

## Report to Council

**Report Title:** Health and Safety Requirements for Contractors on Municipal Property

**Prepared By:** Chris Wells, Director of Fire and Emergency Services

**Department:** Health and Safety

**Date:** June 22, 2021

**Report Number:** HS2021-01

**File Number:** C11HS

**Attachments:**

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### Recommendation:

That the Council of the Municipality of Brockton hereby receives Report Number HS2021-01 – Health and Safety Requirements for Contractors on Municipal Property, prepared by Chris Wells, Director of Fire and Emergency Services for information purposes and provides staff further direction on the preferred option to ensure the Municipality is meeting the minimum requirements of the Occupational Health and Safety Act.

### Report:

#### Background:

When the Municipality intends to hire a contractor to perform construction work on land or premises that the Municipality owns or occupies, then the Municipality falls under one of two designations within the Occupational Health and Safety Act (OHSA). Brockton becomes either the “Owner” or the “constructor” of the project. For many years it was believed that the Municipality could limit its liability by simply assigning the contractor as the “constructor” which would make the Municipality the “Owner” of the project however the act assigns responsibilities or duties to both designations. As an owner Brockton is responsible for ensuring that “the workplace complies with the regulation [OHSA clause 29(1)(a)(iii)]” and that “no workplace is constructed, developed, reconstructed, altered or added to except in compliance with the Act and regulations [OHSA clause 29(1)(a)(iii)]”. In addition, for this step to limit Brockton’s liability, we would have to ensure that we do not assume direct or indirect control over the work beyond ensuring quality control, and that we do not supervise the contractors work. If we perform either of these functions or we supply any workers or do any work on the site then the Municipality becomes a constructor under the definition of the act and then becomes further responsible “to ensure that every employer and worker on the project complies with the Act and regulations [OHSA clause 23(1)(b)].”

So, if we cannot supervise the contractors work or have any direct or indirect control over their work, how do we meet our requirement for being an owner of the project? For many years industry standard and accepted best practise for limiting constructor or owner liability has been that any business that hires a contractor to

perform construction work on lands or premises that it owns or occupies ensures that the contractor is a) qualified to perform the work, b) that the contractor has appropriate health and safety policies and procedures in place and c) that the workers who will be working on the project have been trained on that policy and program.

Although this process will not guarantee that the Ministry of Labour, Training and Skills Development will not charge a business should there be an incident, recent decisions in the Ontario Court of Justice clarified that it does show due diligence toward enhancing workplace safety and will minimize the Municipality's liability if there is a contravention of the act.

To put this in perspective, staff have reviewed 2020 Capital projects and there were more than 50 projects to which this legislation would have applied. Those 50 projects do not include non-capital projects (operating budget) or the fact that some projects require sub-contractors which adds another layer of liability.

### **Analysis:**

#### **Option A)**

The Municipality could continue doing what we are doing and naming contractors as "constructors" for our projects. Although this can lower our liability if an incident occurs, we will still be responsible for a large percentage of the liability because we will not be able to produce proof of due diligence to show that we ensured the constructor had policies, procedures, training or was certified to do the work. We are simply relying on the contractor's word. Further, if we as the owner provide any workers, for example to control traffic or to supervise in any way, then we increase our liability as we become "constructors" on our own site and as such are liable for the safety of the all contract workers on the site - not just our own employees. This not only opens the Municipality up to fines from the Ministry of Labour but also leaves us vulnerable to lawsuits should a contractor's employee get hurt while working on Municipal property. This option would represent no additional labour or cost to the Municipality up front, but could represent several hundreds of thousands in fines and legal fees (and upwards of millions of dollars in damages) should an incident occur [OHSA clause 66(2)].

#### **Option B)**

The Municipality could limit its risk of liability by auditing contractor's health and safety programs, training and certifications in-house. This audit would apply to contractors bidding on Municipal projects and would represent a significant investment in staff time/labour. Currently the Health and Safety Department is allotted 2 days a week to co-ordinate the Municipal health and safety program which encompasses 5 major departments falling under 2 separate acts and 5 separate regulations. This includes staff training and orientation of new staff, managing of the Health and safety advisory committee, managing the Municipal asbestos program and maintenance of the policies and procedures for the various departments. It would take a considerable amount of time to properly audit the information prescribed by the act for the number of contractors associated with the Municipality. As such it would not be feasible for the health and safety department in its current form to take on this additional task with the resources currently allotted to it. A further report would be required to assess the additional staff time and expertise required and associated budget affects for added staff time and compliment. This option would act like an insurance policy by limiting

the amount of liability the courts would be able to assign to the Municipality should an incident occur on Municipal property.

