



STAFF REPORT ACTION REQUIRED

Licensing of Paving Contractors

Date:	February 24, 2010
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	P:\2010\Cluster B\MLS\Ls10010

SUMMARY

The purpose of this report is to examine the feasibility of introducing a category of business licence for driveway paving contractors in order to shift responsibility for compliance with the City's paving bylaws from the homeowner to the paving companies.

The City of Toronto currently enforces issues related to over-paving and widening of driveways through the Toronto Municipal Code, Property Standards bylaws, Zoning bylaws and Transportation Services Right of Way Management administers and enforces permits for the construction, reconstruction and the alteration of driveways, therefore the licensing of paving contractors is not necessary.

Proposing to license driveway paving contractors in order to attempt to control over-paving and driveway widening is not an appropriate use of the City's licensing power. The enforcement of illegal paving and other related issues is better dealt with under the appropriate bylaws already in place.

There is insufficient evidence of a municipal purpose to license driveway paving contractors at this time.

RECOMMENDATIONS

The Executive Director of Municipal Licensing and Standards recommends that the Licensing and Standards Committee:

1. Refer this report to the Public Works and Infrastructure Committee for their consideration, specifically to implement a harmonized permitting process citywide for driveway paving that will address zoning issues related to driveway paving when reviewing the proposed harmonized Right of Way Bylaw.

Financial Impact

There are no financial implications arising from the adoption of the recommendations of this report.

DECISION HISTORY

On February 6, 2009 the Licensing and Standards Committee referred the following background information -

<http://www.toronto.ca/legdocs/mmis/2009/ls/bgrd/backgroundfile-18313.pdf>

and communication -

<http://www.toronto.ca/legdocs/mmis/2009/ls/comm/communicationfile-9869.pdf>

to the Executive Director, Municipal Licensing and Standards with a request that:

- a. in consultation with the City Solicitor and appropriate City Departments, he report back to the Committee for its meeting on May 7, 2009; and
- b. a public hearing be scheduled.

COMMENTS

Licensing Driveway Paving Contractors

Municipal Licensing and Standards (MLS) does not recommend licensing pavers in order to enforce the City's paving bylaws. Legal advises that the courts have consistently held that a municipality cannot attempt to accomplish a non-licensing objective (e.g. zoning or right-of-way) through licensing provisions. Such bylaws must be enforced directly through prescribed means. Licensing bylaws should also be regulatory of the business itself, that is, enacted for the purpose of governing and regulating the manner in which the business is carried on. Furthermore, there is no sufficient evidence to demonstrate that there is currently a problem with driveway paving contractors in the City of Toronto or in neighbouring municipalities that licence driveway paving contractors.

Regulating the business will not resolve concerns of over-paving and driveway widening, especially since paving is carried out by the request of the property owner and MLS would not be notified until there is a complaint or investigation inquiry.

Consultations

Municipalities that License Driveway Paving Contractors

Barrie, Brampton, Markham, Mississauga and Oakville currently license driveway paving contractors. Municipal Licensing and Standards' staff contacted each municipality's licensing division in order to determine the number of licensed contractors in each municipality as well as the number of complaints they received, the nature of the complaints as well as charges laid. As of the end of 2009, Barrie licensed 12 driveway paving contractors, Brampton 6, Markham 40, Mississauga 17 and Oakville 14.

Barrie

The City of Barrie indicated that driveway paving contractors were not a major problem. On average, the city receives between six to eight complaints per year and they were mainly about unlicensed contractors carrying out work in new subdivisions, or unlicensed driveway sealers operating. When asked about charges laid, Barrie indicated that this rarely occurred, however, there was one charge laid in 2009 for poor workmanship.

Brampton

The City of Brampton confirmed that within the last twelve years they had 11 complaints related to paving such as customers unsatisfied with the contractor's workmanship and licensed contractors complaining about unlicensed contractors bidding on contracts.

In 2007 to 2009 (inclusive), there were no charges laid in the city of Brampton regarding driveway paving offences.

Markham

The Town of Markham indicated that council would be revisiting the issue of licensing driveway paving contractors in the near future. Markham is also in the process of reviewing their program to determine if licensing should continue because the town is no longer dealing with the same issues that brought about the introduction of the licensing, which was that contractors were over-paving driveways. Markham indicated that there have been only a handful of complaints since the implementation of the paving bylaw in March 2007.

