

## **Licensing of Driveway Paving Contractors**

<b>Date:</b>	April 13, 2011
<b>To:</b>	Licensing and Standards Committee
<b>From:</b>	Executive Director, Municipal Licensing and Standards
<b>Wards:</b>	All wards
<b>Reference Number:</b>	P:\2011\Cluster B\MLS\Ls11007

### **SUMMARY**

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The purpose of this report is to recommend a new category of business licence for driveway paving contractors in the interest of consumer protection, nuisance control and health and safety. Establishing this new licence category would allow homeowners access to a list of licensed driveway paving contractors.

Some municipalities have been licensing driveway paving contractors since 1978. Currently, Barrie, Brampton, Markham, Mississauga and Oakville license driveway paving contractors.

This report was prepared in consultation with Transportations Services. The City Solicitor will submit a separate report to Committee on this matter.

### **RECOMMENDATIONS**

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**The Executive Director of Municipal Licensing and Standards recommends that City Council:**

1. Adopt the bylaw to license driveway paving contractors, as per Appendix A of this report;
2. Give effect to the bylaw on July 4, 2011; and
3. Direct the City Solicitor to introduce the necessary bill in Council to give effect to Recommendation No. 1.

Public notice has been given in a manner prescribed in the Toronto Municipal Code Chapter 162, Notice, Public.

### **Financial Impact**

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

If the City of Toronto were to license driveway paving contractors, the licence would fall under the trades category. The 2011 licence fee for trades is \$343.64 for a new licence and \$203.47 for its renewal. Even though the Better Business Bureau estimates that there are approximately 200 driveway paving contractors operating in Toronto and the GTA, municipalities that licence the contractors do not reflect that number. Based on the current number of licensed driveway paving contractors in Barrie, Brampton, Markham, Mississauga and Oakville the City of Toronto stands to generate anywhere from \$2,405.48 (based on seven licensed contractors) to \$39,862.24 (based on 116 licensed contractors) in the first year of the issuance of this trades licence. In keeping with the cost recovery model, the additional licensing revenue would go to offset the additional administrative and enforcement costs.

### **DECISION HISTORY**

On March 10, 2010, The Licensing and Standards Committee:

1. Referred the report (February 24, 2010) from the Executive Director, Municipal Licensing and Standards 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 By-law.
2. Requested the Executive Director, Municipal Licensing and Standards to:
  - a. report to the Licensing and Standards Committee on a by-law to license paving contractors to ensure that they work in a safe manner and respect all City by-laws and various codes and have sufficient liability insurance on private and public property.
  - b. in consultation with appropriate City staff, report to the Licensing and Standards Committee on a proposal to reduce the cost of a paving permit so that it would not discourage persons from obtaining a permit, such fee to be on a cost recovery basis including the fees generated from the licence fee.

### **ISSUE BACKGROUND**

In February 2009, the Licensing and Standards Committee referred communications to the Executive Director of Municipal Licensing and Standards (MLS) regarding concerns about illegal driveway paving. MLS receives numerous complaints and inquires from the public about driveway paving i.e. over-paving, widening, excessive hard landscape

surface and front yard parking. Since its last report to Licensing and Standards Committee in March of 2010, staff, by applying broader search filters, have identified a considerably higher number of complaints.

Transportation Services, Right of Way Management currently regulates and issues permits for the construction, reconstruction and alteration of driveway paving in the public-right-of-way.

Licensing driveway contractors aims at setting standards for business practices of contractors that protect consumers, prevent potential nuisances and potential health and safety issues that may be caused in the carrying on of the business.

## **COMMENTS**

### **Licensing Driveway Paving Contractors**

Municipal Licensing and Standards recommends the introduction of a licensing regime to regulate the business operation of driveway paving contractors in the interest of consumer protection, nuisance control and health and safety. MLS currently licenses other trade contractors such as insulation installers, building cleaners, building renovators and drain contractors.

