



Report to: General Committee

Date of Meeting: November 20, 2006

SUBJECT: By-law to Licence Driveway & Boulevard Contractors
PREPARED BY: W. Wiles, Manager, By-law Enforcement & Licensing

RECOMMENDATION:

That the report "By-law to Licence Driveway & Boulevard Contractors" be received;

And that a by-law to require the licencing of persons engaged in the hard surface construction of residential driveways and municipal boulevards abutting residential private property be enacted;

And that By-law 2002-284, establishing the fees charged for licencing, be amended to include a \$200.00 licence fee for Driveway & Boulevard Landscaping Contractors.

FINANCIAL CONSIDERATIONS:

A projected revenue of \$5,000.00 is being forecasted within the 2007 Business Licencing Revenue Account 310-3238508.

PURPOSE:

Contractor licencing is one the identified components for implementation under the Extended Driveway Program.

BACKGROUND:

Municipalities are authorized under Section 150 of the Municipal Act to license, regulate and govern any business wholly or partly carried on within the municipality. To enact a licensing by-law the municipality must state the reason for the licensing and how the reason relates to the three designated purposes for licensing- Health & Safety; Nuisance Control; Consumer Protection. This by-law is being enacted for all three purposes, as noted below:

License Purpose	Explanation
Health & Safety	<ul style="list-style-type: none">Regulations regarding the placement of materials on public highways
Nuisance Control	<ul style="list-style-type: none">Regulations to ensure only qualified contractors operate within the Town
Consumer Protection	<ul style="list-style-type: none">Regulations to ensure contractors are properly insuredMechanism to require a written contract for the protection of residents

In addition to passing an amending by-law to zoning by-laws allowing extended driveways, Council approved and funded an Extended Driveway Implementation

Program. This licencing requirement is a component of the overall implementation program that includes the following other components: staff training; a communication plan with a pamphlet for household distribution and detailed owners checklists/ guides available electronically via the Town's web site; a potential incentive program for retrofitting of properties, amendment to the Town's standard wording in Subdivision Agreements and, a phased-in enforcement plan.

OPTIONS/ DISCUSSION:

As an alternative to licencing, resident obtained permits were discussed throughout the public consultation process with widened driveways. Residents indicated a preference for licensing of contractors as this would provide a method for them to identify reliable contractors. Staff reviewed the two options and found that permitting would require more staff resources and under a cost recovery model result in higher fees as compared to the licensing scheme. The determination based on the licencing of approximately 25 contractors a year opposed to the issuance of an estimated 2,500 permits a year.

The question of quality of work was raised by the contractors. The industry was advised the proposed by-law has no quality elements and such disputes are civil matters.

The by-law requires individuals engaged in the construction, re-construction, and alteration of driveways and municipal boulevards to be licenced only. A resident constructing his own driveway will not require licencing, but is still be required to comply with the by-law. To ensure contractor knowledge of regulations attendance at a mandatory training and education session is required. The session will be developed and delivered by Licensing Staff, with regular field inspections to ensure complete understanding and construction in compliance with regulations by contractors. Clauses are to be included in the by-law to state that the licence is the property of the municipality and must be returned upon suspension or revocation. Standard license clauses regarding the suspension and revocation clauses are to be included in the by-law.

During the public consultation process with widened driveways and at the August 27th General Committee Meeting the licencing of snowplow operators and lawn maintenance contractors was raised respectively. Subsequent public/ industry meetings and consultation found no support for a full licencing program for those activities at this time. It is recommended that no action on such an initiative be taken at this time.

It is the recommendation of staff that the licencing of contractors be required. Elements of the proposed licensing by-law are included in Schedule A.

Field Enforcement Program

All staff within the By-law Enforcement & Licencing Division are being trained on the enforcement of the new regulations. Required resources to enforce the amended by-law and licensing requirement will be provided by three additional staff positions approved as part of the extended driveway program. The additional resources will allow for weekend and evening coverage. In 2007, staff will be addressing new construction and identified

worst violators (more than 80% hard surface) and in 2008 will address the balance of non-complying driveways and boulevards.