Markham identified the following challenges they experienced with licensing driveway paving contractors:

- Contractors complained that it was onerous to get a licence if they only carry out three or four paving jobs in Markham per year.
- Workers used privately owned vehicles without contractors' business details making it more difficult to identify contractors.
- Workers did not want to give the name of the contractor (their employer).
- It was difficult to lay charges because property owners did not want to reveal the name of the contractor because they were afraid that the contractor would not finish the work or do a good job.

- The Town of Markham was not sure that there is value for the dollar licensing driveway paving contractor (approximate revenue is \$8,000 per year. In 2009 approximately 40 licences were issued at \$200 per licence fee per year)
- A lot of the town's time and resources could be spent chasing after unlicensed contractors.

Mississauga

The City of Mississauga first introduced the driveway paving contractor licence around 1978. Mississauga estimates that they receive approximately three or four complaints per year. The complaints were for incomplete work (no official tracking of statistics is done).

Oakville

Oakville reported an average of 10 complaints per year over the past eleven years. The highest number of complaints were in 1999 (17), however in 2009 there was only one complaint and that complaint was a result of a misunderstanding relating to a missed licence renewal.

The examination of statistics related to the number complaints received about paving and the number of notices issued annually does not support the theory that there is a problem with driveway paving contractors or that there are significant problems with the over-paving of driveways.

Other Organizations that Receive Complaints Regarding Business Operation

Consultation with The Better Business Bureau (BBB), Ministry of Small Business & Consumer Services, and Toronto Police Services, Fraud Squad was also conducted to determine the number of complaints received regarding paving contractors, especially around the issues of fraud or failure to complete contracted work.

Although the mentioned organizations accept complaints, the documentation and statistics were not readily available or consistent. For instance, the Better Business Bureau website reported 951 complaints against paving contractors Canada wide for the year 2006 through to the end of 2008. BBB staff reported having 151 complaints in the past 12 months and 481 complaints in the last 36 months up to March 30, 2009. Their service area includes boundaries between Kitchener-Waterloo and Toronto. If the number of complaints is accurate, the service district of Kitchener-Waterloo and Toronto would make up almost half of Canada's complaints (their computer system is unable to filter for only Toronto based complaints).

The BBB website allowed for a restricted search of Toronto and GTA paving companies in the BBB system; however, it would not filter or summarize the type of complaints. The website listed approximately 200 paving companies in their system, 67 of which were members of the BBB (March 2009).

The Toronto Police Services, Fraud Squad was contacted. The department does not maintain statistics regarding complaints about paving contractors and fraud, as a result MLS staff was referred to the Ministry of Small Business & Consumer Services.

When the Ministry of Small Business & Consumer Services was contacted, MLS staff was informed that the Ministry only takes complaints about businesses but does not maintain statistics. Their website posts a “Consumer Beware List” that outlines complaints about various businesses. Eight complaints were listed for Toronto based driveway paving contractors and there were thirty-six listed for GTA based contractors (March 2009).

Bylaws in the City of Toronto that Regulate Paving

It is the responsibility of the property owner to comply with all bylaws related to the construction, reconstruction and alteration of their driveway as well as to obtain all necessary permits prior to the commencement of work. The issuance and the enforcement of paving permits is the responsibility of Transportation Services, Right-of-Way Management, however, property standards and zoning bylaws relating to driveway paving and widening are enforced by MLS. A licensing bylaw enacted for the purpose of indirectly enforcing these bylaws, rather than for the traditional licensing purposes of consumer protection, abatement of nuisance or public health and safety would be vulnerable to challenge in the courts.

Currently the City does not have a harmonized bylaw to enforce paving in the former municipalities. Transportation Services staff enforce several different bylaws dealing with paving (or work being completed) in the public right of way. Generally, all bylaws require property owners to seek permission from the City to work in the right-of-way for activities such as excavation, set up and staging of equipment, and temporary street occupation. This includes the request to pave their driveway.

Without a harmonized bylaw the enforcement of driveway paving infractions in the former municipalities are not standardized, which can cause enforcement challenges when the rules do not apply equally to the City’s service delivery areas. Transportation Services is in the process of harmonizing their bylaws.

