

Natural Garden Exemption

Date:	November 2, 2012
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	P:\2012\Cluster B\MLS\LS12019

SUMMARY

The purpose of this report is to respond to requests from City Council and the Licensing and Standards Committee regarding the natural garden exemption process. This report examines changes to the by-law and exemption process, the feasibility of notifying area residents regarding applications, revisions to the natural garden inspection fees and the feasibility of amending the by-law to add a time constraint for natural garden exemptions based on change of property ownership.

The requirements for natural gardens are outlined in The Toronto Municipal Code, Chapter 489, Grass and Weeds. This report recommends amendments to the Toronto Municipal Code, Chapter 489 to provide delegated authority to the Executive Director of Municipal Licensing and Standards to approve natural garden exemptions.

The proposed amendments contained within this report, will assist in streamlining the approval process for those properties lawfully conforming with the Natural Garden Exemption contained within the by-law, while also providing improved notice to the Ward Councillor upon application, and continuing to permit an appeal process for all.

Staff from Parks, Forestry and Recreation (PF&R), Transportation Services Right of Way Management (ROW) and Legal Services were consulted in the preparation of this report.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards, recommends that:

1. City Council adopt the amendments contained in Appendix “A” to amend the Toronto Municipal Code, Chapter 489, Grass and Weeds.

2. City Council adopt the amendment to Toronto Municipal Code Chapter 489, Grass and Weeds, in accordance with Appendix “A” to delegate the authority to grant exemptions to the Executive Director, Municipal Licensing and Standards, subject to any applications for review of exemptions by Community Council.
3. City Council adopt the amendments to the Toronto Municipal Code, Chapter 441 Fees and Charges to recover administrative costs for a final appeal.
4. City Council direct the City Solicitor to prepare the necessary bill(s) to make such by-law amendments as may be required to give effect to the recommendations in this report and to make any necessary minor substantive or stylistic refinements as may be identified by the Executive Director of Municipal Licensing and Standards or the City Solicitor.

Public notice has been given in a manner prescribed in the Toronto Municipal Code, Chapter 162 Notice, Public.

Financial Impact

Currently, TMC Chapter 489, the Grass and Weeds by-law has no applicable fee for a natural garden appeal. Under the proposed process, home owners or occupants who wish to appeal the Executive Director's decision will be required to pay an exemption appeal fee in the amount of \$200.00, similar to Chapter 591, Noise. Appeals in a given year could generate additional annual revenues from \$1,200.00 to \$2,000.00.

This report will have no financial impact beyond what has already been approved in the current year's budget. Future year budgets will be adjusted as required.

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

DECISION HISTORY

At its meeting of January 25, 2012, the Licensing and Standards Committee requested the Executive Director, Municipal Licensing and Standards to review the Toronto Municipal Code, Chapter 489 Grass and Weeds, relating to the issue of Natural Gardens.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.LS11.5>

At its meeting of May 15, 2012 Toronto and East York Community Council, requested the Executive Director, Municipal Licensing and Standards to review the Toronto Municipal Code, Chapter 489, Grass and Weeds, with respect to Natural Gardens.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.TE16.26>

At its meeting of July 11, 2012 City Council, requested the Executive Director, Municipal Licensing and Standards to review the Toronto Municipal Code, Chapter 489, Grass and Weeds, relating to the issue of Natural Gardens.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.TE17.114>

ISSUE BACKGROUND

The Toronto Municipal Code, Chapter 489, Grass and Weeds, defines "grass and weeds" as all noxious weeds and local weeds, designated under the *Weed Control Act*, and any other vegetation growth. The requirements for "natural gardens" are included in Chapter 489 and by definition are to produce ground cover, which is consistent with a managed and natural landscape other than regularly mown grass. Suitable ground cover includes one or more species of wildflowers, shrubs, perennials, grasses or combinations of them whether native or non-native.

COMMENTS

Statistics from January 1, 2012 to October, 2012 indicate that 4,151 investigation requests regarding Grass and Weeds violations were reported to Municipal Licensing and Standards (ML&S), for which 2,514 notices were issued. Of these notices, 0.4% (10) resulted in requests for a natural garden exemption. Based upon this data, the continued issuance of notices for grass and weeds are an appropriate approach to these complaints and drive significant compliance in respect to the purpose and intent of the bylaw.

