

Overgrown Grass and Vegetation on City Right of Way

Date	January 20, 2021
To	Operations and Community Services Committee
From	City Solicitor's Office
Service Area	Office of the City Solicitor
Item No.	OCS21-3

RECOMMENDATION

That the Operations and Community Services Committee recommend that City Council:

1. Approve the recommendations, options 2 and 5, contained within this report as it relates to overgrown grass and vegetation.
2. Approve housekeeping amendment to *The Regina Community Standards Bylaw* to more clearly authorize inspections to enforce the Bylaw, as further described in this report.
3. Instruct the City Solicitor to prepare the necessary amending bylaw to be brought forward to the February 24, 2021 meeting of City Council following the approval of these recommendations.
4. Remove CM20-22(1) from the list of outstanding items.

ISSUE

On July 29, 2020 City Council directed Administration, through motion MN20-11, to prepare an aggressive weed control enforcement plan for consideration at the August 26, 2020 City Council meeting. This request was in response to residents' complaints regarding overgrown properties and boulevards, the latter concern focused primarily in newer neighbourhoods. The report considered at the August 26, 2020 meeting presented the enforcement process for overgrown grass cases and how it was impacted due to the COVID-19 pandemic, the enforcement tools provided under *The Cities Act*, as well as the enforcement plan for the upcoming 2021 overgrown grass and vegetation season.

The time between the motion being debated on July 29 to the report being considered at City Council on August 26, did not allow enough time to research and present options for issues surrounding overgrown grass on boulevards and other portions of the right of way. Therefore, a commitment was made to bring forward a report for consideration by City Council at a later date.

IMPACTS

Accessibility

None with respect to this report.

Financial Impacts

For 2021, the cost of two casual Bylaw Enforcement Officers for the growing season (approximately \$40,000) will be covered by salary lag. The cost of the communication plan will be covered through existing budgets.

Policy/Strategic Impacts

Recommendation number one aligns with the targeted outcomes on the strategic plan in terms of balancing community needs and wants with affordability. Providing clarity around the portions of the right of way that are maintained by the City and those that are not will support the City's efforts in delivering consistent and reliable levels of service.

OTHER OPTIONS

The Administration is recommending two options of the five options presented below: Option 2 and Option 5.

Option 1 - Maintain status quo

This option would see the enforcement and communication plan presented in CM20-22 implemented for the 2021 growing season without amendments to *The Community Standards Bylaw* regarding boulevards and/or alleys.

In this option, the enforcement period would be shortened compared to previous years, with an informal notice period being reduced and used for only first-time offenders and Orders to Comply being issued for 15 days.

While the communication plan presented previously as part of this option utilized a number of tactics, the messaging was focussed primarily on owner responsibilities under *The Community Standards Bylaw*.

Under this option, there would be no increase in existing city service levels, which means that most boulevards in residential neighbourhoods and all alleys would not be maintained by the City.

This option is not being recommended.

Option 2 – Aggressive enforcement plan with expanded communication plan

This option would see a shortened enforcement process that would eliminate the informal notice step and reduce the time for compliance while still respecting a property owner's right to appeal. Further, repeat offenders would be issued a violation ticket for any subsequent violation of the bylaw. While not an overly effective enforcement tool, violation tickets would be issued to any repeat offenders during the growing season to support City Council's request for an aggressive enforcement plan.

The communication plan will be comprehensive in nature and combine messaging from the past three years as it relates to yard maintenance, landscaping requirements, options for boulevards and the consequences for not complying with the applicable bylaws. The plan would focus on educating residents utilizing a "good neighbour" concept found in Calgary and Saskatoon. Included as part of this plan will be improved internal messaging and clarity around responsibility, which will contribute to increased effectiveness when responding to service requests submitted by residents.

As with option 1, there would be no increase in existing city service levels, which means that most boulevards in residential neighbourhoods and all alleys would not be maintained by the City, however, information will be provided as to what is maintained by the City.

This option is being recommended.