Licensing driveway paving contractors will make them more accountable for any public nuisances and/or health and safety issues that may arise from their actions, such as damage to private or public property, in the process of completing a job. Health and safety concerns can further be addressed through licensing driveway paving contractors because contractors would be mandated to be familiar and comply with all bylaws related to their work, including permit requirements. Their work would also be subject to inspections by appropriate City division(s), ensuring compliance.

### **Consumer Protection**

Licensing driveway paving contractors can protect and bring peace of mind to consumers who want to hire them. Establishing procedures and regulations would help to ensure that the identity of contractors is known to those contracting their work. It would also establish minimum requirements for any contract for driveway paving services. In addition, the City can provide consumers with access to a roster of licensed City of Toronto contractors. By licensing driveway paving contractors, consumers would have an avenue to make complaints against contractors who do not operate within the guidelines of the prescribed bylaws. Procedures and regulations for paving contractors should require, but should not be limited to:

1. displaying the driveway paving contractor's name and licence number on all vehicles and signage
2. a written contract between contractor and the person for whom the work is being done
3. proof of liability insurance.

## **Nuisance Control**

Establishing regulations to require driveway paving contractors be licensed to operate in the City of Toronto would reduce potential nuisance effects by requiring the contractor not to commence contracted work until all necessary permits and approvals are obtained. This would reduce the potential for damage to City property and/or infrastructure by requiring contractors to be aware of all applicable bylaws and requirements relevant to their work.

## **Health and Safety**

Licensing driveway paving contractors improves the health and safety of the public by reducing potential damage to City utilities and properties that may cause a hazard to the public. Contractors would be required to become familiar with all applicable bylaws relevant to their work.

By licensing driveway paving contractors, the City could require that they do not commence contracted work until the appropriate City permits are in place. In addition, those who do not comply with this or other bylaws could be brought before the Licensing Tribunal to have their business licence suspended, revoked or to have conditions placed on it. Those who are unlicensed, if identified, can be charged for operating a business without a licence.

In addition to complying with the Licensing bylaws, contractors would also have to comply with the terms outlined in any applicable permit (e.g. paving permit).

## **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 2009 and again in 2011 in order to determine the number of licensed contractors in each city, as well as the number of complaints they received, the nature of those complaints, and the charges laid. The information outlined in this section is based on the information that was provided to MLS staff by these municipalities. The way in which each municipality documents its information is different and as a result the same level of detail is not provided for each municipality.

There were not many differences with the responses received in 2009 and 2011, with the exception of the City of Markham. Within a one-year period, Markham increased their number of licensed driveway paving contractors and reported significantly more complaints about driveway paving.

As of the end of 2010, Barrie licensed 14 driveway paving contractors, Brampton 7, Markham 64, Mississauga 21 and Oakville 10. Markham experienced the largest increase of licensed driveway paving contractors in the one-year span. See Table 1. Oakville was the only municipality that experienced a decrease in the number of licences issued within the same period. Barrie, Brampton and Mississauga had a small increase of licensed paving contractors.

Table 1.

Municipality	Number of Licences Issued		
	2009	2010	% increase
Barrie	12	14	16.7
Brampton	6	7	16.7
Markham	40	64	60.0
Mississauga	17	21	23.5
Oakville	14	10	-28.6

#### Barrie

The City of Barrie indicated that between 2005 and 2010 inclusively, they received an average of two to three complaints per year. Complaints were mainly about contractors operating without a licence. During the same period, there was one charge laid and it was also for operating without a licence. This charge resulted in compliance (a fine was paid).

#### Markham

Markham started licensing driveway paving contractors in 2007. Since then they have received 2,100 complaints (to the end of 2010). These complaints included proactive investigations. Markham's complaints were largely related to driveway parking, re-paved driveways and extended driveways. The numbers of complaints are broken down in the table below:

Table 2.

City of Markham's Complaints and Charges Laid		
Year	No. of Complaints	No. of Contractors Charged
2007	424	7
2008	572	7
2009	477	8
2010	627	31
<b>Totals</b>	2100	53
<b>*note:</b> Complaints include proactive investigations		

Since Markham began licensing paving contractors in 2007, they have only laid 53 charges related to driveway paving even though they have a high number of complaints regarding this issue.

