



**STAFF REPORT
ACTION REQUIRED**
with Confidential Attachment

Agreement Concerning the Display of Topiary Signs near the F.G. Gardiner Expressway, and Amendments to Chapter 694 and Chapter 441 of the Municipal Code with respect to Topiary Signs

Date:	July 24, 2014
To:	Planning and Growth Management Committee
From:	Chief Building Official and Executive Director, Toronto Building and City Solicitor
Wards:	14 – Parkdale-High Park
Reason for Confidential Information:	<ol style="list-style-type: none">1. This report involves the security of property of the City.2. This report contains advice or communications that are subject to solicitor-client privilege and pertains to litigation or potential litigation that affects the City
Reference Number:	PG14007

SUMMARY

This report recommends that the City enter into an agreement with Hillside Media Communications Limited ("Hillside") concerning the continued display of up to 14 topiary signs in the Metrolinx rail corridor near the F.G. Gardiner Expressway. This report also recommends amendments to Chapter 694, Signs, General, ("Chapter 694") to better govern the display of these topiary signs, as well as the addition of a new fee to Chapter 441, Fees and Charges ("Chapter 441") to recover the costs incurred in the review and inspection of topiary signs where sign permits may be required.

A topiary sign is defined by Chapter 694 as a sign consisting only of shrubs, grass, flowers, ornamental plants and landscape elements. Under Chapter 694, topiary signs are permitted in all sign districts without the requirement for a sign permit provided that they are no higher than 0.6m metres above grade and comply in all other respects with the requirements of Chapter 694. Several of the topiary signs recommended for approval in this report contain elements with a height greater than 0.6m above grade and therefore will require both an amendment to Chapter 694, and a subsequent sign permit in order to

be allowed. This report also proposes the addition of a new sign permit fee for topiary signs to Chapter 441, Fees and Charges ("Chapter 441") to recover the costs incurred in the review and inspection of topiary signs when required.

For almost 30 years, Hillside has displayed topiary signs along the north side of the railway corridor adjacent to the Gardiner Expressway. These signs have been governed through various historic agreements which led to Hillside's displaying up to 14 topiary signs in exchange for the maintenance and upkeep of the property where they are located as well as the display of the City of Toronto logo and two other topiary signs displaying non-commercial or charitable messages.

This report has been prepared in consultation with Transportation Services, and the City Manager's Office.

RECOMMENDATIONS

The Chief Building Official and Executive Director, Toronto Building and City Solicitor recommend that:

1. City Council authorize the General Manager, Transportation Services, to negotiate and execute on behalf of the City an agreement with Hillside Media Communications Limited ("Agreement") described in the Attachment 1-Confidential Information to this report;
2. City Council direct that the Attachment 1-Confidential Information remain confidential as it contains advice that pertains to litigation or potential litigation; and that the final Agreement between the City and Hillside Media Communications Limited be made public subject to applicable law, once it has been fully executed by all parties;
3. City Council direct the revenues from the Agreement to this report to the Public Realm Reserve Fund XR1410 to be drawn upon annually to provide funding for the "Orphan Space Program" to enhance the maintenance of lands within the public right-of-way under the jurisdiction of Transportation Services;
4. City Council amend Chapter 694, Signs, General, by adding an area-specific amendment to Schedule B to Ch. 694, Signage Master Plans and Area Specific Amendments to allow the display of 14 Topiary Signs in the portion of the rail corridor known as the Oakville Subdivision bounded by Roncesvalles Avenue and Jameson Avenue in accordance with the draft by-law attached as Attachment 2 to this report;
5. City Council amend Chapter 441, Fees and Charges, of the Municipal Code of the City of Toronto to modify Appendix C - Schedule 8, Toronto Building to add a new fee for sign permits for topiary signs, and to modify related fees in accordance with the draft by-law attached as Attachment 3 to this report; and,

6. The City Solicitor be authorized to prepare the necessary Bills for introduction in Council in order to implement the above recommendations, subject to such stylistic and technical changes to the draft by-laws as may be required.

Financial Impact

Proposed Agreement with Hillside:

By October 31, 2014, Hillside will pay the City a lump-sum amount of \$77,033.04 and will then make annual payments to the City starting in 2015 of approximately \$16,750; this amount will be increased in accordance with annual increases in the City's property tax rate based upon an established formula which considers property class and the municipal tax rate.