Option 3 – Amend the Bylaw and enforce violations through prosecution process

This option would see *The Regina Community Standards Bylaw* amended to make property owners responsible for overgrown grass and vegetation on the boulevards and alleys adjacent to their property. If a violation is found, a notice would be given to the property owner informing them of the violation and giving them time to comply voluntarily. If the violation persists, as is discussed later in the report, the only enforcement mechanism would be to prosecute the property owner.

This option is not being recommended as it is not an effective use of City and court resources. More importantly, the prosecution process can take months, which means that the violation will persist until the process concludes.

Option 4 – Increase service levels

This option would see an increase in service level where the City of Regina would assume responsibility for overgrown grass and vegetation on all boulevards in the city regardless of whether the boulevard was in a residential neighbourhood or along an arterial road. The analysis of this option determined that the Parks Maintenance budget would require an increase of approximately \$1,650,000 plus the cost of equipment to provide this level of service. Further, the alley levy charged to property owners would have to increase by five to seven per cent to provide single cut of vegetation during the growing season.

This option is not being recommended given the significant financial impact.

Option 5 – Request an amendment to The Cities Act

This option would see the City request that *The Cities Act* be amended to allow property owners to be responsible for overgrown grass and vegetation on boulevards and alleys, similar to the language in section 333(1)(e) of the Act pertaining to sidewalk snow removal. This not a viable option in the short term as the City needs to wait until the Province opens the Act for review. It should be noted that there is no guarantee that our request will be approved, however, if it were, the Bylaw could be amended as it relates to boulevards and alleys, allowing for an Order to Comply to be issued as the primary enforcement mechanism instead of the lengthy prosecution process.

This option is being recommended.

COMMUNICATIONS

The communication plan that is being presented as part of this report is similar to the one presented to City Council as part of CM20-22, which was considered on August 26, 2020, however, this revised plan is intended to encompass all landscaping, yard maintenance and bylaw related communication from the past three years into one comprehensive plan. This plan will adopt a “good neighbour” concept, such as those utilized in Saskatoon and Calgary and remind residents of bylaw requirements, such as landscaping for new homes.

In preparation for the 2021 overgrown grass and vegetation season, the Administration will execute a comprehensive communication plan that focuses on educating residents on all aspects of yard maintenance and the specific regulations contained within *The Regina Community Standards Bylaw* and *The Zoning Bylaw*. The plan will also combine messaging from the last couple of years that was targeted towards new homeowners and remind residents of the landscaping requirements for new homes following the issuance of an occupancy permit. The communications plan will begin prior to the start of the growing season and will continue throughout the season. The growing season begins in April/May and ends in September/October.

The communication plan for the 2021 growing season will focus on improving the content on Regina.ca. The following content will be updated and/or published by March 2021:

- Distinction between *The Regina Community Standards Bylaw* and *The Weed Control Act*
- Requirements for overgrown grass and vegetation under the Bylaw as well as examples of acceptable vegetation and vegetation that would be considered a violation
- Landscaping requirements set out in *The Zoning Bylaw* for new homes
- Link to *The Weed Control Act*
- Information for residents on how to manage their yards and options for landscaping
- Details on what residents can do on the boulevards adjacent to their property, such as permitted plantings and landscape treatments
- Enforcement and complaint process
- Information on what the City is responsible for in terms of boulevards and other portions of the right of way

In addition to the topics identified above for Regina.ca, the additional communications tactics that will be used to educate residents of their yard maintenance, landscaping options, their obligations as property owners, and the consequences for failing to comply will include:

- Targeted social media ads (Approximate cost: \$4,000)
- Brochures (Approximate cost: \$3,500, which includes design, language translation and printing)
- Water bill insert (Approximate cost: \$1,000 for design, printing and mailing)
- Community education sessions (Approximate cost: \$3,000)

Reflecting the diversity of our City, some of the tactics that will be utilized will be translated into other languages to engage as many residents as possible. Further, stakeholders such as the Regina and Region Homebuilders Builders Association will also be engaged as part of this plan. While not part of the outward-facing plan that will be used to engage residents, improvements will be made to internal processes and scripting to ensure consistency and improved efficiency when responding to requests from residents.