#### Brampton

In 2009, the City of Brampton confirmed that between 1998 and 2004 (inclusive), the city had 11 complaints related to driveway paving, such as customer dissatisfaction with the contractor's workmanship and licensed contractors complaining about unlicensed contractors bidding on contracts.

When contacted in 2011, Brampton indicated that they received one complaint from 2005 to 2010 (inclusive). The complaint was about the contractor's workmanship.

#### Mississauga

The city of Mississauga first introduced the driveway paving contractor licence around 1978. In 2009, staff estimated that they had received approximately three or four complaints per year. The complaints were for incomplete work (no official tracking of stats is done). In 2009 and 2010, Mississauga received eight complaints and had one charge for that period. The complaints were about unsatisfactory work and the charge was for operating without a licence.

#### Oakville

The Town of Oakville's Clerk's Department, Licensing and Bylaw Services was contacted in 2009 at which time MLS staff was informed that between 1999 and 2008 there were 109 complaints, an average of 10 complaints per year. The highest numbers of complaints were in 1999 (seventeen). The complaints Oakville received between 1999 and 2008 were primarily for operating without a licence, shoddy work and fraud.

Oakville was contacted again in 2011 for information about the number of complaints they received in 2009 and 2010. They indicated seven complaints (three in 2009 and four in 2010). Complaints were noise or nuisance related, no charges were laid.

### **Similarities with Paving Contractor Bylaws in Other Municipalities**

Markham, Mississauga and Oakville were three out of the five municipalities examined that had the most similar bylaws for regulating driveway paving contractors. Some of these similarities were

1. definition of driveway paving contractor
2. definition of paving
3. requirement for the contractor to display the driveway paving contractor's name and licence number on all vehicles
4. requirement for a written contract between contractor and the person for whom the work is being done
5. requirement for stationary the contractor intends to use in making contracts to include the contractor's name, contractor number and/or address and phone number

6. requirement to show proof of liability insurance
7. requirement to obtain all necessary permits and approvals prior to the commencement of work.

Markham, the municipality that licenses the most driveway paving contractors of the five cities examined, had additional requirements. These requirements include

1. a valid clearance Certificate issued by Workplace Safety and Insurance Board of Ontario
2. a copy of the applicant's Ontario Vendor Permit issued by the Province of Ontario
3. a copy of the applicant's Ontario Master Business Licence
4. completion of a training education session provided by the Licensing Officer.

### **The City of Toronto's permit process for paving driveways**

Transportation Services, Right of Way Management is responsible for handling the application process for paving permits for work to be completed in the public right of way. The permitting process involves an application and the submission of the Council approved fee (2011 fee is \$127). A pre-inspection is also completed to determine if there is existing damage to boulevards, curbs, sidewalks and the road surface prior to paving. The pre-inspection also includes checks for bylaw compliance regarding illegal widening and/or obstructions, such as Trees, Hydro poles, Fire hydrants, utility boxes; it also includes a check for the location of the water shut off key location. Once the work is complete a follow-up or post-construction inspection takes place in order to review a new or widened driveway and to check that it complies with the bylaw and that no illegal widening has taken place on public property and no damages have occurred to the Municipal boulevard, i.e. curbs, sidewalk or road surface. The Officer also takes updated pictures of the completed work.

Transportation Services, Right of Way Management reported issuing 4,800 permits related to driveway paving between 2005 and 2010 (inclusive). In 2009, MLS received 403 investigation requests about driveway paving (investigation requests include complaints and proactive investigations by enforcement officers). Of the 403 investigation requests received, 194 led to Notices issued. For that same year, Transportation Services issued 886 permits related to driveway paving in the public right of way.