Parking Control and Area By-law Officers will also be responsible for ensuring any contractor observed during routine patrols is licensed and that any construction observed is in accordance with the by-law. The additional enforcement resources will ensure prompt response to properties of concern and allow for weekend and evening coverage. Staff in the Operations and Engineering Division will also be educated on by-law requirements to assist with the communication and enforcement activities.

FINANCIAL TEMPLATE:

Not applicable

ENVIRONMENTAL CONSIDERATIONS:

Projected benefits of the program is a curtailment of the significant hard landscaping conversions of residential lots and a more balanced hard and soft landscaping standard for future construction. Soft landscaping is more environmentally desirable for storm water management and urban design purposes.

ENGAGE 21ST CONSIDERATIONS:

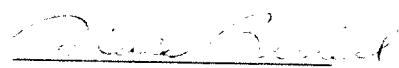
Development of the Extended Driveway Implementation Program was completed through an extensive public consultation process. A Working Group, consisting of residents appointed by Council, independently developed a series of recommendations on the program content on which this licencing requirement is based.

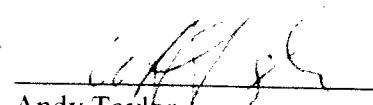
BUSINESS UNITS CONSULTED AND AFFECTED:

Legal

RECOMMENDED

BY:


Sheila Birrell,
Town Clerk


Andy Taylor
Commissioner, Corporate Services

ATTACHMENTS:

Schedule A- Proposed By-law Elements
Draft By-law to Licence Driveway & Boulevard Landscaping Contractors
Draft By-law Amendment- 2002-284 (Licence Fees)

SCHEDULE A- PROPOSED BY-LAW ELEMENTS

Scope

Individuals engaged in the construction, re-construction, and alteration of driveways and municipal boulevards

Licencing Requirements

In order to be licenced, individuals will have to provide the following:

- Completed application form & fee
- Liability insurance of \$2,000,000 with Town named as additional insured party
- Clearance Certification from WSIB
- Copies of business stationary, noting company information
- Ontario's Vendor Permit
- Incorporation or Business partnership details
- Completion of regulation training and awareness

Term

Annual licence, expiring December 31st, each year

Regulations

Once licenced, each business must:

- Display licence number of vehicles at all times
- Note licence number on all documents
- Have a written contract, noting the following;
 - Client name and address
 - Description and details of services being provided
 - Dimensioned site plan
 - Written price, warranties, and completion date
- Maintain a copy on site at all times for Town staff review
- Ensure all materials used in construction and materials being removed from site are maintained off of municipal streets, unless temporary storage on streets is authorized
- Obtain any required permits and comply with all applicable law

Prohibitions

No person shall provide or hold themselves out to be a driveway contractor within Markham unless they are licenced.

Licence Issuance and Renewal

The Licencing Officer is responsible for the processing and issuance of all licences and coordination of the field enforcement program. The Officer will report and seek Council's direction for issuance or renewal where:

- Past conduct is a concern
- Concern contractor will not follow by-law requirements
- Concern contractor will not operate with integrity and honesty, and;
- Where Officer suspends a licence

Committee/ Council Review

Any licence for issuance, renewal, suspension, or revocation will be referred to Council or a Committee of Council for a hearing under the *Statutory Powers Procedures Act*.

Enforcement & Penalties

The by-law may be enforced by Town enforcement staff and York Regional Police and carries a maximum fine of \$25,000 for a person and \$50,000 for a corporation

Enactment Date

March 1, 2007



BY-LAW 2006-

A By-law to license, regulate and govern Driveway Paving Contractor conducting work on privately owned property and municipal boulevards adjacent to such property

WHEREAS Section 150(1) of the Municipal Act, 2001 S.O.2001, c.25, as amended authorizes a municipal council to pass by-laws for the licensing, regulating and governing any business carried on within the municipality; and

WHEREAS a public meeting was held on October 17, 2006 to discuss this by-law; and

