



June 19, 2023

Councillor Tim Tierney, Chair, Transportation Committee
Councillor Catherine Kitts, Vice-Chair, Transportation Committee
Councillor Jessica Bradley, Member, Transportation Committee
Councillor George Darouze, Member, Transportation Committee
Councillor Steve Desroches, Member, Transportation Committee
Councillor Sean Devine, Member, Transportation Committee
Councillor Laura Dudas, Member, Transportation Committee
Councillor Glen Gower, Member, Transportation Committee
Councillor Laine Johnson, Member, Transportation Committee
Councillor Wilson Lo, Member, Transportation Committee
Councillor Matthew Luloff, Member, Transportation Committee
Councillor Ariel Troster, Member, Transportation Committee
CC Councillor Rawlson King, originator of motion
CC Mayor Mark Sutcliffe
110 Laurier Avenue West
Ottawa, ON
K1P 1J1

RE: Planting on Right of Way

-- Consolidated Recommendations from Peoples Official Plan Coalition

-- Legal Memo regarding analysis of Legal Liability associated with ROW gardens

Dear Councillors,

We are pleased to provide you with a set of recommendations that have been researched, developed and endorsed by the broad Peoples Official Coalition. We believe that they meet both City and resident concerns and needs.

Further attached for your consideration is a legal memo regarding legal liability, an issue that many of you have highlighted for us as central to guiding the amendments to the ROW bylaw.

With kind regards,

Marianne Ariganello
For Our Kids

Moe Garahan
Just Food

Angela Keller-Herzog
CAFES

William van Geest
Ecology Ottawa

On behalf of the Peoples Official Plan Coalition (POP)

About POP: The Peoples Official Plan (POP) coalition is composed of over 20 not-for-profit organizations representing tens of thousands of Ottawans. We advocate at Ottawa City Hall for better transit, greater walkability and active transportation, greenspace for all, housing equity, climate change mitigation and adaptation, equity and inclusion, sustainable waste management, and food security, all sought through ethical city planning practices.

POP Recommendations:

Whereas

- Residents already take on the stewardship responsibility for the ROW. Stewardship is a much broader frame than gardening.
- The intent of the bylaw amendment is to open up more permissions for residents who want to garden, not to prohibit activities.
- Several of the current staff recommendations are unnecessarily restrictive
- The intent of the bylaw amendment is to align public stewardship of the ROW with:
 - The need for increasing absorptive capacity of ROW for stormwater management and retention in view of increasing risks of overland flooding and prohibiting any increases in impermeability
 - The need for increasing food security and food resilience, and utilization of public realm spaces in an equitable manner, and food production being a generally permitted use (OP 4.11 (2))
 - The need to provide habitat and nourishment to pollinators
 - The need for creating shade from trees to combat the urban heat island effect (OP 10.3 (1))
 - The intent of the Trees in Trust program for canopy trees to be nurtured by residents abutting the ROW and the low uptake by residents for this program
 - The need for air filtration, in light of decreasing air quality owing to climate-related events
 - The need for carbon sequestration, in light of the climate crisis—as City Council declared in 2019
 - The need to foster a connection to nature and biodiversity to promote individual and community well-being and mental health
 - The objective of urban livability and enhancing the urban tree canopy as per Official Plan Policy # 2.2.3 (7) and 4.8 Ottawa’s commitment to the [Montreal Pledge](#) on biodiversity which includes commitments to integrating biodiversity into regulatory planning; control or eradication of invasive species; ensuring that urban agriculture is accessible, sustainably managed and contributes to food security; increase amount of green spaces and improve equitable access to them; prioritizing nature-based solutions to protect against extreme weather events and hazards. Ottawa City Council April 26 2023 moved for Ottawa to become a signatory to the pledge.
- Many other municipalities have successfully dealt with gardening both edible and non-edible plants in the ROW
- Thousands of homes in Ottawa already have either hardscaping in the ROW, edible and non-edible plants in the ROW, or both
- Our bylaw needs to match enforcement practices or it will continue to raise serious equity concerns, including inequitable access.

Specific Proposals:

1. Planting trees, including edible and non-edible trees, would be permitted and promoted for residents in the ROW, within the following guidelines:
 - In-ground gardening would not be permitted within the critical root zone of trees
 - Aligns with definition in tree protection by-law.
 - Open-bottom planter boxes on top of land within the critical root zone of trees would be acceptable.
 - Locates are required and only hand excavation allowed.
 - Trees planted by residents in the ROW remain the property of the City of Ottawa.
 - Alignment with the Trees in Trust program regarding siting restrictions in terms of distances from utilities, streetlights, corners etc.

2. Planting gardens, including edible and non-edible plants, would be permitted and promoted for residents in the ROW, within the following guidelines:
 - Locates are required and only hand excavation allowed.
 - Information on soil testing be made available on City of Ottawa website, including links through to partner organizations
 - The height restriction would be limited to the visibility triangles for corners and driveways that are aligned to the fencing zone and that the height restriction for this area be 1.0m (not 0.75m as staff have suggested). This allows for the planting of trees, shrubs, larger vines, while mitigating the issue of visibility. Also allows for planting on ROW side yards that do not have visibility or driveway concerns.
 - That within the regulation for 1-1.5 m setback from City and utility elements (poles, hydrants, transformers, etc), groundcover and plants up to a maximum of 30 cm are allowed.
 - No restrictions on planting plants up to the road, whether there exists a curb or not, outside of sightline restrictions.
 - The list of invasive species should be expanded.
 - While the proposed changes prohibit the planting of invasive species, they refer to the [Ontario Invasive Species Act](#) and the [Ontario Weed Control Act](#), which are out of date. We believe that the bylaw should also prohibit the 30 additional terrestrial plants that the Auditor General recommended for regulation under the Act ([see PDF report](#)). This will meet the City's responsibility to appropriately steward and protect land, partnering with residents to do so. Prevention is the most economically and environmentally

appropriate action. The City should inform nurseries regarding the expanded list.

3. Structures to retain, demarcate and/or hold additional soil would be permitted in the ROW, within the following guidelines

- Raised beds construction should be allowed, as it permits viable soil for plant and food gardening
- Raised beds can make gardening accessible to mobility challenged persons
- Additional capacity for stormwater retention is beneficial in view of overland flooding concerns with changing precipitation patterns, including more intense rains
- Hardscaping ROW with any material that decreases permeable surface cannot be allowed, including pavers and asphalt. This does not include a stepping stone in an otherwise permeable garden or hardscaping to retain or hold soil.
- Hardscaping ROW with loose rocks cannot be allowed for safety concerns.

Liability

Whereas:

- The City cannot guarantee the suitability of the ROW for growing food.
- Permitting growing of edible and non-edible plants and trees is a policy decision balancing multiple policy goals, and not a City operations decision
- We need to balance the liability to the City for activity in the ROW with the liability to the City and its residents if we do not adequately deal with the increasingly serious issues of food insecurity, climate change, biodiversity/tree canopy loss, and flooding due to inadequate stormwater management, etc.

Specific Proposals:

- Inclusion of an indemnity clause that includes:
 - The City does not guarantee the soil suitability or safety for growing food
 - The consumption of any edible plants is done so at the gardener's own risk.
 - The City / utility owner can remove any gardening or landscaping structures on ROW without compensation / liability in order to maintain infrastructure.
 - That the homeowner will be invoiced for removal costs of any structures that are not easy for the City/utility to remove in order to maintain infrastructure.
- Education/guidance documents provided by the City, with links to partnering organizations, that recommend soil testing prior to planting food, installation of clean soil or compost.