In 2010, MLS received 291 investigation requests about driveway paving (124 of those led to Notices issued). For that same year, Transportation Services issued 1,321 permits related to driveway paving. Based on the numbers, MLS received a significant number of investigation requests about paving even though many property owners obtained permits to conduct paving in the public right of way (MLS statistics do not include inquiries related to front-yard parking).

This can indicate a couple of possibilities; that, property owners, even after taking out permits, are over-paving on private property, or that, there are still a significant number of property owners who do not obtain a permit for paving in the right- of- way. By licensing driveway paving contractors MLS will be able to identify offending contractors and take enforcement action where required.

## **Possible Challenges with Licensing Driveway Paving Contractors**

There are a number of potential challenges faced by MLS relating to driveway paving:

1. Proving that the existing paving is "grandfathered" (in existence prior to any amendment to the bylaw restricting its construction).
2. Dealing with illegal paving after it has been completed.
3. Property owners often attempting to circumvent the zoning bylaw by installing landscape pavers, which he/she designates as a walkway to the property, with the justification being that the "walkway" would not be included in the calculation of the driveway width.
4. Property owners allowing parking on a widened driveway for illegal parking.

Licensing and enforcing driveway paving contractors through a licensing bylaw may be a difficult task especially for those contractors who do not obtain a business license to operate in the City of Toronto. City staff may spend much time and resources chasing after unlicensed driveway paving contractors. This challenge can be overcome with public education on the requirement to obtain a permit and encouraging the hiring of licensed contractors.

## **Consultations**

### **Organizations that receive complaints regarding business operations**

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

### **The Better Business Bureau**

The Better Business Bureau website reported 951 complaints against paving contractors Canada wide for the year 2006 through to the end of 2008. MLS staff consulted with the BBB in March 2011. The BBB contacted serves mid-western and central Ontario, which includes boundaries between Kitchener-Waterloo and Toronto. The BBB reported having 111 complaints for their entire service area for 2010, thirteen of which were for the City of Toronto.

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, 67 of which were members of the BBB for Toronto and GTA (March 2009).



### **The Ministry of Consumer Services**

The Ministry of Consumer Services is another avenue that the public has to lodge consumer related complaints about businesses. The Ministry's role is to educate, protect and serve Ontario consumers by ensuring a fair, safe and informed marketplace as well as to provide regulatory practices that serve the interests of Ontarians. In addition, the Ministry of Consumer Services posts "Consumer Beware Lists" in a searchable public record. The information posted lists delinquent businesses based on consumer complaints, actions taken by the Ministry as well as charges laid and convictions.

In January 2011, MLS staff consulted with a Lead Investigator from the Ministry's Consumer Protection Branch in order to determine the number and type of complaints the Ministry deals with regarding paving contractors. The information captured by the Ministry did not give specifics about the nature of complaints; however, their computer system did generate the total number of complaints received. The statistics were as follows:

1. a total of 429<sup>1</sup> complaints for Toronto and GTA between 2005 and 2010
2. a total of 164 complaints in the City of Toronto between 2005 and 2010 (inclusive)
3. The Ministry had 27 and 22 complaints on file for Toronto in 2009 and 2010, respectively

In order to have a general idea of the type of complaints made by consumers in Ontario, MLS staff browsed the "Consumer Beware Lists." The following were types of complaints made to the Ministry of Consumer Services regarding paving but were not directly related to the statistics provided by their lead investigator:

1. late delivery
2. failed to deliver valid contract
3. quality of service
4. unfair practice- false misleading representation
5. service not performed

Chargeable offences brought to the attention of the Ministry of Consumer Services are enforceable under the Consumer Protection Act. Penalties under the Act include jail terms, probation, fines and restitution orders. The maximum jail sentence under the Act is two years less a day or fines up to \$50,000 for an individual or up to \$250,000 for convicted corporations.

