed through regular mowing, while being enforceable and easily understood by the general public. The average resident may not understand horticultural terminology.

The intention of the definition is not to include native grasses and sedges and staff appreciate feedback on this point. MLS will manage this through education and training for officers and the public. Maintaining the clarified height provision in the Bylaw will also allow MLS to continue to enforce against properties where lawns have been untended or neglected and turfgrass has become overgrown.

Remedial action

Stakeholders raised concern that remedial action is not defined in the bylaw. The City's authority for remedial action stems from section 386 of the City of Toronto Act, 2006, and any bylaw wording in this case would reflect what appears in that section and other recently-updated bylaws.

Eradication of species

Some stakeholders have identified concerns with the language that puts an onus on property owners to eradicate plant species on the prohibited plant list when some species, particularly harmful non-native species, may be difficult to eradicate.

MLS officers will continue to focus on education and voluntary compliance first. Staff acknowledge that eradicating some of the prohibited plants may be difficult. While each property owner remains responsible for ensuring their property complies with the bylaw, staff will consider each case based on the circumstances when determining what appropriate enforcement action will be. The proposed language is similar to other

bylaws that require property owners to keep their property free of health and safety concerns that may be difficult to control, such as pests and vermin.

Sightline clearance

Some stakeholders suggested that sightline clearance must be more clearly specified in the bylaw, such as using standardized sightline triangle measurements. In developing the proposed recommendations, MLS consulted with Transportation Services on the obstruction and sightline parameters. The proposed parameters align with the requirements for property owners maintaining land adjoining the street and boulevards under Toronto Municipal Code, Chapter 743, Streets and Sidewalks, Use Of.

MLS also reviewed sightline-related provisions in other City of Toronto bylaws, including Chapter 477, Fences, Chapter 742, Sidewalk Cafés, Parklets, and Marketing Displays, and Chapter 740, Street Vending. None of these bylaws use standardized sightline triangle measurements. Chapter 477 includes specific height requirements for fences and vegetation that acts as a fence that is dependent on their location on a property. Chapter 742 includes maximum allowable heights for opaque barriers and fencing as part of café parklets and frontage cafés to preserve sightlines.

Staff are not recommending that specific details related to sightlines (for example, height requirement for vegetation) be included directly in Chapter 489 as each case will be different, and it would be challenging to determine a height that would be effective in all cases without being too restrictive. MLS will develop a Standard Operating Procedure (SOP) to ensure officers enforce this parameter consistently.

Harmonizing public property regulations

Some stakeholders are concerned that this report does not recommend bylaw amendments to harmonize other City bylaws that regulate the public right of way. Staff acknowledge that select aspects of the proposed amendments do not align directly with provisions under Chapter 743, Streets and Sidewalks, Use of; however, the discrepancies are minimal and staff will work to align requirements as part of a future review of the Street and Sidewalks Bylaw. Competing priorities and resource constraints did not allow Transportation Services to undertake a parallel bylaw review at this time.

Under Chapter 743, Streets and Sidewalks, Use of, owners/occupants of land adjoining the street are responsible for maintaining the boulevard to meet specified standards. These standards include maintaining the grassed portion of the boulevard so that it does not exceed 20 centimetres in height, maintaining all other soft landscaping and vegetation so that it does not exceed 0.85 metres in height, and keeping boulevards free of noxious weeds defined under the provincial Noxious Weeds List. While turfgrass is not defined under Chapter 743, the height requirement for grass is the same. The provincial Noxious Weeds List includes 15 more species than the proposed list of prohibited plants under Chapter 489.

As part of future work, staff will look for opportunities to align relevant bylaw definitions under Chapter 743 and Chapter 489 (for example, turfgrass) and use the same list of prohibited plant species.

CONTACT

Elizabeth Glibbery, Director, Investigation Services, Municipal Licensing and Standards,
416-392-7633, Elizabeth.Glibbery@toronto.ca

SIGNATURE

Carleton Grant
Executive Director, Municipal Licensing and Standards