



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**Legal Analysis of Proposed By-Laws Respecting Airport
Taxicabs and Limousines**

Date:	March 27, 2007
To:	Licensing and Standards Committee
From:	City Solicitor
Wards:	All
Reason for Confidential Information:	<ol style="list-style-type: none">1. This report contains advice that is subject to solicitor-client privilege.2. This report is about potential litigation that affects the City.
Reference Number:	

SUMMARY

This report is supplemental to the report from the Executive Director, Municipal Licensing and Standards, entitled Impact of Airport Limousines on the Taxicab Industry.

Currently, most taxicabs and limousines that pick up passengers in the City of Toronto are required to have a Toronto licence. However, there is an exception to that requirement for taxicabs and limousines that carry a permit issued under the federal Government Airport Concession Operators Regulations (GACOR permit) picking up passengers in Toronto to transport them to Toronto Pearson International Airport (Pearson). This is known as the “airport exemption”.

The airport exemption was added to the *Municipal Act* in December of 1978. At that time, it was also added to the former Municipality of Metropolitan Toronto’s licensing by-law, and subsequently carried forward to the City of Toronto’s Municipal Code Chapter 545, Licensing. The Province did not include the airport exemption in the *City of Toronto Act, 2006* (COTA), although it has been retained for other municipalities in the new *Municipal Act, 2001*. By not including the airport exemption in COTA, the Province has enabled Toronto to decide whether it should also be removed from Chapter 545.

The Executive Director's report discusses a proposal to amend Chapter 545 to require taxicabs and limousines picking up fares to the airport to be licensed by Toronto. This report provides legal advice to City Council respecting that proposal. It also provides legal advice on a proposal to amend Chapter 545 to prohibit dual licensing (that is, prohibit taxicabs and limousines licensed by Toronto from carrying any additional licence or permit issued by another jurisdiction) while grandparenting Toronto-licensed taxicabs that possessed a valid GACOR permit prior to January 1, 2007.

RECOMMENDATIONS

The City Solicitor recommends that:

1. The confidential advice in Attachment 1 remain confidential in its entirety as it consists of legal advice.

FINANCIAL IMPACT

The recommendations in this report will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

At its meeting of January 19, 2007, the Licensing and Standards Committee requested that the Executive Director, Municipal Licensing and Standards, report to the Committee on March 30, 2007 on options for using the powers under the COTA to prevent unlicensed vehicles and out-of-town cars from taking fares from the Toronto taxicab and livery industry.

<http://www.toronto.ca/legdocs/mmis/2007/ls/decisions/2007-01-19-ls01-dd.pdf>

At its meeting of February 16, 2007, the Licensing and Standards Committee referred a communication from Councillor Howard Moscoe to its March 30, 2007 meeting. This communication states that the Committee will consider amending Toronto Municipal Code Chapter 545, Licensing, § 545-2B(1) to remove the "airport exemption". The communication also states that the Committee will consider amending Chapter 545 by adding the following provisions:

No taxicab or livery vehicle licensed by the City of Toronto be permitted to carry any additional license or permit issued by another jurisdiction, and no Toronto license or permit will be allowed to be affixed to a vehicle already carrying a license or permit issued by another jurisdiction; but

Notwithstanding that, taxis currently licensed by the City of Toronto that are in possession of a valid GACOR (Government Airport Concession

Operators Regulations) permit prior to January 1, 2007 shall be grandfathered.

<http://www.toronto.ca/legdocs/mmis/2007/ls/bgrd/backgroundfile-1731.pdf>
<http://www.toronto.ca/legdocs/mmis/2007/ls/decisions/2007-02-16-ls02-dd.pdf>

Confidential legal advice is required to fully comment on these proposals.

ISSUE BACKGROUND

Please see the report of the Executive Director, Municipal Licensing and Standards, entitled Impact of Airport Limousines on the Taxicab Industry.