The costs associated with the communications plan will be covered through existing budgets and will not require additional funds.

DISCUSSION

In the past few years, several new neighbourhoods, primarily in Harbour Landing and The Greens on Gardiner, have been developed with boulevards adjacent to residential and commercial properties. While boulevards are not a new concept to Regina as they are found in other neighbourhoods, the willingness to voluntarily maintain them does not seem to be as high in newer areas. Further, the boulevards included in the design of new neighbourhoods were never intended to be the responsibility of the City once the

subdivision was transferred. Therefore, additional maintenance costs of this infrastructure was never included in operating budgets. Whether the City wants to have boulevards or not is outside the scope of this report and a decision to be made by the Planning & Development Services Department as part of the neighbourhood planning process.

Boulevards

The City currently has approximately 146,000 lineal meters or 146km of boulevards ranging in width from more than 5m to less than 2m. The Parks Maintenance Branch maintains approximately 54,500 lineal meters (37 per cent) of these boulevards at an annual cost of \$1.35 million, which includes mowing once a week during a 20-week growing season. The remaining 91,500 lineal meters of boulevards are not maintained by the City and are either cut voluntarily by adjacent property owners or not cut at all. "Mercy cuts" may be performed on a very limited basis and typically in response to complaints about overgrown boulevards that are not included within existing service levels. It should be noted that this data above only reflects the details regarding separated boulevards and not side or buffer boulevards, nor does it include centre medians and traffic islands. There is no data available for side/buffer boulevards, centre medians and traffic islands.

Alleys

The City currently has 185km of gravel alley and 268km of paved alley that are maintained by the Roadways & Transportation Department using funds collected via an alley levy. The alley levy is charged to all properties that have alley frontage and covers costs associated with snow removal, maintenance, rebuilds and any required tree pruning to ensure safe access for city assets; however it does not include the cutting or management of overgrown grass or vegetation.

Alleys are not currently cut by the City. If cutting of overgrown grass or vegetation in the alleys was to be included as a service covered under the alley levy charge, an increased service level would be required. This increased service level, based on the assumption that all alleys would require cutting of overgrown grass and vegetation, would cost approximately \$220,000 to \$375,000, which translates to an increase of five to seven per cent in the alley levy paid by property owners. This estimate is based on alleys being cut once per growing season.

String trimming along fence lines can damage the fence or any other items adjacent to the boulevard or alley. There is also the potential that a fence could be damaged (hit) by equipment. As well, property owners could have other items outside the fence.

The Regina Community Standards Bylaw and The Cities Act

To address the concern of neighbourhood aesthetics (both in relation to yard non-maintenance and other conditions which affect amenity), Council has adopted *The Regina Community Standards* (Bylaw 2016-2) under the authority of *The Cities Act*. *The Regina*

Community Standards Bylaw regulates certain matters which may affect the amenity of a neighbourhood, including overgrown grass and vegetation. The vegetation standard established by the Bylaw is that grass and other vegetation (except intentionally planted shrubs, grasses, etc.) shall not exceed 15cm in height. Responsibility for compliance with the standard lies with the property's owner(s).

In the event a property is not in compliance with the standards established by the Bylaw, a City Bylaw Enforcement Officer may use the enforcement tools provided by *The Cities Act* to seek remediation of the contravention. The most effective tool granted by *The Cities Act* is the ability for the City to enter private property and conduct the work necessary to bring the property into compliance with the Bylaw. There are, however, conditions on the exercise of this authority.

If the City wishes to recover the costs of doing the work, the City must follow the process established by s. 328-330 of *The Cities Act*. Following an inspection during which a contravention of the Bylaw is discovered, the Bylaw Enforcement Officer must issue a formal written Order to the property owner.

