



Hamilton

# INFORMATION REPORT

**CITY WIDE  
IMPLICATIONS**

<b>To:</b>	Chair and Members Economic Development and Planning Committee PED09307		
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<b>Date:</b>	October 26, 2009		
<b>Re:</b>	<b>Requirements for Masters Licences/Trades Licences in the City of Hamilton (City Wide)</b>		

In response to the resolution passed by City Council on July 9, 2009 the purpose of this report is to review the practice of monitoring and regulating the activities of local contractors through enforcement of the City of Hamilton Licensing Code 07-170.

Secondly, this report will address the legal issues surrounding the requirement for local contractors to be licensed.

Thirdly, this report will evaluate why the practice of requiring Masters Licences/Trades Licences was dropped/abandoned in Burlington, Ontario.

## **Historical Background:**

In October of 1979, a report on the licensing function in the area municipalities of Hamilton-Wentworth was presented to the then Legislation and Reception Committee of the Region of Hamilton-Wentworth.

Following the receipt of that report by Council, an ad hoc Licensing Committee was struck to investigate and report on the possibilities of Regional licensing of certain trades and activities in the Region. In April of 1980, Regional Council passed a resolution in which certain trades (namely electricians, renovators, tile drain layers and explosive handlers) be regulated and that legislation be requested for this purpose. All other trades and businesses were to continue to be licensed by area municipalities. In June of 1981, a further resolution was passed by Regional Council approving of the trades licensing function on a Regional basis with further representations to the Province of Ontario to amend the Regional Act.

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A final resolution of Regional Council in May of 1982 was passed, approving of the trades licensing function on a Regional basis and representation to the Province to amend the Regional Act accordingly.

Following Council resolution, a letter to the Honourable Claude Bennett was sent requesting trades regulating legislation in the Regional Act. On November 18, 1986, Bill 22 was given Royal Assent and passed as Statutes of Ontario 1986, c. 46. This Regional amendment added Section 134a to the Regional Act, authorizing Regional Council to pass by-laws to examine, license, regulate and govern the trades referred to above.

By-law R88-136 was enacted on September 20, 1988 and came into force and took effect January 1, 1989.

In 2001, at the time of amalgamation, R88-136 was incorporated into the City of Hamilton Licensing Code (01-156) which has undergone further revisions, and is now known as the City of Hamilton Licensing Code (By-law 07-170).

It has been the will of Regional Council and City Council for 30 years now to ensure that specific trades are licensed in Hamilton.

**General:**

The following Ontario municipalities have enacted Trade Licence By-laws:

- Barrie
- Cambridge
- Kingston
- Kitchener
- Guelph
- Windsor
- London
- Sarnia
- Sault Ste. Marie
- Thunder Bay
- Toronto
- Brantford
- Ottawa

It is important to note that these are all larger, older municipalities with many aging homes and buildings that are in need of repair. They are lucrative markets for contractors, (reputable or not). That is why so many contractors set up shop in Hamilton as there are many buildings in need of repair/renovation. Since there are disreputable contractors who prey on unsuspecting homeowners, Hamilton is a municipality that needs and benefits from a well enforced Trade Licence By-law.

There is no shortage of "Contractor Horror Stories". Some of the unfortunate issues citizens face when dealing with contractors are:

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- Shoddy workmanship
- Scams
- Unmet contract obligations
- Poor performance
- No performance
- Overcharging
- Damage to their properties

According to the Better Business Bureau, except for automotive repair shops and used car dealerships, no other industry generates as many complaints as contractors and contracting companies.

Finding a reliable, knowledgeable and qualified contractor can sometimes be a frustrating task for the average homeowner. While licensing contractors is not necessarily a complete measure of competence, it does imply a certain level of professionalism and is a good indicator that a contractor is committed to his/her job. Licensing can protect homeowners from a number of potential problems.

Often the question is asked: "if all construction work is being conducted under Building Permits and subsequently checked by Building Inspectors, why do contractors need to be licensed?". In actuality, much of the work performed by local contractors does not require Building Permits. Some examples are:

- re-roofing
- re-siding (replacing the same siding material)
- replacing furnaces and air conditioning units
- replacing windows and doors (same size and location)
- re-pointing brick mortar joints and minor general masonry repair
- building exterior cleaning
- replacing plumbing (fixtures only)
- kitchen and bathroom renovations, etc.

