

May 19, 2021

The following is a condensed version of a letter from Subject Matter Experts (SME) to the Planning and Housing Committee.

Re: Item PH23.11, Modernizing Chapter 489, Grass and Weeds to Streamline Processes and Support Biodiversity

The City held two meetings with SME in March and April 2021, and we appreciate all the effort put into this work by City staff.

We appreciate that a number of our recommendations have been incorporated in the staff report, including the recommendation to eliminate the natural garden exemption. However, we have been clear that removing the exemption must be contingent on several other key changes to the bylaw. While some of these changes are in the proposed bylaw, there remain a number of very significant problems that are not addressed. If the City does not address these significant problems, the bylaw is not “fixed”—indeed, the proposed version may be worse than the existing, flawed bylaw.

First, the good:

- The report recommends removing the Natural Garden Exemption, which was the unanimous recommendation not only of the SME but of 97% of the 455 emails sent to the City during the public consultation.
- The report recommends listing prohibited species right in the bylaw, so residents have clarity. This is excellent and is a necessary condition of a revised bylaw, and was a unanimous recommendation of the SME.
- The report recommends that the bylaw be based specifically on health and safety concerns and that any reference to or interpretation of aesthetic considerations be removed from regulation. This is excellent and necessary, and it conforms to previous court rulings on the bylaw and to SME recommendations.
- The report frames the bylaw in terms of supporting biodiversity. This is excellent and necessary, given that the City already has supportive policies for biodiversity on public lands; this is warranted by the biodiversity and climate change crises.

What still needs to be changed:

- The bylaw is only as effective and intentional as its enforcement. The revised bylaw must include a **minimum requirement** for complainants to **identify specifically the nature of the infraction** before an Advisory Notice is sent and investigation and enforcement are triggered. This means that complainants must be required to identify specific health and safety issues and/or the prohibited plant that is the source of the problem identified; this also means that complaints that make any reference to appearance or aesthetics should be ignored on the basis that the city can not legally

investigate or enforce appearance. The addition of this requirement could easily be instituted at the 311 portal with a simple checklist of infractions listed specifically in the bylaw. If the City continues to investigate complaints based on appearance, and to devote resources to their enforcement, the bylaw will continue to undermine private property owners and citizens' efforts to support biodiversity. It will also put the City at risk of legal action, as the bylaw as proposed does not protect citizens' constitutional rights to a natural landscape.

- **The increased fines for non-compliance are alarming.** We wish to be clear that the proposed bylaw as written, i.e. with increased fines for non-compliance and without the natural garden exemption, is likely to have a “chilling effect” on landscapes that deviate from traditional lawns and gardens in an effort to support biodiversity. The risk of a maximum fine of \$100,000 (raised from \$5,000) is frankly ridiculously disproportionate to the offences listed in the bylaw and adds significantly to this chilling effect. For example, it is concerning that many of the same plants that are on the proposed prohibited plant list are common on derelict city-owned properties, and their seeds will routinely blow or be transported onto private properties, for which private property owners could now be liable for a \$100,000 fine!
- **The recommended list of prohibited plants must be compiled with meaningful, committed and direct consultation with the Indigenous community as well as invasive species experts** beyond the few who were consulted at the March and April meetings. First, the City must meaningfully engage with Indigenous land stewards and stewardship groups, Elders and Traditional Knowledge Keepers, and the treaty holders for this territory. The City's own stated reconciliation goals require this engagement. Second, we recognize that there will never be unanimity around what species to include on the prohibited species list, and we support the proposal for regular expert consultation on the list. For this reason, we also provided a “lean” list of the most widely-recognized and dangerously invasive plants—9 species common in the Toronto area, and that are also listed in the Ontario Weeds Act and by the Ontario Invasive Species Council. However, in drawing up the initial list, a wider range of experts in the fields of invasive species, urban ecology and allergens must be consulted. For example, burdock is a plant that is edible, medicinal, culturally-important and non-invasive in natural areas and yet it has been inexplicably added to the proposed prohibited species list. This reveals the complexity of socio-ecological considerations that must be taken into account and how problematic it is to develop a list without broad consultation.
- **The report's recommendations do not define “remedial action”.** Without clarity, there remains the risk and uncertainty to residents that their whole garden will be cut down by the City simply because the landscape contains one or two common garden weeds on the prohibited list (e.g. such as burdock and field bindweed). We note that these two plants, along with pernicious invasives such as Japanese knotweed, garlic mustard and dog-strangling vine, are virtually impossible to completely eradicate, even with concerted and committed ongoing effort. To threaten people with a maximum fine of

\$100,000 and garden destruction for not eliminating plants that the City itself is not able to eradicate on its own managed properties is wholly disproportionate and punitive. Again, we emphasize that City properties are a significant source of weeds which spread to private properties for which private property owners are now liable.