The Ministry of Consumer Services website (February 17, 2011) posts recent charges and convictions under the Consumer Protection Act. Some of which include details of charges and convictions against general contractors and home renovators. Although the

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<sup>1</sup> The Ministry of Consumer Services' complaints included various municipalities outside of Ontario. For the purpose of this report, cities in the GTA were included. The following geographical areas were used from the Ministry's list: Ajax, Barrie, Brampton, Etobicoke, Maple, Markham, Mississauga, Newmarket, North York, Oakville, Oshawa, Pickering, Richmond Hill, Scarborough, Thornhill, Toronto, Whitby, Woodbridge and York.

examples provided are not directly related to driveway paving contractors, they illustrate possible outcomes for infractions under the Act. Examples of convictions cited on the Ministry's website included:

1. A Brampton contractor was sentenced to 24 days in jail, 24 months probation with a condition that he make restitution. The Ministry of Consumer Services received complaints from four of his customers in the Greater Toronto area who, entered into direct sales contracts to renovate basements and/or effect repairs on their residences. The customers paid deposits to the contractor and the contracted work was not completed.
2. A Barrie contractor was charged under the Consumer Protection Act after the Ministry of Consumer Services received complaints from four of his customers who entered into contracts and paid deposits for roof repairs to their homes. No repair work was performed as contracted. The contractor was sentenced to 80 days in jail and 24-months probation. The court also ordered the contractor to pay restitution to the four customers.

### **Specific Recommendations**

The proposed bylaw would apply to any contractor that paves driveways or parking lots (be they residential or commercial).

Staff are proposing a bylaw that would require driveway paving contractors to be easily identifiable by the public, through markings, including licence number, both on their vehicles and on their stationary and advertisements. Contractors would only be issued one business licence and would not be allowed to work under any aliases.

Contractors would also be required to have a regular stationary place of business in order to make it easier to track down the licensee. This type of provisions is already required from other similar trades.

The proposed bylaw would also require all driveway paving contractors to provide a contract prior to commencing any work. Driveway paving contractors would be required to have appropriate insurance and would be prohibited from doing any work if the person for whom the work is to be performed does not have a permit.

The fees for the new licences would mirror those of other types of contractors currently licensed. In 2011, a new licence would cost \$343.64 and a renewal thereof would cost \$203.47.

### **Benefits of Licensing**

If homeowners are made aware about the permitting requirements and related bylaws, and if they are encouraged to hire licensed paving contractors there would be a reduction in the number of illegally paved driveways.

In addition, issues with zoning and/or property standards would more easily be identified and dealt with. A licensing regime would also provide consumers with some level of peace of mind when contracting paving work and would provide the public with a means to file complaints.

## **CONTACT**

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## **SIGNATURE**

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Jim Hart, Executive Director  
Municipal Licensing and Standards

## **ATTACHMENTS**

Appendix A: Proposed Bylaw to License Driveway Paving Contractors  
Appendix B: Proposed Contract Form for Driveway Paving Contractors

## **Appendix A**

### **Proposed Bylaw to Licence Driveway Paving Contractors**

#### **§ 545-1. Definitions.**

**DRIVEWAY PAVING CONTRACTOR** — Any person that has ownership of a business that paves or resurfaces driveways and parking lots.

#### **§ 545-2. Licence Requirement.**

(68) Every driveway paving contractor.

#### **§ 545-XXX. Regular place of business required; minimum age.**

No person shall be licensed as a driveway paving contractor unless he or she has a regular place of business and, if other than a corporation, is of the full age of 18 years.

#### **§ 545-XXX. Notification upon change of address.**

In addition to furnishing any information required under this chapter, every applicant for a driveway paving contractor's licence shall, in his or her application, set out the mailing address of his or her proposed business premises, and every holder of such a licence shall notify the Municipal Licensing and Standards Division in writing within 48 hours of any change of his or her business address.

#### **§ 545-XXX. Identification of vehicles used by driveway paving contractors; advertisements.**

A. Any driveway paving contractor shall ensure that:

- (1) All vehicles used by him or her in the course of business bear on both sides of each such vehicle in letters and figures not less than 10 centimetres in height and clearly legible at a distance of six metres the words "Toronto Licence No." followed by the number of the licence issued by the Municipal Licensing and Standards Division to such contractor.
- (2) All stationery, forms, bills, invoices, statements and any other printed or written advertising material, including any published advertisements in a newspaper, periodical, directory or other publication used by such driveway paving contractor in the course of such business, bear in clearly legible letters and figures the same inscription.