WHEREAS the Council of the Town of Markham deems it expedient to license, regulate and govern the business of driveway paving contractors in the interest of health and safety, consumer protection and public nuisance control by establishing procedures and regulations ensuring the identity of the contractor is known to those contracting the work, establishing minimum requirements for any contract for services, and requiring the contractors to be aware of and familiar with by-laws within the municipality that may affect the work provided;

NOW THEREFORE THE COUNCIL OF THE TOWN OF MARKHAM ENACTS AS FOLLOWS:

I. In this by-law

"Applicant" means the person applying for a licence or renewal of a licence under this by-law and application has corresponding meaning;

"Contractor" means a Driveway Paving Contractor;

"Council" means the Council for The Corporation of the Town of Markham;

"Driveway" means a defined area that is paved or treated with a stable surface that provides access for motor vehicles from a public or private street to a private garage or parking pad;

"Driveway Paving Contractor" means a person engaged in the business of paving or sealing driveway surfaces on privately owned property which may include municipal boulevards adjacent to such private property, including the altering of property in preparation for paving;

"Licence" means the certificate issued under this by-law as proof of licensing under this by-law;

"Licensee" means the person licensed under this by-law or the person required to be licensed under this by-law;

"Licensing Committee" means a committee of Council designated by Council for the purpose of hearing appeals under this by-law;

"Licensing Officer" means a person appointed by the Town to issue licenses and enforce this By-law;

"Parking pad" means an open area of land other than a driveway, that is paved or treated with a stable surface used for the parking of motor vehicles;

"Paving" is the surface of a driveway or parking pad constructed using materials such as asphalt, concrete and interlocking stone;

"Person" means an individual, firm, corporation, association or partnership;

"Private Garage" means an enclosed building or part thereof, designed and used for the storage of one or more motor vehicles;

"Town" means The Corporation of the Town of Markham, in the Regional Municipality of York.

2. Every person who carries on the business of a Contractor in the Town shall be licensed under this by-law.

APPLICATION FOR LICENCE

3. Every application for a licence shall include:
 - 1) a completed application form provided by the licensing officer;
 - 2) the fee in the appropriate amount as set out in by-law 2002-284;
 - 3) a certificate of liability insurance in a minimum amount of two million dollars (\$2,000,000) endorsed to provide the licensing officer at least ten (10) days notice in writing prior to cancellation, expiration or change of the policy, and the Town of Markham named as an additional insured party;
 - 4) valid Clearance Certificate issued by Workplace Safety and Insurance Board of Ontario applicable to the applicant's business;
 - 5) a copy of the stationary the applicant intends to use in making contracts, including such information as the contractor's name, address and telephone number;
 - 6) a copy of the Ontario Vendor Permit issued by the Province of Ontario, Ministry of Finance, applicable to the applicant's business;
 - 7) completion of a training and education session provided by the Licensing Officer;
 - 8) in the case of a corporate applicant, a copy of its articles of incorporation;
 - 9) in the case of a partnership, the names and addresses of all partners; and
 - 10) a copy of the applicant's Ontario Master Business Licence.
4. Every application for renewal of a licence shall be completed and delivered to the Licensing Officer before the expiry date of the licence as set out in section 5 of this by-law.

NATURE OF LICENCE

5. A licence issued under the provisions of this by-law is the property of the Town and
- 1) shall expire on the 31st day of December following issuance of the licence, unless it is renewed or revoked in accordance with the provisions of this by-law;
 - 2) shall not be transferred, sold, leased, subleased, rented or assigned to any person other than the person named on the licence; and
 - 3) shall be returned to the Town upon revocation, suspension or non-renewal thereof.

CHANGE IN PARTICULARS

6. Where there is any change in any of the particulars relating to a person licensed under this By-law, which particulars are required to be filed with the Town on applying for a licence under this By-law, such person shall report the change to the Licensing Officer within seven days of the change.