The average annual increase in the last two years using this formula has been 1.4%. Based on this, it is expected that the value of this annual payment will be approximately \$17,000 in 2016 and \$17,200 in 2017.

In 2014 the lump sum payment will be made to the City by October 31st. In 2015 and beyond, these payments will be paid to the city by September 1st of each year regardless of whether all 14 topiary signs are in fact displayed at the time.

The proposed revenue allocation from the signs is to be provided to the City in addition to:

- a provision in the agreement securing the ongoing maintenance of the lands surrounding the signs;
- providing the City of Toronto with one sign face at no charge; and,
- providing two additional sign faces to charities approved by the City at no charge.

New Fee for Topiary Signs:

It is proposed that the permit fee for a topiary sign be set at the minimum for a sign permit application. The minimum is currently \$283.51 per sign (Appendix C - Schedule 8, Toronto Building), indexed annually. The proposed fee is reflective of the minimal amount of work required to process a topiary sign permit, primarily because there is no structural or health and safety review necessary.

As part of this application, the total revenue from this new fee in 2014, for 14 signs, is estimated to be approximately \$3,970. In five years, due to the fact that the permits issued to Hillside will be for third party signs, the sign permits for 13 of the topiary signs must be renewed. Assuming an inflationary fee increase of 2.0% per year, the estimated revenue from these renewals will be approximately \$4,070 in 2019.

Since the inception of the Sign By-Law Unit in 2010, there have been no permit applications for topiary signs.

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

DECISION HISTORY

Agreement Concerning the Display of Topiary Emblems near the F.G. Gardiner Expressway - Referral to Planning and Growth Management Committee (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX43.36>)

ISSUE BACKGROUND

Hillside has created and displayed 14 topiary signs along the Metrolinx railway embankment visible to the north of the F. G. Gardiner Expressway. These signs have been in place for approximately 27 years.

As part of the past agreements between Hillside and the City of Toronto (including former Metro Toronto), Hillside has provided one large topiary sign at the centre of the row of signs, for the purpose of displaying an official mark of the City, at no cost to the City (the "City-Sign"). Hillside has also modified the sign, as requested by the City from time to time, to promote City events also at no cost to the City. In addition, they have provided two other topiary signs for the use of local charities at no cost to those charities (the "Charity-Signs"). The provision of the City-Sign and Charity-Signs has been in addition to the ongoing maintenance of the railway embankment where the signs are located, on the west side of the Dowling Avenue Bridge to approximately 110 metres west of the Martin Goodman Trail Bridge / The Roncesvalles Pedestrian Bridge.

Figure 1: Location of the Topiary Signs

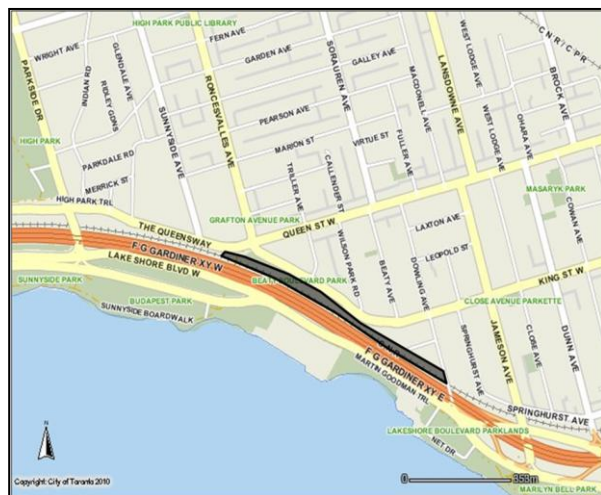
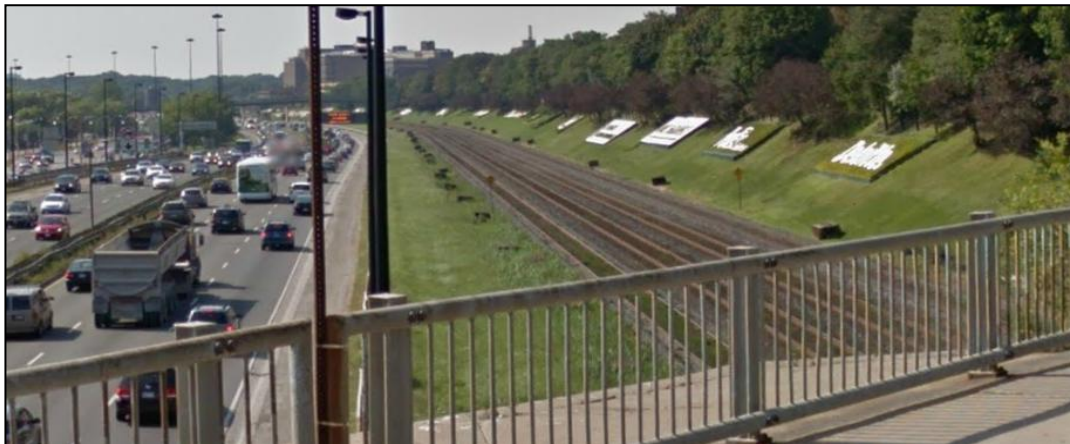