### **Option C)**

The Municipality could minimize its risk of liability by auditing contractor's health and safety programs, training and certifications through an unaffiliated third-party company called Compliance Sync. This audit would apply to contractors bidding on Municipal projects and would represent a minimal investment in Municipal staff time/labour. In addition, there is no cost to the Municipality for the use of Compliance Sync however it should be expected that companies bidding on our projects would account for the fees they pay to Compliance Sync in the bids they provide to the Municipality. This option also serves as an insurance policy for the Municipality by minimizing the amount of liability the courts would be able to assign to the Municipality should an incident occur on Municipal property. I acknowledge the roll out and timing for implementation of Compliance Sync was a challenge and I regret not informing Council in advance. My intentions were not to cause confusion but to ensure we were meeting our legislative requirements, and minimize Brockton's potential liability due to the vast number of projects we undertake in a year with our current staff compliment. Compliance Sync is a cost-effective way for the Municipality to achieve this without significant affect on the budget. I recognize that there have been some issues brought forward to council regarding Brockton's use of Compliance Sync so I would like to clear up some confusion with regards to the items I am aware have been brought forward to council.

- 1) Compliance Sync does not ask for private information. Worker information is limited to identification by name, job/trade qualifications and health and safety training records. Although Health and safety policies and training records are considered private until the company agrees to release the info this is no different than release of proof of insurance or WSIB registration. Companies have the right to not share this info but most realize that verifying compliance is a cost of doing business and understand that they would not likely get the job if they decided not to produce these items, just as employers recognise that if these items cannot be provided they would be opening themselves up to unacceptable risk. Health and Safety policies and training should be taken just as seriously.
- 2) Compliance Sync applies to contractors who are doing work which falls under the definition of a "project" within the act. In an effort to not miss anyone the initial project was released to many contractors that are affiliated with the Municipality but are not required to register with Compliance Sync based on the work that they are performing on Municipal property. The Acts definition of "project" means a construction project, whether public or private, including:
  - a. the construction of a building, bridge, structure, industrial establishment, mining plant, shaft, tunnel, caisson, trench, excavation, highway, railway, street, runway, parking lot, cofferdam, conduit, sewer, watermain, service connection, telegraph, telephone or electrical cable, pipe line, duct or well, or any combination thereof,
  - b. the moving of a building or structure, and
  - c. any work or undertaking, or any lands or appurtenances used in connection with construction;

- 3) Contractors do not have to register every employee they have on staff. Only workers that are actually performing work on Municipal property need to be registered. Further a contractor does have the option of only registering after they are awarded a contract. Contractors would only need to be compliant prior to commencing work on Municipal property. 81 vendors that the Municipality has recently worked with were already registered with Compliance Sync and 41 vendors have confirmed partnership with the Municipality, 20 of which are local contractors that have registered in the last two weeks. Some of these local vendors were told they were not required to register based on the work they do for the Municipality but have found that Compliance Sync assists them with their health and safety program by providing guidance on health and safety requirements as well as reminders when items are due for renewal so they registered anyway. There are currently 982 vendors registered with Compliance Sync that service Bruce County.
- 4) Compliance Sync does not charge for an annual fee and then per worker on top. The charge is per worker per year and is based on number of employees. For example, a company that registers 2 workers would pay \$99 per worker which is \$198 total annually where as a company who registers 100 workers pays \$35 per worker for a total of \$3,500 total annually. Price breaks are provided at every 5 workers registered up to 30 workers, every 10 workers up to 50 and every 50 up to 200 workers registered. On average, annual verification works out to around \$360 per year. Further Vendors who are not currently working for the Municipality can register for free and park their membership at any time until work opportunities arise.
- 5) Compliance Sync does not take hours to complete. Initial registration can be done online in minutes and verification which takes longer is estimated at 30 minutes. Once registered any client using Compliance Sync can see your verification which allows you to bid on any project that requires Compliance Sync without further cost.

By using a transparent third-party company, the Municipality would be recognizing companies that have already taken steps to show that health and safety is important to them and provide a service to assist those to ensure they meet the requirements under the OHSA. Further it would allow the Municipality to meet the minimum requirements of the Occupational Health and Safety Act efficiently and cost effectively within the current resources provided to the health and safety department. As such it remains my recommendation that council accept option C and I will continue to further communicate with businesses on this transition.

### **Sustainability Checklist:**

What aspect of the Brockton Sustainable Strategic Plan does the content/recommendations in this report help advance?

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|---|-----|
| • Do the recommendations help move the Municipality closer to its Vision? | N/A |
| • Do the recommendations contribute to achieving Cultural Vibrancy?       | N/A |
| • Do the recommendations contribute to achieving Economic Prosperity?     | N/A |
| • Do the recommendations contribute to Environmental Integrity?           | N/A |
| • Do the recommendations contribute to the Social Equity?                 | N/A |

**Financial Impacts/Source of Funding:**

- Do the recommendations represent a sound financial investment from a sustainability perspective? Yes

**Reviewed By:**

**Trish Serratore, Chief Financial Officer**

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**Respectfully Submitted by:**

Chris Wells, Director of Fire and Emergency Services

**Reviewed By:**

**Sonya Watson, Chief Administrative Officer**