REGULATIONS

7. Every person licensed or required to be licensed under this by-law, shall
- 1) have printed or otherwise displayed on both sides of all vehicles owned, leased or operated during the course of business, in figures no less than 10 centimetres (4 inches) in height, the driveway paving contractor's name and licence number;
 - 2) have printed on all business stationery, forms, bills, statements and advertising materials, the driveway paving contractor's name, business address, telephone number and license number;
 - 3) enter into a written contract with the person for whom the work is being done before commencing any work, such contract to include:
 - i) the name, address, telephone number and licence number of the licensee;
 - ii) the name and phone number of the person for whom the work is being done;
 - iii) the address where the work is to be done;
 - iv) a description of the materials and services to be supplied, including the depth of asphalt, concrete, gravel or other material to be applied (this description may be supplemented by a sketch);
 - v) an area site plan indicating the dimensions of driveway on the property to be paved;
 - vi) the itemized price for the materials and services to be supplied;
 - vii) detailed statement of the terms of payment;
 - viii) warranties or guaranties, if any; and
 - ix) the estimated date of completion.
 - 4) give a copy of the contract referred to in subsection 3 to the person for whom the work is being done;
 - 5) ensure that all materials or substances used by the contractor are contained on the property for which the contract applies;

- 6) Obtain written permission for the placement of materials on the property other than that for which the contract applies;
- 7) Obtain all permits and approvals required by law prior to the commencement of any work; and
- 8) comply with all laws, including Town of Markham By-laws as amended.

PROHIBITIONS

8. No person shall
 - 1) carry on the business of a Contractor in the Town without a licence to do so issued by the Town of Markham;
 - 2) hold themselves out as being licensed to carry on the business of a Contractor if the person is not so licensed;
 - 3) carry on business of a Contractor under any name other than the name for which the licence is issued; and
 - 5) permit a person to carry on the business of a Contractor in the Town without a licence to do so issued by the Town.
9. The Licensing officer shall
 - 1) Receive and process all applications for licenses and renewal of licenses to be issued under this by-law;
 - 2) issue and renew licenses for persons who meet the requirements of this by-law;
 - 3) Generally perform all the administrative functions conferred upon the Licensing Officer by this by-law; and
 - 4) Coordinate the enforcement of this by-law.
10. Despite the foregoing section, upon review of a licence application, including an application for renewal, the Licensing Officer shall prepare a report and seek Council's direction with respect to the issuance or renewal of a licence where:
 - 1) the past or current conduct of the applicant or licence holder affords reasonable grounds for belief that person is not carrying or will not carry on the trade, calling, business or occupation in respect of the Contractor in accordance with law and with integrity and honesty; or
 - 2) there are reasonable grounds for belief that the carrying on of the trade, calling, business or occupation of the Contractor by the applicant or licence holder has resulted or will result in a breach of this By-law or any other applicable law; or
 - 3) the applicant or licence holder is a corporation or a partnership and its conduct or the conduct of its officers, directors, employees, agents or partners affords reasonable grounds for the belief that its trade, calling, business or occupation in respect of the Contractor has or will

not be carried on in accordance with the law and with integrity and honesty; or

- 4) there are reasonable grounds for belief that the premises, accommodations, equipment or facilities in respect of which the licence is required to not comply with the provisions of this By-law or any other applicable law; or
 - 5) the conduct of the applicant or licence holder or other related circumstances afford reasonable grounds for the belief that the carrying on by the applicant of the trade, calling, business or occupation for which the licence is sought would infringe the rights, or endanger the health or safety, of other members of the pub
11. When an application for a licence is made in accordance with the provisions of this By-law and the applicant meets all the requirements of this By-law or where the Licensing Officer has been so authorized by Council in response to a Report in this regard, the Licensing Officer shall issue a licence certificate which shall set out the expiry date of the licence in accordance with this By-law and the applicant shall thereby be licensed, until such date, subject to any prior revocation, suspension or other termination of such licence.
 12. The Licensing Officer may suspend a licence for any of the grounds set out in section 10. Such suspension shall take effect upon service of written notice thereof to the licensee and the licence shall remain suspended for no more than fifteen days from the date of service of this notice. In order to continue this suspension beyond the fifteen day period or to revoke the licence, the Licensing Officer must prepare a report and receive Council's direction in this regard. Where any licence is suspended, it shall not be reinstated until the Licensing Officer is able to confirm that the conditions leading to the suspension have been remedied.
 13. At any meeting of Council or of a Council Committee called in relation to a report to consider the issuance, renewal, suspension or revocation of a licence:
 - 1) the applicant,
 - i) shall be accorded its rights pursuant to the *Statutory Powers Procedures Act*, including the right to appear and speak to the matter; and
 - ii) when he or she has been provided with notice of the meeting and does not attend, Council may proceed with the meeting in the absence of the applicant.
 - 2) Council may,
 - i) refuse to grant a licence, revoke a licence or suspend a licence; or
 - ii) impose special conditions as a requirement in order to obtain, continue to hold, or renew a licence.
 - 3) where Council concludes that grounds exist upon which a licence may be refused, suspended or revoked, Council may in lieu thereof issue a licence for any period up to a full licence period, on probation, or without a term of probation, subject to such conditions as Council may impose and are in accordance with law.

