

Revenue Sharing Agreement for 14 Topiary Signs near the F.G. Gardiner Expressway

Date: June 17, 2024

To: General Government Committee

From: General Manager, Transportation Services

Wards: Ward 4, Parkdale-High Park

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report is about a position to be applied to any negotiations carried on or to be carried on by or on behalf of the City of Toronto.

SUMMARY

This report recommends that the City enter into an agreement with Hillside Media Communications Limited ("Hillside") for a revenue sharing arrangement relating to 14 topiary signs within a portion of the rail corridor defined as the Oakville Subdivision adjacent to, and visible, from the F.G. Gardiner Expressway ("Proposed Revenue Share Agreement").

Currently, Hillside has a 10-year revenue sharing agreement with the City, administered through Transportation Services, under which Hillside pays a specific portion of the revenues to the City; and, also provides the City with the direct benefit of using a specific topiary sign (the "Toronto Sign") along with the maintenance and upkeep thereof. The revenue sharing agreement also obligates Hillside to operate two of the 14 topiary signs with sign content that advertises or promotes charities, approved by the City, at no cost to the City.

The current agreement is set to expire on September 23, 2024. It is the opinion of the General Manager, Transportation Services, that a new revenue sharing agreement, should be agreed to and executed by the City. It is proposed that the new revenue sharing agreement require a combination of financial payments and provision of services similar to the current Agreement.

Under the current Agreement, Council approval is required to continue the exemption from Chapter 771, Taxation, Third Party Sign Tax of the City of Toronto Municipal Code. Revenue Sharing Agreement respecting Topiary Signs

RECOMMENDATIONS

The General Manager, Transportation Services recommends that:

1. City Council authorize the General Manager, Transportation Services, to negotiate, enter into and execute an agreement with Hillside Media Communications Limited ("Proposed Revenue Share Agreement"), in substantial accordance with the terms and conditions described in Confidential Attachment 1 to the report (June 17, 2024) from the General Manager, Transportation Services.
2. City Council direct that Confidential Attachment 1 to the report (June 17, 2024) from the General Manager, Transportation Services remain confidential until such time as final Agreement between the City and Hillside Media Communications Limited is fully executed by all parties as it contains a position, plan, procedure, criteria or instruction to be applied to any negotiations to be carried on by or on behalf of the City, 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 the Public Realm Reserve Fund XR1410 drawn upon annually to provide funding for neighbourhood beautification and other physical public realm improvements.

FINANCIAL IMPACT

Under the proposed Revenue Share Agreement, the City will receive annual financial payments to the City starting in 2025 of approximately \$21,750.00, which will increase in accordance with the annual increase rate as defined by which is the percentage change in Statistics Canada's Toronto Consumer Price Index (All Items), as calculated by the Chief Financial Officer and Treasurer.

Under the Proposed Revenue Share Agreement, the exemption of these 14 signs from the City's Third Party Sign Tax will result in a reduction to the revenues which would otherwise be collected by the City's Third Party Sign Tax in the amount of approximately \$50,050.72 in 2025, which is also subject to similar annual adjustments. However, in addition to the revenue share payment that the City will receive in direct payment, the City will also receive specific services by Hillside, specifically the provision and maintenance of the Toronto Sign.

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

DECISION HISTORY

City Council, at its meeting of August 25, 2014, adopted, as amended the report "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" (Item PG35.7).

<https://secure.toronto.ca/council/agenda-item.do?item=2014.PG35.7>

City Council, at its meeting of April 12, 2011, adopted the report "Court Decision Regarding Municipal Code Chapter 771, Third Party Sign Tax" (Item PG2.10)

<https://secure.toronto.ca/council/agenda-item.do?item=2011.PG2.10>

COMMENTS

On February 23, 2010, City of Toronto Municipal Code Chapter 771, Taxation, Third Party Sign Tax, came into effect which provides for the taxation of third-party signs in the City, including third party topiary signs.

However, pursuant to subsection 771.8.K of Chapter 771, no tax is payable by an owner who has entered into a revenue sharing agreement with the City.

A "topiary sign" is defined for purposes of the Sign By-law and Chapter 771 as a sign consisting only of shrubs, grasses, flowers, ornamental plants and landscape elements.

On August 25, 26, 27 and 28, 2014, the City passed a site-specific by-law amendment to City of Toronto Municipal Code Chapter 694, Signs, General, (the "Sign By-law") which authorized the display of up to 14 topiary third party signs within the portion of the Oakville Subdivision, adjacent to the F.G. Gardiner Expressway, and bounded by the Dowling Avenue pedestrian bridge and a point approximately 110 metres west of the Martin Goodman Trail pedestrian bridge ("Subject Lands"). This specific amendment to Sign By-law, which allowed for the legal display of topiary signs within the Subject Lands constitutes subsection 2.X of Schedule B, Signage Master Plans, and Area Specific Amendments, to the Sign By-law.

In addition, at the August 25, 26, 27 and 28, 2014 meeting, City Council authorized the General Manager of Transportation Services to enter into, on behalf of the City, a revenue sharing agreement with Hillside with respect to the display of up to 14 topiary signs in which the City would receive a portion of revenues of the signs through payment of funds, and provision of specific services.