When contractors perform work such as listed above, it is critical that the quality and acceptability of the work be monitored. Since Building Inspectors are not necessarily on these job sites, contracting companies must have a competent person on staff (i.e. the "Master"). The Master ensures adherence to good construction practices as well as compliance with the regulations as outlined in the Ontario Building Code and plays a vital role in the successful completion of every construction project. Masters should monitor all construction company projects underway by visiting each job site on a regular basis.

Obtaining a Master Licence is not onerous. A Police clearance ensures the general public is protected against non-law-abiding and sometimes unscrupulous contractors. The exam administered to all Master Licence applicants is also a way of determining their competency. The exams cover a range of topics, including technical Ontario Building Code questions, health and safety questions, as well as business ethic questions.

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For example, a recent meeting between Building Services Division staff and an unlicensed roofing contractor revealed he was unclear how much ventilation is required to adequately vent an attic roof space. This contractor required significant training in order to upgrade himself in order to pass the qualifying exam. This is an indication the testing process, needed to obtain a Master Building Repair Contractor's Licence, is a crucial step in licensing contractors.

The general intent of the contractor licensing section of Licensing Code 07-170 is to protect those members of the public who retain the services of a trade contractor or tradesperson to do work in residential, commercial or industrial premises, in which a member of the public is the owner, lessee or the general contractor. Currently, the City of Hamilton licenses Plumbing Contractors, Drain Layers, Building Exterior Cleaners, (graffiti removal companies), Building Repair Contractors and HVAC Contractors.

To best clarify how the Trade Licence By-law operates, listed below are three case studies to describe the various processes:

**Case Study #1**

A citizen signs a contract with a licensed contractor to re-shingle his home. A reasonable consideration is agreed to by both parties and both the contractor and homeowner sign the contract. Work commences in a timely manner with the job being completed in good time. The contractor leaves the site in clean and tidy condition. A few weeks later during a significant rain event, the homeowner discovers the roof leaks. He/she responds by calling the contractor, who refuses to return to make any repairs to his/her work. The homeowner then turns to the City for assistance. Shortly after a Building Inspector attends the property and upon inspection, it is discovered that the chimney flashings were not installed correctly and that the plywood underlay, as stipulated (and paid for) in the contract, was not installed. The contractor is called in to meet with Building Services Division staff to discuss the Building Code infractions (flashing), and unmet contract obligation (plywood underlay). If an acceptable resolution is not achieved at the staff level, a report would be written to the Licensing Committee, who may choose to revoke the licence of the contractor.

**Case Study #2**

A senior citizen is approached at her front door by a contractor who 'happens to be in the neighbourhood' and is convinced by the contractor that 'for safety reasons' the front porch railings on her house need to be replaced. A contract is drafted and signed by both parties with a consideration that is three times the industry standard. The contractor completes the work in good time and in conformance with the Ontario Building Code and requests his final payment. In the meantime, one of the senior citizen's family members learns of the gross overcharging and contacts the Building Services Division. The Building Inspector attends the property and finds that the contractor is unlicensed and has grossly overcharged the senior citizen. Enforcement action then ensues and the contractor is prosecuted for conducting a building repair contracting business without a licence and without a qualified Master on site. If voluntary restitution is not achieved with respect to the gross overcharging, the matter is

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handed over to the Police Services and/or the Ministry of Consumer Affairs. The contractor responds by applying for his licence (provides a Police clearance, proof of insurance and prepares to write an exam) and voluntarily pays restitution to the senior citizen.

**Case Study #3**

A Building Inspector spots a contractor's truck in a driveway, and does not recognize the company name printed on the door. The Inspector notices the contractor's business phone number printed on the door is an out-of-town number. The Inspector takes the proactive step of approaching the contractor to make inquiries regarding his licence. The contractor meets with the Inspector and advised him that he did not know he required a licence to operate in Hamilton. He agrees to apply right away for his licence. As part of the licence application process Building Services Division staff review the individual's Police abstract, only to discover three recent fraud convictions listed. The convictions are all related to contracting work. It is also learned that the individual does not carry any liability insurance. Accordingly the licence is denied, and the contractor is prosecuted for operating in Hamilton without a licence, thereby protecting other unsuspecting homeowners from possible fraud/insurance claims.