Current Process

Should a home owner / occupant wish to contend the growth as a naturalized garden, written notification to Community Council via the Executive Director of ML&S must be provided. An assessment is initiated by ML&S and is conducted by a Parks Forestry & Recreation (PF&R) Horticulturalist. PF&R provides a service designed to assist the public in beautifying their yards based on a set of criteria (Appendix B).

Following this inspection, the PF&R Horticulturalist provides ML&S a report either recommending or rejecting the natural garden exemption and is directed back to ML&S and Community Council. Once a hearing date has been set for Community Council to review this notice, and grant or reject the exemption, it will be circulated to the owner or occupant as well as the complainant who raised the issue of grass and weeds. This allows for all parties involved to attend Community Council and advocate their concerns. Once a decision has been made by Community Council to either grant or reject the exemption, City Clerk's Office notifies the owner or occupant and any other interested parties. If the application for exemption as a natural garden is refused, Community Council directs a second notice of violation to be issued by ML&S stating that the home owner or occupant is required to bring the property into compliance within 6 days of receipt of the notice. Failure to comply with this second notice will result in re-inspection and subsequent appropriate actions, i.e. – remedial action, for which the costs are incurred by the home owner.

Proposed Process Change

To streamline the process, the proposed amendments will shift the delegated authority from Community Council to the Executive Director of ML&S eliminating the need for a public hearing. ML&S will notify the local Councillor of all requests for natural gardens by means of circulation, providing the Ward Councillors with the ability to respond, object or impose conditions (time restrictions as a site specific condition) within 14 days of notification. Furthermore, the process provides the Ward Councillor with the ability to

inform any concerned area residents within their ward (eg. complainants or neighbours) to ensure the interest of their communities are considered. ML&S will either grant the exemption and notify the home owner or occupant via written letter, or issue a refusal letter if the natural garden exemption does not meet the desired criteria by the PF&R Horticulturalist. The refusal letter will indicate that the request for a natural garden exemption has been refused and advise the applicant of their opportunity to appeal the decision to the appropriate Community Council via ML&S; or comply with the previous notice within 21 days. The refusal letter will also document the PF&R Horticulturalist's findings and applicable recommendations.

To request an appeal, an application form would be submitted to ML&S along with the applicable \$200.00 fee. Once the appeal application has been received, staff will prepare a report for Community Council advising of the refusal of the natural garden and the owner's wish to appeal the decision of ML&S and PF&R. A notice of the hearing will also be sent to all residents within 100 metres of the applicant's residence. This process mirrors the Toronto Municipal Code, Chapter 591, Noise.

Finally, failure to comply or appeal the decision will result in escalated enforcement including, City remedial action and all related costs will be applied to the tax roll for the subject premises.

CONTACT

Carleton Grant
Director, Policy and Strategic Support
Municipal Licensing and Standards
Phone: (416)338-5576
Email: cgrant@toronto.ca

SIGNATURE

Tracey Cook
Executive Director
Municipal Licensing and Standards

ATTACHMENTS

Appendix A: Details of Proposed Amendments to Municipal Code, Chapter 489 Grass and Weeds and Details of Proposed Amendments to Municipal Code, Chapter 441 Fees and Charges.

Appendix B: Natural Gardens Fact Sheet.

**Appendix A: Details of Proposed Amendments to Municipal Code, Chapter 489
Grass and Weeds and Details of Proposed Amendments to Municipal Code,
Chapter 441 Fees and Charges.**

Authority: Licensing and Standards Committee Item , adopted, by City of Toronto
Council on , 2012.
Enacted by Council: , 2012

CITY OF TORONTO

BY-LAW No. -2012

**To amend City of Toronto Municipal Code Chapter 489, Grass and Weeds and
Chapter 441, Fees and Charges.**

WHEREAS under sections 7 and 8 of the *City of Toronto Act, 2006* (the "Act"), the City may pass by-laws in respect of the health, safety and nuisance matters and the economic, social and environmental well-being of the City; and

WHEREAS under sections 7 and 8 of the Act and the specific power in section 259, the City may pass a by-law imposing fees or charges on persons for services and activities provided or done by or on behalf of it; and

WHEREAS under sections 7 and 8 of the Act and the specific powers and restrictions respecting delegation in sections 20 to 24, the City may delegate its powers and duties under the Act to an officer or employee of the City, including administrative and quasi-judicial powers and legislative powers of a minor nature as provided in section 21; and

