



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Report on Utility Locate Services for Business Improvement Areas as Required by the Ontario Underground Infrastructure Notification Act (ON1Call)

Date: Monday October 16, 2017
To: Public Works and Infrastructure Committee
From: General Manager, Economic Development and Culture; General
Manager of Transportation Services; and City Solicitor
Wards: All

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

The purpose of this report is to recommend that the City assume ownership of all underground infrastructure assets owned by the Business Improvement Area (the "BIAs") boards of management and assume responsibility for BIA utility locate services through the City's existing service contract, as of February 1, 2018 or such earlier or later date(s) as may be determined by the General Manager of Transportation Services. This would facilitate compliance with Ontario Underground Infrastructure Notification Act, 2012 (the "Act") and safe and timely responses to utility locate requests. The City would perform this work on behalf of the BIAs on a cost-sharing basis, charging back the BIAs 50% of the actual costs attributed to their BIA. It is estimated that the total additional costs associated with BIA locate requests could range from \$331,000 to \$553,000 (gross) annually.

Providing utility locate services has proven to be a financial and administrative burden to BIAs resulting in the inconsistent provision of locate services and which may also result in delays to utility infrastructure projects. ON1Call advises that some BIAs are refusing to provide these services or are not meeting required timelines, and therefore are in breach of the Act. Failure to meet these requirements may result in enforcement action by ON1Call.

While this report recommends the City assume this responsibility on a 50% cost-recovery basis, BIAs will be relieved of the costly and time-consuming administration of the service and should benefit from lower locate costs as a result of being part of the larger City contract.

RECOMMENDATIONS

The General Manager, Economic Development and Culture, General Manager, Transportation Services and the City Solicitor recommend that:

1. City Council direct that the City of Toronto assume ownership of BIA underground infrastructure assets and include BIA locate services to be managed and administered by the General Manager, Transportation Services, as of February 1, 2018, or such earlier or later date(s) as the General Manager of Transportation Services considers appropriate in the circumstances, and that the BIAs continue to maintain the infrastructure;
2. City Council direct the General Manager, Transportation Services to administer BIA utility locate services on a cost-sharing basis, charging back the BIAs 50% of the actual costs attributed to each BIA on an annual basis and setting a provision for the City share as part of the 2018 budget process.
3. City Council direct that, effective as of the date the City assumes ownership of BIA underground infrastructure, Municipal Code Chapter 19, Business Improvement Areas, be amended to include a new section 5.6 to allow the City to impose a special charge on any unpaid amounts owing to the City, and to include a new Article 7 deeming the City to be the owner of the underground infrastructure and requiring the BIAs to maintain the infrastructure, as set out in Appendix 1 attached to this report, subject to any necessary minor substantive or stylistic refinements as may be identified by the General Manager of Economic Development and Culture or the City Solicitor.
4. City Council direct that the confidential information contained in Confidential Attachment 1 remain confidential in its entirety, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

Under the City's existing utility locate contract, the City is charged between \$39 to \$175 per locate request. From January 1, 2017 to August 31, 2017, the BIAs received a total of 4535 locate requests. Projecting this for the entire year results in a total of approximately 5945 locate requests. When validating those requests, it is highly likely that there are approximately 3567 locates per annum that can be charged back to the BIA's, at a total cost of approximately \$331,740. This report recommends that this cost be shared on a 50/50 basis with the BIAs, resulting in a \$165,870 estimated annual cost to the City.

However, without the authority or the means to investigate the locate requests, there is a scenario where the annualized costs could be approximately 5,945 valid locates, which would drive the costs to approximately \$552,900 per annum. This scenario exists because a number of the BIA's are not reporting any information back to ON1Call.

	Annual Locates	Annual Gross Cost	50% share
Scenario 1: Likely	3567	\$331,740.	\$165,870
Scenario 2: Worst Case	5945	\$552,885.	\$276,443

It is therefore recommended that the City assume ownership of the BIAs' underground infrastructure and the corresponding obligations to locate them on behalf of the BIAs and charge back the BIA 50% of the actual costs attributed to each BIA and that a funding source be determined as part of the 2018 budget process.

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

DECISION HISTORY

In 2013, the Ontario Underground Infrastructure Notification Act (the "Act") came into force. As a result, what was previously a voluntary system between excavators and owners of underground infrastructure became mandatory. All owners of underground infrastructure are now required to become members of ON1Call (the provincial organization established to administer the Act) and are required to provide locates for their underground infrastructure upon request. When an excavation request is initiated, ON1Call issues compulsory requests to registered owners of underground infrastructure in a proposed excavation area to provide visual identification of underground infrastructure, or a written clearance confirming that no underground infrastructure will be impacted by the proposed excavation. The locates or clearances must be performed within a prescribed period of time.

This is an unanticipated requirement for most BIAs when they agreed to undertake projects involving underground infrastructure.

COMMENTS

There are currently 35 BIAs that have underground infrastructure mainly associated with BIA pedestrian and other decorative lighting projects that were originally cost-shared with the City. More installations are anticipated in the future. Under the City's Capital Cost-Share Guidelines, the BIAs own the underground infrastructure, and maintenance of these assets is the BIA's responsibility. The City's BIA office has interpreted locate services as a maintenance obligation. Before the enactment of the Act, the utility company performing underground excavation was responsible for providing the utility locates prior to commencing work.