Licensing driveway paving contractors does not guarantee compliance with permitting or bylaw requirements because the transient nature of the business may make it difficult to locate and identify offending contractors to enforce related bylaws. It is however, easier to identify and locate the property owners whose property is not in compliance with the relevant bylaws in order to recover any costs associated with bringing the property in question into compliance. The recommendation in this report is to refer this matter to the Public Works and Infrastructure Committee for their consideration, specifically to implement a harmonized permitting process citywide for the paving of driveways that will address zoning issues related to driveway paving.

The Benefits of Paving Permits

By issuing paving permits, the City can ensure that:

- no new damage occurs to the curb and sidewalk in the vicinity of the driveway since Transportation Services undertakes a pre-inspection

- any new or existing driveway conforms to City bylaws and is not widened beyond the prescribe limits
- work can be prevented from occurring on collector/arterial roads during peak periods
- property owners get an understanding of what is permitted in the right-of-way since walkways, retaining walls, border curbs etc. are often constructed at the same time as the driveway
- potential conflicts with abutting trees and utilities are identified and/or mitigated
- the contractor undertakes the proper work zone setup on the public street
- any liability during construction is placed on the applicant
- the property owner is not held responsible for pre-existing damages to the curb and sidewalk
- there is a check for scheduling conflicts for future capital and utility work to be undertaken in order to minimize instances where a new driveway is excavated during planned work

Possible Challenges to Licensing Driveway Paving Contractors

Licensing and enforcing driveway paving contractors may be challenging and would require time and financial resources in the form of enforcement officers. Enforcement officers would need to identify and locate unlicensed driveway paving contractors, and even more effort may be required to achieve compliance. The City of Toronto usually becomes aware of paving issues via complaints. Because driveway paving issues are complaints based, follow-ups and enforcement occur after the paving work has commenced.

If the City of Toronto were to licence driveway paving contractors, the licence would fall under a trades category. The licensing fee for the issuance of a trades licence in January 2010 was \$357.99 and \$197.16 for a renewed licence. Business licensing fees are cost recovery and take into consideration processing and licensing fees. The processing fee mainly covers administrative costs, while the licensing fees address investigation, enforcement, prosecution and other costs. Of the \$357.99 for the issuance of a trades licence, \$182.85 is allocated to processing and \$175.14 covers licensing costs.

Based on the current number of licensee in Barrie, Brampton, Markham, Mississauga and Oakville there are four to 40 licensees in each municipality. Markham indicated that there might not be value for the dollar in licensing driveway paving contractors as they only collected \$8,000 in licence fees in 2009 (based on 40 licences). Markham also admitted that a lot of time and resources were spent chasing after unlicensed contractors.

It is difficult to determine the exact number of driveway contractors operating in Toronto and the Greater Toronto Area (GTA). The Better Business Bureau website cited approximately 200 paving contractors operating in Toronto and the GTA. Municipalities such as Barrie, Brampton, Markham and Oakville reported licensing significantly less driveway paving contractors than the estimate given by the BBB. With paving companies constantly moving from location to location, identifying and locating such businesses for licensing purposes would be a significant challenge for the City Toronto as

it has been for such municipalities as Barrie, Brampton, Markham, Mississauga and Oakville.

Additional challenges to implementing licensing regulations for driveway paving contractors include:

- No incentives for driveway paving contractors to apply for and maintain a business licence, especially since many of them have gone undetected.
- Driveway paving contractors remain anonymous and it may be difficult to identify who they are.
- Paving contractors' work moves them to various locations and possibly many municipalities.

Licensing and enforcing driveway paving contractors through a licensing bylaw may be a difficult task especially for those contractors who do not maintain a business license to operate in the City of Toronto. City staff may spend much time and resources trying to identify and locate unlicensed driveway paving contractors or contractors who violate the current bylaws related to paving.

This report was written in consultation with Legal Services and Transportation Services.

CONTACT

Dawn-Marie Morgan
Policy and Research Consultant
Municipal Licensing and Standards
Phone: (416) 397-5464
Fax: (416) 392-0797
Email: dmorgan1@toronto.ca

SIGNATURE

Jim Hart
Executive Director
Municipal Licensing and Standards