WHEREAS under section 366 of the Act, the City may pass by-laws providing that a person who contravenes a by-law of the City passed under this Act is guilty of an offence, and under section 370 may establish a system of fines for offences including special fines, in addition to the regular fine for an offence, that are designed to eliminate or reduce any economic advantage or gain from contravening the by-law; and

WHEREAS under subsections 384(3) and 385(4) of the Act, a by-law under section 366 may also provide that a person who contravenes an order (to discontinue the contravening activity) under subsection 384(1) or an order (requiring certain work to be done) under subsection 385(1) is guilty of an offence; and

WHEREAS subsection 8(1) of the Act, provides the City with broad authority to provide any service or thing the City considers necessary or desirable for the public; and

WHEREAS Council has declared its opinion that if land is not maintained free of long grass and weeds, this matter could become or cause a public nuisance; and

WHEREAS the City provides that the regulation of grass, weeds and natural gardens to the citizens of Toronto as a necessary and desirable service; and

WHEREAS Council has authorized regulations that will facilitate natural gardens contributing positively to the quality of Toronto's appearance and its visual character to enhance the image and attractiveness of Toronto for its residents, business community, and visitors; and

WHEREAS the Council of the City of Toronto wishes to enact this by-law in order to clarify that Community Council no longer has the delegated authority to make final decisions respecting natural gardens exemptions and that Community Council has the delegated authority to hear applications for review from natural garden exemption request denials; and

WHEREAS notice of the intention to enact this by-law has been provided in accordance with the *Act* and its regulations; and

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Chapter 489, Grass and Weeds, of the City of Toronto Municipal Code is amended as follows:

Subsection 489-3E is deleted and replaced with the following:

E. Exemptions.

- (1) An owner may apply for an authorization for an exemption from a prohibition or limitation contained within this chapter on the basis that the growth is exempt as a natural garden by filing with the Executive Director an application in the form prescribed by the Executive Director.
- (2) A notice, including notice by placard, given or placed under this section, shall contain the statement that the owner may, upon receipt of notice under this section, within the time prescribed in the notice to comply, request that the issuance of the notice be reviewed and the growth be authorized by the Executive Director on the basis that the growth is exempt as a natural garden by filling with the Executive Director an application in the form prescribed by the Executive Director.
- (3) Upon receipt of an application under Subsection 3E(1) or (2), the Executive Director shall give written notice to the Councillor of any ward where the growth is located, and where the request for

review is for a growth located on a boundary street between wards, to the Councillors of the adjoining wards.

- (4) The Executive Director shall authorize the exemption if all of the following conditions have been met:
 - (a) All of the Councillors notified under Subsection 3E(3) have either:
 - [1] Not responded within 14 days of the notice; or
 - [2] Responded indicating that they have no objection to the application being approved.
 - (b) The applicant has complied with all terms and conditions of approval of the last exemption issued to them under this section, if any.
 - (c) The applicant has provided the following:
 - [1] The applicant's name, address, and telephone number;
 - [2] A general description of the nature of the growth that is subject to the request for an exemption; and
 - [3] A written undertaking, in a form satisfactory to the Executive Director, that the owner or occupant will maintain the natural garden free of noxious and or invasive weeds and in good repair
 - (d) The growth has been inspected by a City horticulturalist who has recommended approval of the exemption.
- (5) An exemption issued under Subsection 3E(4) shall be subject to the following terms and conditions:
 - (a) The natural garden will be restricted to the location set out in the exemption authorization letter;
 - (b) The natural garden will remain well maintained;
 - (c) The natural garden will be kept free of noxious weeds; and
 - (d) Any other conditions respecting health, safety and nuisance as the Executive Director considers advisable.

- (6) Exemption effective.
 - (a) Subject to Subsection 3E(6)(b), an exemption authorized by the Executive Director shall take effect 21 days after the issuance of a notice of decision.
 - (b) If an application for review has been made under Subsection 3E(7) within 21 days of the date of the issuance of a notice of decision, the exemption shall not be valid unless the Application is withdrawn or otherwise dealt with under Subsection 489-3E.
- (7) Where the Executive Director refuses to grant an exemption under this section, the applicant shall be notified in writing and advised that they may apply to have the Executive Director's decision reviewed by the Community Council which has jurisdiction for the location of the proposed natural garden by filing an application within 21 days of the date of the Executive Director's notice, along with the applicable fee as set out in Chapter 441, Fees and Charges, with the City Clerk at the address shown on the notice.
- (8) Notice of hearing shall be sent to all residents within 100 metres of the location where the natural garden is proposed to be located as shown on the last revised assessment rolls and at the applicant's expense.
- (9) Where the location of the proposed natural garden under application falls on the boundary street of more than one Community Council, each affected Community Council shall provide its recommendations to Council for its consideration of the application under Subsection 3E(7).
- (10) Council, or the Community Council under delegated authority, may issue or refuse an exemption application made under Subsection 3E(7).
- (11) If the Community Council under delegated authority or Council issues an exemption, the exemption is subject to the conditions set out in Subsection 3E(5), unless the Community Council under delegated authority or Council provides otherwise, and to any other conditions respecting health, safety and nuisance as the Community Council under delegated authority or Council considers advisable.