Figure 2: Location and Position of Topiary Signs displayed next to the F.G. Gardiner Expressway



Recently, in the course of discussions about modifying the City-Sign to incorporate the official markings of the 2015 Pan Am and Parapan Am Games, it was determined that the historic agreement requires modernization as well as formalization to ensure the effective management of the long-standing relationship.

COMMENTS

Hillside has been responsible for the ongoing maintenance of the topiary signs on the subject lands since 1987, initially in accordance with approvals provided by the former Municipality of Metropolitan Toronto. As part of an updated agreement between Hillside and the City, both parties are attempting to bring the historically permitted topiary signs into compliance with the requirements of Chapter 694.

This matter has also identified the need for a new fee in Chapter 441 for the review and inspection of topiary sign permit applications that are not exempt from the requirements in Chapter 694 for sign permits.

Proposed Agreement with Hillside

Term of the Agreement:

The updated agreement between the City and Hillside is proposed to have a term of ten years and will be administered by the General Manager, Transportation Services through the Director of the Public Realm Section.

The City or Hillside may terminate the Agreement at any time without cause by providing written notice one year in advance of the scheduled termination date to the other party.

In the event that Hillside should breach any term of the updated agreement, the City would provide Hillside with written notice of the breach and would be able to terminate the agreement if Hillside does not correct the breach within one month of receiving notice from the City.

Compliance with Applicable Laws, Policies and other Requirements:

The updated agreement between the City and Hillside will require that Hillside comply with all applicable laws, including Chapter 694. Hillside will also be required to operate and maintain the topiary signs in accordance with the requirements of Chapter 612, Pesticides, Use of, of the City of Toronto Municipal Code.

Hillside has also entered into a Park Access Agreement with the City's Parks, Forestry and Recreation Division to use the Beatty Parkette to the north of the signs for the purpose of loading and unloading material used for landscaping in connection with their maintenance. The current agreement expires at the end of 2014, but Hillside Media will

be required to obtain a new Park Access Agreement and to keep it in good standing throughout the term of the updated agreement.

Hillside carries the required liability insurance which names the City as an additional insured and will continue to carry such liability insurance throughout the term of this Agreement.

Hillside will also be required to maintain all signs in the topiary display and the surrounding embankment (from the west side of the Dowling Avenue Bridge to approximately 110 metres west of the Martin Goodman Trail Bridge / The Roncesvalles Pedestrian Bridge) in accordance with the provisions of Chapter 629, Property Standards, of the City of Toronto Municipal Code.

Annual Payment to the City and Maintenance of the Railway Embankment:

By October 31, 2014, Hillside will pay to the City a lump-sum amount of \$77,033.04 and will thereafter make annual payments to the City starting in 2015 of approximately \$16,500; these amounts will be increased in accordance with annual increases in the City's property tax as described in the financial implications section of this report.

The City will invoice Hillside each year for the annual payments owing. In 2014 this annual payment will be made to the City by October 31. In 2015 and beyond, these payments will be paid to the City by September 1st of each year, regardless of whether all 14 topiary signs are in fact displayed at the time.

At this time, Transportation Services has a program (the "Orphan Space Program") that contracts with Parks, Forestry and Recreation to provide horticultural services on boulevards, centre medians, bump-outs and other landscape features. The annual payments received from Hillside would be directed to enhance the maintenance of lands within the public right-of-way under the jurisdiction of Transportation Services. As the City grows and becomes more developed and as more of these features become standardized in our street construction, more of these types of spaces are created. There is increased interest on the part of the public for more landscaped features, and new development projects are increasingly providing them as part of their proposals. An expansion of this program would permit additional spaces to be taken on, and a higher level generally of horticulture and maintenance applied to city streets.