B. For purposes of this section, any reference to the number of a licence shall mean the trade number that is issued to a licensee by the Municipal Licensing and Standards Division to identify the particular trade or type of business that is licensed.

#### **§ 545-XXX. Use of trade names.**

A person licensed as a driveway paving contractor may carry on business under a trade name or name other than his or her own but shall not carry on business under more than one name, and only one licence shall be issued.

**§ 545-XXX. Regulations concerning driveway paving contractors; written contracts.**

Every person licensed or required to be licensed under this chapter as a driveway paving contractor shall observe or cause to be observed the following regulations:

- A. Before commencing any work, a driveway paving contractor shall enter into a written contract with the person for whom the work is to be performed. The contract is to be signed by the contractor and such person and the contract is to be in the form attached hereto as Appendix O located at the end of this chapter.
- B. No other work shall be done by such driveway paving contractor as an extra or otherwise unless and until a further contract on the same form covering such other work has been entered into in like manner between the parties.
- C. The driveway paving contractor shall complete the form of contract in as much detail as may be practical as to the quality and quantity of material and the number of hours of labour involved and the rate thereof and as to all other dimensions and measurements relating to the work to be done.
- D. A driveway paving contractor shall upon request furnish to the person for whom the work has been done an itemized and detailed written bill concerning such work within 24 hours.
- E. The contract shall not contain any clause or provisions except those contained in Appendix O located at the end of this chapter without the express approval of the Executive Director or his or her designate, and the driveway paving contractor shall not enter into any collateral or supplemental agreement or arrangement which terms are repugnant to or inconsistent with the contract.

**§ 545-XXX. No work to be conducted without a valid permit.**

Every person licensed or required to be licensed under this chapter as a driveway paving contractor shall not commence any work if a valid permit has not been taken out by the person for whom the work is to be performed.

**§ 545-XXX. Policy of insurance; certified copy or certificate.**

- A. Every driveway paving contractor shall procure a policy of insurance in at least the amount of \$2,000,000.00 (exclusive of interest and costs) comprehensive against loss or damage resulting from bodily injury to or the death of one or more persons, or from loss or damage to property resulting from any accident.
- B. The policy of insurance shall:
  - (1) Provide for cross-liability and severability of interest;
  - (2) Be endorsed to the effect that the Municipal Licensing and Standards Division will be given at least 10 days' written notice of any cancellation, expiration or variation in the amount of the policy; and
  - (3) Name the City of Toronto as an additional insured.
- C. A certified copy or certificate of the policy of insurance shall be deposited with the Municipal Licensing and Standards Division.

**Chapter 545, Appendix A**

Driveway paving contractors are to be included in Fee Class 09 (Tradesperson) and shall be, for 2011, \$343.64 for a new licence and \$203.47 for a renewal thereof.

## Appendix B

### APPENDIX O TO CH. 545 CONTRACT FORM FOR DRIVEWAY PAVING CONTRACTORS

Name, address and telephone number of building renovator  
Toronto Licence Number

Date \_\_\_\_\_

TO: (Name and address of person for whom the work is to be done)

Re: (Address where work is to be done)

We offer to furnish all materials and labour necessary to complete the following:

All of the above work is to be completed in a workmanlike manner on or before  
(completion date) for the sum of \_\_\_\_\_.

Payment to be made on receipt of invoice.

\_\_\_\_\_  
(Signature of building renovator)

#### ACCEPTANCE

I/We hereby accept the above offer and authorize you to proceed with the above work in  
accordance with the above terms.

\_\_\_\_\_  
(Signature of person for whom work is to be done)

One copy of this contract signed by both parties is to be delivered to the person for whom  
the work is to be done before any work is done. The other copy signed by both parties is  
to be retained by the driveway paving contractor.