A search of recent Building Services Division records reveal several files where, as the result of Inspector's investigations, local contractors have been called in to explain their actions. The issues at hand were contractors who:

- grossly overcharged Hamilton homeowners
- preyed on vulnerable seniors ('granny scams')
- did not fulfil their obligations as agreed to in a contract
- performed shoddy workmanship
- received deposits and never performed any work
- engaged as a contractor without a licence

In many cases of gross overcharging or non-fulfilment of contract obligations, Building Services Division staff have been able to get residents their money back (to date, totalling in the tens of thousands of dollars). In many other cases, staff have been able to persuade contractors to get the work done to the satisfaction of the homeowners and in compliance with the Ontario Building Code. Other cases were so severe the files were turned over to Hamilton Police Services who investigated the matters as fraud.

**Legal Intent**

As described above, the legal intent of the Trade Licence portion of the By-law is to license, regulate and govern trades as they are carried out in the workplace of the City of Hamilton. Licences are issued to the persons carrying on the business of contractor or engaged in a trade and recognized for licensing purposes as a Master of Trades with provision being made for examination of such persons. The By-law does not give the City of Hamilton the authority to 'double test' a recognized trade. This means a Plumber

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or HVAC contractor who possesses the appropriate Certificate of Qualification (C of Q), is exempt from writing an exam in order to obtain a licence.

**Legal Consultation**

As part of the Back Flow Prevention By-law initiative (currently being implemented by the Public Works Department) it was discovered a new Trade Licence category was necessary in order to include “Fire Sprinkler Installers”, as this particular trade has the ability to test backflow prevention devices. Since the proposed By-law will stipulate that contractors who test BFP devices must hold a valid municipal licence, their trade would have been overlooked and unable to test them. It became immediately apparent that the Hamilton Licensing Code 07-170 required updating with a revision to include this particular trade.

During that process, Building Services Division staff consulted with Legal Services staff on this matter and performed an exhaustive review of the Trade Licence section of the Licensing Code. It was noted that some minor housekeeping revisions were needed, but overall, no fault was found in the By-law, or the authority it affords to the municipality to license trades.

With respect to liability to the City of Hamilton for choosing to have such a by-law, the extent of the possible liability is difficult to quantify. As stated above, licensing contractors does not guarantee their competence, but the process entails a certain level of professionalism on the part of licensed contractors and is a good sign that the contractor is serious about his/her job and/or business.

**Why was Trades Licensing dropped/abandoned in Burlington, Ontario?**

During a recent interview with City of Burlington staff it was learned that Trade Licensing was indeed abandoned by the City of Burlington in 2000. The reason given was “lack of adequate resourcing”. There was insufficient staff to effectively enforce the Trade Licensing By-law. According to Burlington staff, there were only three By-law Enforcement Officers in 2000, which were responsible for enforcing all Licensing By-laws. Tough decisions were made, and by-laws were prioritized. Trade Licensing was determined to be a lower priority and the by-law was subsequently revoked.

The set of circumstances that faced Burlington in 2000 cannot be compared to the City of Hamilton Trade Licence Enforcement. In Hamilton there are 35 Building Inspectors who are active on a daily basis enforcing the Trade Licence By-law, both proactively and reactively.

**Summary**

The purpose of licensing trades in Hamilton is to establish a centralized and uniform system for the local regulation and discipline of licensed contractors. The Building Services Division’s mission in enforcing the By-law is to promote quality construction by Hamilton contractors and ethical business practices thereby protecting the health, safety, and financial resources of Hamiltonians.

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Licensing contractors is a very effective way of protecting the general public from dishonest or substandard contractors. Licensing Masters is a very effective way of ensuring quality work is being performed on all jobs (where there is a permit or not).

The Trade Licence system is an effective way to weed out contractors who fail to meet the standards set out in the By-law.

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