Non-Commercial Messaging:

The updated agreement will require Hillside to display the City's official logo on the central sign of the topiary display at no cost to the City. This includes implementing any changes to the design of the City's official logo as requested by the City. These changes will be communicated to Hillside Media by the Director, Strategic Communications. Hillside Media will also be required by the updated agreement to modify this sign to include advertising of the 2015 Pan Am and Parapan Am Games, in accordance with the design approved by Toronto 2015 throughout the completion of the Pan Am Games.

The updated agreement will also require Hillside to continue to dedicate the signs at both ends of the embankment to charities at its own expense. The charities advertised must be approved by the Director, Strategic Communications on behalf of the City. Hillside will also be required by the updated agreement to carry out maintenance and upgrades to these signs at its own cost.

Figure 3: Non-Commercial Topiary Sign



Required Amendments to Chapter 694

As part of Chapter 694, topiary signs have been defined as signs consisting only of shrubs, grasses, flowers, ornamental plants and landscaping elements and are permitted without a sign permit provided they not exceed 0.6 metres above surrounding grade and provided they comply in all other respects with Chapter 694 including separation distances that may be required between signs or between the sign(s) and sensitive land uses.

Due to the unique nature of topiary signs, no provisions in Chapter 694 were established to allow topiary signs which exceed the limitations set out in the by-law. As a result, all such topiary signs are required to be approved by City Council on a site-specific basis and require permits.

The topiary signs currently displayed by Hillside adjacent to the F.G. Gardiner Expressway do not meet the requirements for topiary signs in order to be exempt from sign permit requirements set out in Chapter 694. This is due primarily to their size and the separation distances required between the signs. As such, a site-specific by-law amendment is required to allow permits to be issued.

Separation Distances:

Chapter 694 requires a minimum 100 metre separation distance between third party signs. This requirement would apply to 13 of the topiary signs displayed by Hillside. It is proposed that the minimum required separation distance between each of the topiary signs be 25 metres.

As well, the signs displayed by Hillside are located less than 25 metres from the F.G. Gardiner Expressway, whereas Chapter 694 requires that a third party sign have a separation distance of at least 400 metres from the F.G. Gardiner Expressway.

Due to the orientation of the topiary signs, as well as the consistency in the shrubs, grasses and materials used in the signs, the issues of sign clutter or driver distraction are reduced in comparison to more traditional sign copy types.

Chapter 694 requires that all third party signs have a minimum separation distance of 30.0 metres from Residential-R and Open Space-OS Sign Districts. The topiary signs displayed by Hillside are, in some instances located less than 10.0 metres from the Residential –R Sign District to the north of the signs.

Despite this, as a result of the slope of the embankment where the signs are situated, as well as the signs being down-lit with the light directed away from residential developments, the signs should have no impact on any of the nearby residential properties.

Sign Copy Displayed:

The Topiary Signs currently displayed by Hillside adjacent to the Gardiner Expressway are proposed to remain in place and largely unchanged from the current design. Specifically, these topiary signs will consist of:

- Two signs for non-commercial (charitable) messaging with a sign face area of approximately 50 square metres (see figure 3 above);
- One sign with first party copy identifying Metrolinx with a sign face area of approximately 135 square metres, respectively (see figure 4);
- Ten signs with third party copy with sign face areas ranging from 103 square metres to 220 square metres (sign dimensions change as corporate sponsors change). The content of these third party signs would be limited to logos or corporate symbols, similar to those found on the upper storeys of office buildings in the downtown area and financial district (see figure 5); and,
- One sign dedicated to the City of Toronto comprised of various landscaping materials and including a 3.3 metre high wall created out of wood timbers at the back of the display. This particular sign also includes 6 flag poles displaying the flags of The City of Toronto, The Province of Ontario and Canada (see figure 6 below).