OFFENCE, PENALTY AND ENFORCEMENT

14. Every person licensed under this By-law shall produce the licence issued pursuant to this By-law, upon demand of any person authorized to enforce the provisions of this By-law.
15. Every person who is licensed or required to be licensed pursuant to this By-law shall allow, at any reasonable time, any person authorized to enforce the provisions of the By-law, to inspect the places and premises used for the business and the equipment, vehicles and other property used or kept for hire in the carrying on of the business.
16. No person shall hinder or obstruct any person authorized to enforce the provisions of this By-law.
17. Any person who contravenes the provisions of this By-law, any person who fails to perform a duty imposed herein or who performs an act prohibited herein, and every director or officer of a corporation, or partner of a partnership, who concurs in such a contravention, is guilty of an offence and, upon conviction pursuant to the provisions of the *Ontario Municipal Act* (as amended), is liable to:
 - 1) a penalty in the case of persons, other than a corporation, not to exceed \$25,000.00 or imprisonment for a term not to exceed one year or both; and
 - 2) a penalty in the case of a corporation, not to exceed \$50,000.00.
18. The making of a false or intentionally misleading recital of fact, statement or representation in any agreement, statutory declaration or application form required by this By-law shall be deemed to be a violation of the provisions of this By-law.

MISCELLANEOUS

19. Should any section of this By-law be declared invalid by a court of competent jurisdiction, it is the intent of the Council that such section shall be severed here from and the remainder of the By-law shall continue in full force and effect.
20. Wherever notice or materials are required to be served upon or provided to any person pursuant to this By-law, such service or provision shall be deemed effective five days following the mailing of such materials by registered mail to the last address of that person as indicated upon licensing documents filed with the Town.
21. The short title of this By-law shall be the Driveway Paving Contractors' By-law.
22. This By-law will take effect and come into force on March 1, 2007.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS
DAY OF , 2006.

SHEILA BIRRELL, TOWN CLERK

DON COUSENS, MAYOR



BY-LAW 2006-

A By-law to Amend By-law 2002-284 a By-law to Establish Licence Fees for the
Town of Markham

WHEREAS Section 150 of the *Municipal Act, 2001, S.O. 2001, c.25*, authorizes municipalities to licence, regulate and govern any business wholly or partly carried on within the municipality;

WHEREAS By-law 2002-284, a By-law to Establish Licence Fees for the Town of Markham was enacted on December 10, 2005;

WHEREAS By-law 2006-xxx, a By-law to Licence Driveway and Municipal Boulevard Contractors was enacted on November 2006;

WHEREAS Council held a public meeting on October 17th, 2006, to discuss the enactment of a by-law to licence driveway and municipal boulevard contractors and the fee for obtaining a licence;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM ENACTS AS FOLLOWS;

1. That Appendix 1 to By-law 2002-284 be amended by inserting the following new licencing fee;

By-law #	Licencing By-law	Fee Category	Fee (\$)
2006-xxx	Driveway & Boulevard Landscaping Contractors		200

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS
DAY OF , 2006.

SHEILA BIRRELL, TOWN CLERK

DON COUSENS, MAYOR