COMMENTS

Current Licensing and Permit Requirements for Airport Trips

To pick up passengers at Pearson Airport and transport them to Toronto, a taxicab or limousine must:

1. Possess a GACOR permit issued by the Greater Toronto Airport Authority (GTAA);
2. Have a pre-arranged fare; or
3. Have been requested to pick up the fare by the GTAA.

Any taxicab or limousine properly licensed by a municipality may drop fares off at Pearson without a GACOR permit. As a result, any Toronto-licensed taxicab or limousine can bring fares to Pearson. If the taxicab or limousine is not entitled to pick up passengers, as described above, it must return to the City empty.

With the current airport exemption, taxicabs and limousines that have a GACOR permit can pick up passengers in Toronto and transport them to Pearson without a Toronto licence.

Currently, 360 taxicabs and 276 limousines, or a total of 636 vehicles have been issued permits by the GTAA.

With the airport exemption in place, any of these 636 vehicles can legally transport passengers in the City of Toronto to Pearson, then transport passengers from Pearson back to Toronto.

Of these vehicles, 79 are taxicabs currently licensed by the City of Toronto. No limousines currently licensed by the City of Toronto carry a GACOR permit.

Effect of Removing the Airport Exemption

The effect of removing the airport exemption from Chapter 545 would be that all taxicabs or limousines picking up passengers in the City would require a Toronto licence.

The 557 taxicabs and limousines issued GACOR permits but not holding Toronto licences would not be able to legally pick up passengers within the City's boundaries to transport them to Pearson Airport unless they first obtained a Toronto licence. They would still be able to pick up passengers at the airport and drop them off in Toronto, but would have to return to Pearson without passengers.

Removing the airport exemption would not affect the operation of Toronto-licensed taxicabs and limousines. As before, they would be able to pick up passengers in Toronto and drop them off at the airport. Unless they have a GACOR permit, have a pre-arranged fare or have been requested to take passengers by the GTAA, they would not be able to transport passengers back to Toronto.

Effect of Removing the Airport Exemption and Preventing Dual Licensing

The second proposal is that, in conjunction with removing the airport exemption, taxicabs and limousines licensed by the City of Toronto would be prohibited from holding a licence or permit from another jurisdiction. An exception would be made for taxicabs currently licensed by the City of Toronto that are in possession of a valid GACOR permit prior to January 1, 2007.

The combined effect of these two proposals would be to prevent the 557 vehicles holding a GACOR permit but that do not have a Toronto licence from obtaining one. Additionally, no City of Toronto taxicabs or limousines, other than the 79 grandparented licensees, would be able to obtain GACOR permits.

As a result, only the 79 taxicabs currently in possession of a City of Toronto licence and a GACOR permit could legally transport passengers both to and from Toronto and Pearson, as opposed to the 636 that currently are permitted to do so.

Relevant COTA Provisions

COTA provides in subsection 11(1) that by-laws are without any effect to the extent of any conflict with provincial or federal legislation, regulations, or other instruments of legislative nature. According to both the common law and s. 11 of the COTA, conflict exists when:

1. A person cannot simultaneously comply with the by-law and the provincial or federal legislation or legislative instruments; or
2. Where the by-law frustrates the purpose of the provincial or federal legislation or legislative instrument.

The regulation-making authority in the COTA should also be noted when considering enacting licensing by-laws. Section 25 allows the Provincial government to make regulations imposing limits and conditions on the City's power to make by-laws under section 8. The regulation can last for up to 18 months, and by-laws would be inoperative to the extent of the limits, conditions or prohibition put in place by the regulation.

Section 119 allows the Provincial government to make regulations exempting any business or class of business from a licensing by-law and imposing conditions or limits on the powers of the City to enact licensing by-laws.

It should also be noted that s. 5 of the COTA states that the Minister of Municipal Affairs and Housing shall initiate a review of the Act two years after it comes into force, and then every five years.

Further comments are included in the confidential attachment.

CONTACT

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SIGNATURE

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ATTACHMENTS

Attachment 1 – Confidential advice