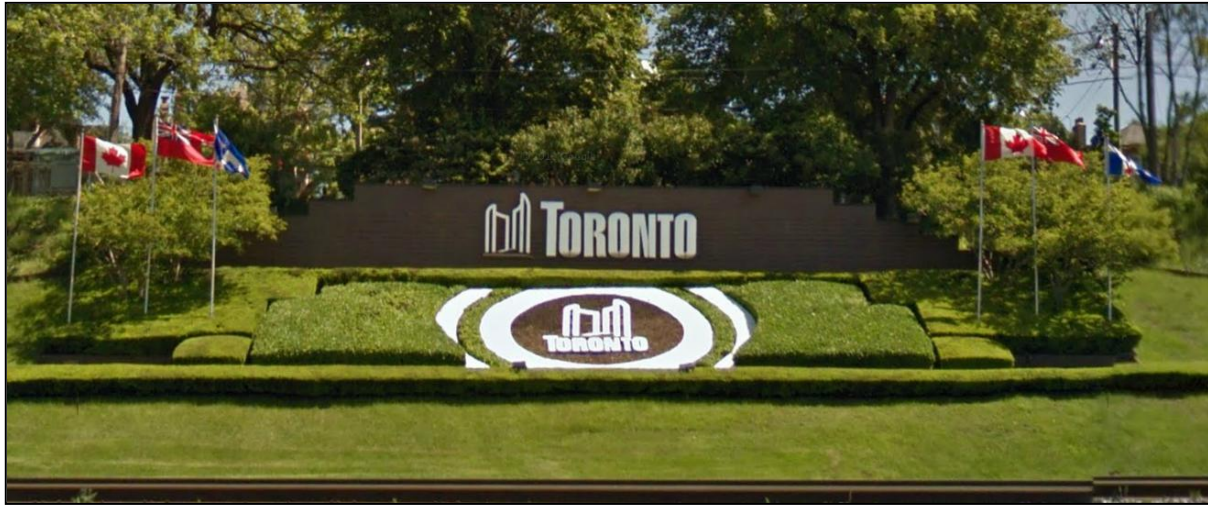
Figure 4: First Party Topiary Sign



Figure 5: Third Party Topiary Sign



Figure 6: City of Toronto Topiary Sign



These proposed individual sizes and dimensions of these 14 signs are listed in Table 1 below.

Table 1: Details of Topiary Sign Dimensions, Size & Sign Copy Type

Sign #	Sign Dimensions (length x width)(m)	Sign Size (m ²)	Sign Purpose
1	7.7 x 29.9	230.3	City of Toronto Sign
2	3.5 x 15.5	54.3	Non-Commercial Messaging Sign
3	3.4 x 16.8	57.2	Non-Commercial Messaging Sign
4	5.5 x 24.7	135.9	First Party Sign (Metrolinx)
5	4.6 x 14.1	64.9	Third Party Sign
6	5.5 x 23.5	129.3	Third Party Sign
7	4.9 x 44.8	219.6	Third Party Sign
8	5.8 x 24.7	143.3	Third Party Sign
9	19.9 x 5.5	109.5	Third Party Sign
10	5.5 x 19.9	109.5	Third Party Sign
11	5.5 x 21.4	117.7	Third Party Sign
12	5.5 x 25.0	137.5	Third Party Sign
13	5.2 x 19.9	103.5	Third Party Sign
14	5.2 x 19.9	103.5	Third Party Sign

With respect to the size of the signs, Chapter 694 restricts the maximum sign face area of third party signs to 20 square metres; whereas the third party topiary signs displayed by Hillside are 5-10 times larger than otherwise permitted.

Due to the compatibility of materials used in the topiary signs with the surrounding area, the impact of the larger sign faces is substantially reduced. Also, the shrubs, grasses and other materials used in topiary signs require more space in order to display a discernible (visible) message due to their imprecise nature.

Amendments to Chapter 441

The review of the topiary signs displayed by Hillside raised the question of fees for the review and inspection of topiary signs that are not exempt from the requirements in Chapter 694 for sign permits.

The fee for topiary signs that require sign permits is recommended to be \$283.51 per sign, indexed annually in accordance with other fees in Chapter 441.

This fee is currently the minimum fee required for sign permit applications and is reflective of the reduced amount of review and inspection time that is likely to be required for topiary signs given that they do not raise the same structural or health and safety issues as compared to traditional sign types.

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SIGNATURE

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ATTACHMENTS

- Attachment 1 – Confidential Attachment from the City Solicitor
- Attachment 2 – Draft Bylaw – Area Specific Amendment to Chapter 694, Oakville Subdivision bounded by Roncesvalles Avenue and Jameson Avenue
- Attachment 3 – Draft Bylaw – Amendments to Chapter 441, Fees and Charges, of the Municipal Code of the City of Toronto, Appendix C - Schedule 8, Toronto Building