While section 328(1) of *The Cities Act* allows for the issuance of an order to remedy a violation, it only applies to "the owner or occupant of the land, building or structure...to remedy the contravention". This means that while the City could amend *The Regina Community Standards Bylaw* to make property owners responsible for overgrown grass and vegetation on the boulevard or alley adjacent to their property, the City would not be able to remedy the violation or apply the costs to the tax account of the property owner.

The only situation where the City can apply costs to remedy a violation on public right of way to adjacent private property tax accounts is for sidewalk snow removal. This measure is provided for in section 333(1)(e) of *The Cities Act*:

(e) if the city has passed a bylaw requiring the owner or occupant of a parcel of land to keep the sidewalks adjacent to the parcel of land clear of snow and ice, unpaid expenses and costs incurred by the city for removing the snow and ice with respect to the parcel of land;

Similar language does not currently exist within *The Cities Act* for overgrown grass and vegetation; therefore, in the absence of a legislative amendment to *The Cities Act*, the Bylaw cannot be amended to yield the same result as it does for sidewalk snow removal. If the Bylaw were to be amended, prosecution of the property owner in bylaw court would be the only enforcement mechanism.

Prosecution

If a violation is found by a Bylaw Enforcement Officer, or a notice of violation ticket remains unpaid, a request for prosecution is prepared by the Bylaw Enforcement Branch, which is then submitted to the City's Bylaw Prosecutor who assesses the request to determine if

there is enough evidence to support that an offence has been committed and can be proven in court. If there is sufficient evidence, an Information outlining the charges is sworn before a Justice of the Peace and a summons is issued for the defendant. It can be a number of weeks between the summons being issued and the initial court date due to court scheduling and the time required to personally serve the defendant with a summons.

If the defendant pleads not guilty, the case is then set for trial. The Justice of the Peace would want the matter set out to give the defendant time to request and review disclosure. This is typically one to two months after the first court appearance, depending on available court dates. If the Court finds the defendant guilty or the defendant pleads guilty then a fine and order may be issued. The timeframe to comply with the Order would then be determined by the Justice of the Peace.

In the case of overgrown grass and vegetation on boulevards and alleys, if the Bylaw were to be amended to make property owners responsible, as mentioned previously, the only enforcement mechanism would be prosecution. Not only is this an ineffective use of city and court resources, but the use of prosecution as an enforcement mechanism could also allow a violation to persist on a boulevard or alley for the entire growing season resulting in more complaints from residents.

Notice of Violation Tickets

In addition to prosecution, one of the other enforcement tools available under *The Cities Act*, is ticketing. Issuance of a ticket, however, only seeks to impose a monetary penalty on the owner for not complying with the Bylaw, it does not directly result in the work being performed. In the event the owner does not respond to the ticket by complying with the Bylaw, the City would be able to issue another ticket for the same offence provided more than 24 hours has passed since the last ticket. Any ticket issued by the City may be challenged by the owner. If the owner does not voluntarily pay the ticket, the City may proceed with laying a charge for violating the Bylaw. The charge would be prosecuted in the City's dedicated Bylaw Court following the process outlined in the section above.

Service Request Data

The following table shows the number of service requests received regarding overgrown grass, vegetation and/or weeds from 2015 to 2020. This data was compiled by searching all service requests received during the time period using key words such as weeds, grass, overgrown, boulevard, alley, etc. The data is broken down by the location of the concern or complaint, such as private/public property (eg: park, easement, etc.), boulevard and alley.

As shown in the table, complaints related to overgrown grass and vegetation on private property or city owned land such as parks accounted for an average of 91 per cent of the service requests received by the City during the six-year period. The remaining nine per cent of the service requests were related to sections of the right of way, such as boulevards

and alleys. The data shows that over the past six years, the primary source of complaint or concern from residents was for private property or public amenity space such as parks.