- **It is unclear whether the standard of enforcement is *eradication of prohibited species* or the *attempt to control prohibited species*.** We argue that a standard of eradication is impossible to achieve for many of the proposed prohibited species. This clarification must be made in the bylaw's enforcement provisions, with specific reference to the list of prohibited species.
- **There is no appeals process in the bylaw.** If bylaw officers (even with the addition of plant-identification training recommended in the report) mis-identify plant species and order them removed, residents have no recourse to appeal the order. Many of the plants on the proposed prohibition list have multiple “look-alike” plants, and grasses in particular are notoriously difficult to correctly identify—even for trained botanists. For these reasons, it is clear that there must be an appeals process.
- **The sight-line clearance that residents are required to maintain for safety must be clearly specified in the bylaw.** This must include specific and standardized sight line triangle measurements to allow residents access to the rules they are required to follow in order to remain in compliance, and to avoid arbitrary and vague enforcement.
- **The report does not recommend harmonizing plant regulation on private property with the bylaw regulating plants on boulevards and the public right of way** (which are still subject to the provincial Noxious Weed List). This creates the confusing situation in which there are different plant prohibitions depending on where the property line is located. We recommend that the prohibited plant lists be harmonized.
- **The report recommends that turfgrass be regulated at a height and length of 20cm.** However, the report’s recommended definition of turfgrass is too broad, unscientific, and inadvertently includes native grasses, sedges, and other “ground covers.” If the bylaw intends to regulate turfgrass, the definition of turfgrass in the bylaw should be changed to be specific, in horticultural terms: “cool-climate, mat-forming, common turfgrass species dominated by Kentucky bluegrass and non-native fescues.” As well, “length” is an unnecessary addition that would prohibit environmental lawn alternatives such as EcoLawn, a product that contains native grasses at many heights. We also note that by stipulating a 20cm height limit on turfgrass and inadvertently encumbering native grasses, the report ignores the growing interest in the “No Mow May” (and beyond) movement, which effectively prohibits this pollinator-friendly practice without evaluating its potential benefits in the context of planned bylaw revisions. **For these reasons, “length” should be removed from the bylaw.**

- Two clauses in the “Offences” section of the report are completely opaque and punitive, and are likely to have a similar “chilling effect” on private citizens’ efforts to support biodiversity through natural gardens. What is the intent of, and what will be achieved by, a “*special fine in an amount equal to any economic gain obtained from non-compliance*”? Why does the report add “*offences for obstruction and failure to provide information as required*”? Adding such opaque and chilling legalese on top of the threat of a maximum fine of \$100,000 is a sure way to discourage natural gardens.
- Many of the report’s recommendations are a sledgehammer response to a problem that the report itself notes has been at issue, over the period of 2016 to 2020, for just 1,227 “vacant or abandoned properties” and 5,583 properties with “overgrowth”—a vague and arbitrary term that has been ruled by the courts as unconstitutional in the context of garden regulation. The effect of this sledgehammer response on the more than 1 million private dwellings in the city (where biodiverse plantings could and should be encouraged) will be to discourage, disincentivize, prevent and punish people who are taking positive environmental actions and asserting their constitutional rights to express themselves through their gardens.

The report states that the proposed amendments “are intended to remove any unnecessary barriers to allow residents to maintain a natural garden on their private land.” We wholeheartedly support that goal but, unfortunately, the proposed amendments do not yet achieve this, and instead, contain significant barriers and disincentives to natural gardens. We ask the City to invest the time to consult widely and specifically on the matters we have raised above and improve the proposed bylaw.

As Subject Matter Experts, we urge you to make the changes we recommend in order to achieve the goal of supporting biodiversity. There is simply too much at stake.