Since enactment of the Act, the City's BIA Office and On1Call have been working closely with BIAs to assist them with complying with the Act by offering on-board training, a credit by ON1Call on notification fees, one-on-one assistance to BIAs, and providing a listing of utility locate service providers. Despite these efforts, BIAs still find the administration and financial costs of responding to enquiries difficult, particularly in those areas where there is a high volume of utility infrastructure work being conducted.

While some BIAs have made earnest attempts to comply with the Act, they have expressed their frustration with the locate requirements and have asked that the City provide administrative and financial assistance in providing the service. Some BIAs contend that the City should own the underground infrastructure. They further contend that they only agreed to maintain the above-ground asset not the underground infrastructure to support it. It should be noted that the City of Toronto is the only municipality that does not provide locate services for its BIAs.

Difficulties with BIA Compliance:

While many BIAs are complying with ON1Call requirements, others are finding it difficult to meet the requirements on a consistent basis. There are a number of reasons why providing locate services is proving to be a burden for BIAs.

From an administrative perspective, it appears that BIAs did not anticipate the application of this requirement and they do not have adequate staffing (and some BIAs have no staff) to administer locate services. In order to administer the program, the BIA is required to have a designated contact available on a 24/7 basis, to vet and clear all locate requests in a timely basis, and, in cases of emergency excavation work, immediately. BIAs also lack the proper training or technical expertise to ensure locate requests are being dealt with in a proper manner. Some BIAs have also noted difficulty garnering interest from locate service providers ("LSPs") due to the low volume of work associated with smaller BIAs.

From a financial perspective, the costs currently incurred by 35 BIAs varies greatly depending on the physical extent of the BIA infrastructure, volume and extent of excavation work being conducted in a particular BIA, and the level of action required to clear a locate request. For example approximately 40% of all locate requests can be cleared by simply providing confirmation from the BIA that the proposed excavation work is not within the area of BIA infrastructure and therefore there is no need for an LSP to physically visit the location and mark the location of the infrastructure. When an LSP is required to provide physical markings, the costs to BIAs can be as high as \$190 per locate request.

BIAs that have retained the services of a qualified locate service provider are incurring unanticipated financial expenses. In the case of smaller BIAs where there is significant utility work being conducted, the costs can represent a significant amount of the BIA's total budget.

Rationale for City to Assume Utility Locate Services:

There are several reasons why it is advisable for the City to assume responsibility for BIA locate services.

First and foremost, there is a need to ensure locate services are dealt with in a uniformly safe and timely manner. If locates are not properly provided, there are potential safety hazards for those who are carrying out excavation within the area. The City has also made a significant financial investment in BIA infrastructure and has an interest in protecting it. Failure to provide adequate locate services could result in the loss of valuable infrastructure that the City has invested in.

Finally, the City already has two utility locate service providers under contract to identify the City's underground infrastructure and fulfill the City's locate requirements to ON1Call. BIA underground infrastructure is usually in the same vicinity as City infrastructure and is within the public right of way and would result in better coordination of locate services. The City's administration of BIA locates through its locate providers would represent a minor increase in scope and administration to the City compared to 35 BIAs separately managing and administering locates across all of the City. There are also potential cost savings for BIAs as a result of the economies of scale available to the City handling the locates.

BIAs will continue to be responsible for the normal maintenance of underground infrastructure supporting their assets, despite the assumption by the City of ownership of the underground infrastructure and responsibility for providing the locate services.

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ATTACHMENTS

Appendix 1 - Proposed Changes to Municipal Code Chapter 19

Confidential Attachment 1 - Report from City Solicitor

APPENDIX 1

PROPOSED AMENDMENTS TO MUNICIPAL CODE CHAPTER 19, BUSINESS IMPROVEMENT AREAS

§ 19-5.6. Debts to City.

If a board fails to pay to the City any amounts owing under Article 7 of this Chapter, a cost sharing program, a loan agreement or other agreement, or any other circumstance where the City has agreed to provide a service to a board or undertake any statutory obligations of a board on a cost recovery basis, or where Council has directed that a board reimburse the City for any costs incurred by the City, and such amounts remain unpaid for a period of 60 days following the mailing of an invoice, or where the City incurs legal liability as a result of any act or omission of the board, the City may impose a special charge upon rateable property in the business improvement area that is in a business property class.

Article 7

City Infrastructure

§ 19-7.1. Ownership of Assets.

The City is deemed to be the owner of all underground infrastructure installed by or on behalf of a board.

§ 19-7.2. Maintenance of Assets.

A board is responsible for maintaining all underground infrastructure installed by or on behalf of the board.

§ 19-7.3. Utility Locate Services.

- A. The City as owner of the underground infrastructure shall be responsible for providing utility locate services and complying with all applicable legislation.
- B. A board shall reimburse the City for the City's costs associated with providing the utility locate services and complying with the legislation, in such amounts as may be directed by Council.