Year	Location of complaint					
	Private/Public Property		Boulevard		Alley	
2015	1,324	95%	28	2%	44	3%
2016	1,961	95%	33	2%	56	3%
2017	991	90%	88	8%	25	2%
2018	1,790	93%	57	3%	67	4%
2019	1,851	82%	258	11%	143	6%
2020	1,490	90%	84	5%	78	5%
Average	1,568	91%	91	5%	69	4%

Jurisdictional Scan

A jurisdictional scan of municipalities across Canada was conducted in preparation of this report, however, given the limitations for enforcement as a result of language currently contained within the Act, only Saskatchewan municipalities have been included.

A review of municipal bylaws found that Estevan and North Battleford contained language within their respective bylaws legally requiring property owners to be responsible for the overgrown grass and vegetation on both boulevards and alleys while Moose Jaw's bylaw only made property owners responsible for boulevards. Saskatoon and Prince Albert did not amend their bylaws to make property owners legally responsible for maintaining boulevards or alleys which consistent with what is being recommended by the Administration within this report.

Of the five Saskatchewan municipalities listed above, Moose Jaw and Saskatoon provided details of boulevard treatments (eg: shrubs, landscaping, etc.), either through Bylaw or as part of a formal program, that residents would be permitted to use in the boulevards adjacent to their property. The Administration is developing boulevard guidelines, similar to the program offered in Saskatoon, that will be released to Regina residents later in 2021.

Enforcement Process

Analysis of enforcement data from 2019 and 2020 has shown that in the cases where voluntary compliance has been obtained, it has typically been in response to the initial "notice" issued by the Bylaw Enforcement Officer. This initial notice could be in the form of an informal notice or an Order to Comply.

In 2019, it took an average of 22.9 days to resolve an overgrown grass and vegetation case. The enforcement process in this year utilized an informal notice as the first step in the

enforcement process. Considering processing times for service requests and enforcement documents, this notice was typically issued on day 20.

While 2020 was an anomaly for enforcement due to COVID-19, which was reflected in an average case resolution time of 57.5 days during May and June, when enforcement increased to normal levels in July, enforcement times were reduced to 27.5 days. A process change in August that saw the elimination of electronic document generation and removal of the informal notice stage reduced case resolution times to 20.4 days.

Additional changes are being made to the enforcement process for 2021 that is expected to further reduce the case resolution times by approximately ten days. This change would see a shortened compliance period but still allow a property owner a right to appeal the Order to Comply as provided for under 329 of *The Cities Act*. While an appeal of an Order to Comply can extend the time it takes to remedy a violation, it is worth noting that only two appeals were filed in 2020 for overgrown grass and vegetation orders.

Housekeeping Amendment

The Cities Act sets out the City's powers in undertaking an inspection to enforce a bylaw. The Act includes the words "if ... a bylaw authorizes or requires anything to be inspected". Upon review of the enforcement sections of the Bylaw it was noted that although an inspection is clearly intended to occur, it is not explicitly authorized. Therefore, it is recommended that the following section be added to the Bylaw:

14.1 (1) The inspection of property by a designated officer to determine if this Bylaw is being complied with is hereby authorized.

(2) Inspections under this Bylaw shall be carried out in accordance with *The Cities Act*.

The addition of this section is intended as a clarification only and will not change the way the Bylaw is currently enforced.

DECISION HISTORY

On July 29, 2020 City Council directed Administration, through motion MN20-11, to prepare an aggressive weed control enforcement plan for consideration at the August 26, 2020 meeting. This motion was in response to complaints from residents regarding overgrown lots, unmaintained boulevards and the time taken to resolve complaints.

Report CM20-22 was considered at the August 26, 2020 in response to the motion with the commitment to bring forward recommendations for the maintenance and other portions of the right of way related to overgrown grass and vegetation. As per the recommendations, a second report will be brought forward to City Council that will address the City's obligations under *The Weed Control Act*.

Respectfully submitted,



Andrea McNeil-Wilson, Manager, Bylaw Enforcement 1/14/2021

Respectfully submitted,



Byron Werry, City Solicitor 1/14/2021

Prepared by: Andrea McNeil-Wilson, Manager, Bylaw Enforcement