The current agreement is set to expire; under the terms of the existing agreement, any further renewal of the existing revenue sharing arrangement requires Council authorization. It is in the opinion of the General Manager, Transportation Services that it would be in the best interest of the City that a new revenue sharing agreement be authorized and administered for the continued benefits derived from (a) the payment of

annual funds in the form of a revenue share; (b) the display and maintenance of a topiary sign dedicated to the City of Toronto (the "Toronto Sign"). Therefore, to ensure the City continues to obtain the benefits of a revenue share provided to the City through a combination of financial payments and provision of services; rather than the benefit of subjecting the topiary signs to Chapter 771, and the receipt of the tax revenues which would otherwise be collected; Council authorization for the Proposed Revenue Share Agreement is required prior to the expiry of the current agreement.

Term of the Proposed Agreement:

The new Proposed Revenue Share Agreement between the City and Hillside is proposed to have a term of ten years from the date of its execution. The Proposed Revenue Share Agreement would be administered by the General Manager, Transportation Services through the Director of the Permits and Enforcement Section.

Either the City or Hillside may terminate the Proposed Revenue Share Agreement at any time without cause by providing written notice one year in advance of the scheduled termination date to the other party. Further, the City would have the entitlement to terminate the Proposed Revenue Share Agreement with cause, upon written notice, if Hillside should breach any term of the agreement and Hillside does not correct the breach within one month of receiving notice from the City.

Compliance with Applicable Laws, Policies and other Requirements:

The Proposed Revenue Share Agreement between the City and Hillside will require that Hillside comply with all applicable laws, including the Sign By-law; and other municipal regulations. This will require Hillside to operate and maintain the topiary signs in accordance with the requirements of City of Toronto Municipal Code Chapter 612, Pesticides, Use of; and Chapter 629, Property Standards. Currently, Hillside annually enters into a Park Access Agreement with the City's Parks, Forestry and Recreation Division to use the Beatty Parkette for the purpose of loading and unloading material used for landscaping in connection with their maintenance of the topiary signs. The current agreement expires at the end of 2024. Hillside will be required to obtain a Park Access Agreement annually and adhere to the provisions within the agreement.

Hillside currently carries the required liability insurance which names the City as an additional insured and will be required under Proposed Revenue Share Agreement to continue to carry such liability insurance throughout the term of the agreement.

Annual Payment to the City:

Under the Proposed Revenue Share Agreement, Hillside will make annual payments to the City starting in 2025 of approximately \$21,750.00; these amounts will increase in accordance with the annual increase formula as described in the financial implications section of this report.

Starting in 2025, annual payments will be paid to the City by September 1st of each year. These payments will be a fixed amount representing revenue sharing for each of the 14 topiary signs in the Subject Lands regardless of whether all 14 topiary signs are displayed at the time. It is proposed that the annual payments received by the City from Hillside will provide funding for the maintenance programs that enhance the public realm.

Transportation Services shall be required to invoice Hillside each year for the annual payments owing.

Additional Payments in Services to the City - The "Toronto Sign"

The Toronto Sign (Attachment 1) is the largest topiary sign displayed within the Subject Lands at approximately 167 square metres. This structure contains six flags including the National flag of Canada, flag of Ontario and the City of Toronto. Further to this structure, there is also a large retaining wall that acts as a backdrop to the City's branded emblem and logo. The Toronto Sign acts as a "welcome" sign near to the boundary of the former municipality of the City of Toronto, for some travellers on the F.G. Gardiner Expressway.

Hillside will be required to continue to maintain the Toronto Sign (labelled as zone 8 on Attachment 2) at no cost to the City. Further, if any official design changes of the City's logo are initiated at any given time during the duration of this agreement, Hillside will need to ensure the vision is reflected accordingly on the signage at no additional cost. Hillside may also be required to modify or update the topiary sign to communicate, promote and raise awareness of upcoming signature initiatives (i.e., FIFA 2026) in accordance with the design approved by the City (such matters to be administered by Chief Communications Officer, Strategic Public and Employee Communications) again at no additional cost. Past examples include, the 2015 Pan Am and Parapan Am Games and Covid-19 pandemic.

Additional Potential Benefit - Non-Commercial Messaging:

The agreement will also require Hillside to dedicate the signs at both ends of the embankment (labelled as 1 and 14 as indicated in Attachment 2 to this report) to charities at its own expense. The charities advertised must be approved by the City, which shall be administered by the Chief Communications Officer, Strategic Public and Employee Communications. Hillside will also be required by the agreement to carry out maintenance and upgrades to these signs at its own cost.

Conclusion:

In staff's opinion the total value of the annual payment funds in the form of a revenue share; and the services of the display and maintenance of the Toronto Sign exceeds the forgone contribution to the City's revenues generated by applying the City's Third Party Sign Tax to these signs, and so the Proposed Revenue Share Agreement is in the City's best interest.

CONTACT

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SIGNATURE

Ashley Curtis
Deputy General Manager, Transportation Services

ATTACHMENTS

Confidential Attachment 1: Proposed Terms and Conditions of the Revenue Share
Agreement
Attachment 1: The Toronto Sign
Attachment 2: Topiary Signs along the F.G. Gardiner Expressway - Map and
Photograph

Confidential Attachment 1: Proposed Terms and Conditions of the Revenue Share Agreement

Attachment 1: The City of Toronto Topiary Sign

Figure 1: Year 2023



Figure 2: Year 2021



Figure 3: Year 2014-2015



Figure 4: Year 2009