(12) A Community Council under delegated authority or Council may require, as a condition of approval, that City staff monitor the natural garden at the expense of the applicant.

(13) Despite anything contained in this section, where an application for an exemption is made by the City or any of its agencies, boards or commissions:

(a) The application shall be submitted directly to the Executive Director by the City department, agency, board or commission seeking the exemption.

(b) The fees in Chapter 441, Fees and Charges, do not apply.

2. Schedule 12, Municipal Licensing and Standards, of Appendix C of Chapter 441, Fees and Charges, of The City of Toronto Municipal Code is amended as follows:

A. By adding the following:

* (To unnumbered column for row numbers)

*	(To Column I)	(To Column II)	(To Column III)	(To Column V)	(To Column VI)	(To Column VII)
403	Maintenance and Standards Exemption Application	Fee for Application to Community Council – Exemption for Natural Garden	Full Cost Recovery	Per application	\$200.00	No

3. This by-law comes into force on _____, 2013.

ENACTED AND PASSED this _____ day of _____, 2012.

What qualifies as a Naturalized Garden?

A naturalized garden is one that is both environmentally responsible and economical. It is pesticide and chemical free, drought-tolerant and water efficient. It may contain native and / or non-native plant material, is low cost and low maintenance.

Unlike neglected properties comprised mainly of overgrown plants and / or invasive weeds, naturalized gardens are intentionally planted and managed within a boundary. The plant composition of a naturalized garden is chosen based on environmental benefits, aesthetics and/or ability to create an attractive habitat for birds, butterflies and other wildlife.

In order to have a naturalized garden within the City of Toronto, it must be in compliance with the City's Grass and Weeds by-law, Municipal Code **Chapter 489** which includes the following::

489 - 2. Maximum height.

A. The owner or occupant of private land shall cut the grass and weeds on their land and remove the cuttings whenever the growth of grass and weeds exceeds 20 centimeters in height.

B. For the purposes of this section, the term "grass and weeds" refers to:

- (1) All noxious weeds and local weeds designated under the Weed Control Act; and
- (2) Any other vegetation growth which does not form part of a natural garden that has been deliberately implemented to produce ground cover, including one or more species of wildflowers, shrubs, perennials, grasses, or combinations of them, whether native or non-native, consistent with a managed and natural landscape, other than regularly mown grass.

Requests to remove specific noxious weeds may be issued under the following criteria:

- if the plant threatens a person's health (i.e. ragweed, poison ivy, poison sumac, etc.)
- if the plant threatens our native plant communities in ravines and parks (i.e. invasive weeds such as Dog Strangling Vine, Purple Loosestrife, Garlic Mustard, European Buckthorn, etc.)
- if the plant poses a potential safety hazard (i.e. tree and / or shrub limbs which require pruning or removal, blocking sightline of traffic along boulevards or street corners, irritant (i.e. stinging nettle) or thorny plants when found along shared fence lines or sidewalks, etc.)

For more information visit:

http://www.toronto.ca/health/pesticides/go_natural_factsheets.htm

http://www.toronto.ca/health/pesticides/bylaw_faq_2007.htm

<http://www.toronto.ca/watereff/tips/xeriscaping.htm#xeric>



Visit our website at www.toronto.ca

Common Invasive Plants and some Recommended Alternative Plants for Your Garden

Common Invasive Plants	Recommended Alternative Plants
Ragweed	Goldenrod
Dog Strangling Vine	Rudbeckia
Garlic Mustard	Foamflower
Poison Ivy	Purple Coneflower
European Buckthorn	Serviceberry
Purple Loosestrife	Cardinalflower

Visit our website at www.toronto.ca