CITY WIDE IMPLICATIONS

To: Mayor and Members Committee of the Whole

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Date: October 22, 2009

Re: Backflow Prevention By-law - (PW09087a) - (City Wide) Committee of the Whole Outstanding Business List

Council Direction:

At the October 13, 2009, Committee of the Whole meeting respecting approval of a Backflow Prevention By-law, Committee Report PW09087, staff was directed to report back to Committee on the following issues:

1. Breakdown of who attended the two public sessions held.
3. What can be done to address the issue of price gouging?
4. Options for payment to mitigate the financial impact for property owners.

Information:

Report PW09087 respecting the approval of a Backflow Prevention By-law was presented at Committee of the Whole on October 13, 2009. During debate a number of issues were raised respecting who attended the public meetings held for the program in November of 2008, the potential of developing a process of appeal for challenging assessments, what could be done to address the issue of price gouging, and options for payment to mitigate the financial impact for property owners. Staff was directed to report back on these issues.

Subsequently staff surveyed a number of municipalities in Ontario to determine if there was precedence with respect to the aforementioned concerns. In addition, communication with the Ministry of the Environment confirmed that approximately 28 jurisdictions in Ontario currently have Backflow Prevention By-laws and Programs similar to what is proposed in this Report. While some municipalities required all properties to be compliant with their backflow prevention By-law there were a number, such as Hamilton, that limited the scope of the By-law to the Industrial, Commercial, Institutional, and Multi-Residential Sectors.

Thirteen municipalities responded to questions from Hamilton when asked for information with respect to the three concerns identified by Committee for further analysis. Of the thirteen respondents there were none that offered any kind of financing relating to backflow prevention and none had a documented process for disputing a
cross connection survey assessment. A number of respondents did confirm that they encourage property owners who are regulated by this type of program to obtain at least three prices from contractors when soliciting these services, some confirmed that they relied on mechanisms within their licensing code for monitoring contractor behaviour, while others use an informal process similar to that of Hamilton’s.

Staff met to review the survey results and determine whether or not there was an ability to eliminate or mitigate the concerns raised during debate. The following provides further discussion of these issues and the resulting recommendations of staff.

1. Breakdown of who attended public sessions held - Two public meetings were held on November 6th and November 11th of 2008 to present the elements of the program and solicit feedback from stakeholders. A total of 112 attendees signed in for the two presentations and represented a number of interests, a break down of which follows:

<table>
<thead>
<tr>
<th>Area of Interest</th>
<th>Number of Attendees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plumbing, Backflow Prevention Industry</td>
<td>37</td>
</tr>
<tr>
<td>Industrial Properties</td>
<td>7</td>
</tr>
<tr>
<td>Church Representatives</td>
<td>6</td>
</tr>
<tr>
<td>Property Owners</td>
<td>5</td>
</tr>
<tr>
<td>Auto Dealerships</td>
<td>2</td>
</tr>
</tbody>
</table>

In addition to the above there were a variety of other interests represented at the meetings including the Hamilton-Wentworth District School Board, Hamilton Port Authority, property management and real estate companies, commercial properties, a car wash, Mohawk College, and a banquet hall.

2. Process of appeal to challenge assessments - As previously mentioned there were no municipalities in Ontario that responded to our survey that confirmed they have a documented process for disputing survey assessments. All aspects of conducting a cross connection control survey, establishing the level of hazard presented by a property, and selecting a backflow prevention device are governed by the CSA B-64 standard. As this is a widely adopted, robust and well researched standard for conducting these assessments the proposed By-law requires that all authorized persons comply with this standard when assessing a property.

Should a property owner dispute the assessment that an authorized person provides respecting their property they can hire another authorized person to perform another survey as a means to confirm whether or not the first survey was indeed correct. The CSA B-64 standard has within it a level of flexibility to accommodate a variety of circumstances and this proposed By-law was drafted to take advantage of this flexibility in order to make it more user friendly for property owners. While the proposed By-law does take advantage of the flexibility of the standard there were respondents to the Hamilton survey who indicated they continue to require a higher, more rigid standard than that of the B-64 standard.

It is important as the purveyor of drinking water for the municipality to retain the right to determine an acceptable level of protection respecting cross connection control and backflow prevention. Staff recommend that the B-64 standard remain the standard by which assessments are measured and that the City retain the right to interpret the standard as it relates to all aspects of this By-law.
3. What can be done to address the issue of price gouging - The By-law as written requires that annual testing, maintenance, and calibration be conducted by contractors licensed to work in the City of Hamilton and be certified to perform cross connection control and backflow prevention testing and maintenance. A concern was raised that as a result of the need to comply with this new By-law property owners may be subjected to unfair pricing by the industry that services these devices and as such the City should explore what mechanisms that can be put in place to monitor and control these unfair business practices.

Currently under the City’s licensing By-law there is a requirement for contractors who work within the City to obtain either a contractor’s license or other form of business license. This process allows the City to have the opportunity to monitor the activities of the licensee with respect to workmanship. It does not currently provide the City the jurisdiction to regulate what a contractor charges for work they have performed.

City staff meet with licensed contractors when citizen complaints are received relating to poor workmanship, performance issues or over-charging. In addition to meeting with a contractor, staff may bring forward a report to the Licensing Tribunal to have a licence modified to “Conditional Status” or even revoked. This has proven to be an effective mechanism for monitoring contractor behaviour. The City does not have authority under the Municipal Act, 2001 to regulate rates charged by contractors.

As mentioned above, staff’s survey of municipalities with backflow prevention by-laws and programs indicates that most municipalities have similar licensing requirements to Hamilton’s. These municipalities also indicated that they routinely encourage property owners to obtain a minimum of three quotes from contractors to ensure they are receiving fair pricing.

It was also noted that, as this By-law relates to the Industrial, Commercial, Institutional and Multi-residential sectors, most property owners affected by the By-law already have in place ongoing relationships, including annual contracts, with plumbing and/or mechanical contractors, which should deter price gouging.

4. Options for payment to mitigate the financial impact for property owners - Staff reviewed what options may be available to the City to assist property owners who will require capital works to comply with the new By-law. The City’s options are limited in this regard given section 106 of the Municipal Act, 2001 which prohibits the giving or lending of money to any manufacturing business or other industrial or commercial enterprise, which is the sector of property owners being addressed under the proposed Backflow Prevention By-law. As such, staff is not recommending any form of direct financial assistance be provided.

Despite the above, City staff recognize that affordability is an important factor in the success of the program. During the public meetings held in November of 2008 there were concerns raised about the affordability. In an effort to address these concerns the user fees associated with this program have been set very modestly, reflecting anticipated cost recovery.

A further review of fees charged in surrounding jurisdictions confirmed that there is a wide variety of fee structures. In general, fees appeared to reflect the variety and complexity of properties captured by the governing By-law. Smaller communities with few industrial and commercial properties appeared to have the lowest program fees. In addition to what staff believe are modest user fees, the time for compliance with this proposed By-law has been extended to assist property owners who may be required to
make capital improvements to comply. Compliance deadlines of 18 to 24 months from the By-law’s approval date, allow property owners to build any necessary expenditures into future budgets.

Staff therefore recommend that the Backflow Prevention Program and associated By-laws be approved in accordance with the Recommendations contained in Report PW09087.

Gerry Davis, CMA
General Manager
Public Works Department