



## STAFF REPORT ACTION REQUIRED

### Review of Taxicab Licensing Thresholds

<b>Date:</b>	November 13, 2007
<b>To:</b>	Licensing and Standards Committee
<b>From:</b>	Executive Director, Municipal Licensing and Standards
<b>Wards:</b>	All
<b>Reference Number:</b>	5579

#### **SUMMARY**

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In response to a direction from the Licensing and Standards Committee, staff reviewed the City's business licensing thresholds, and specifically with respect to their impact on taxicab drivers.

An industry stakeholder consultation was held on August 28, 2007 to obtain feedback on the issues raised by the Committee.

On the basis of this consultation, and further research and analysis by staff, a number of recommendations were made, of which the main ones were to introduce a "demerit-point" style system for bylaw offences, and to eliminate the requirement for trip sheets and, in their place, require operator log sheets.

Staff conclude, however, that the way the thresholds are currently structured already address some of the concerns expressed by the Committee. Because of this, staff do not believe that it is necessary to increase the bylaw thresholds to ten convictions (or its equivalent of ten points, under the system that is being proposed in this report), as such a measure would effectively undermine their original purpose.

The City Solicitor was consulted in the preparation of this report.

## **RECOMMENDATIONS**

**The Executive Director of Municipal Licensing and Standards recommends that:**

1. the amendments to Appendix K of Toronto Municipal Code Chapter 545, Licensing, in Appendix A of this report be adopted to replace the current bylaw thresholds with a demerit-point system;
2. The amendments to Toronto Municipal Code Chapter 545, Licensing, in Appendix B be adopted to effectively replace the current requirement for taxicab drivers to maintain trip sheets with one to maintain an operator log;
3. the amendments to Appendix D of Toronto Municipal Code Chapter 545, Licensing, in Appendix C of this report be adopted to replace the sample trip sheet with a sample operator log; and
4. City staff be authorised and directed to take any other action necessary to implement the proposed bylaw amendments.

## **IMPLEMENTATION POINTS**

Modifications will need to be made to the Division's Licensing system to reflect the bylaw amendments. These can be accomplished with current resources.

## **FINANCIAL IMPACT**

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The recommendations in this report have no financial implications beyond those already approved in the current year's budget.

## **DECISION HISTORY**

At its meeting of June 29, 2007, the Licensing and Standards Committee directed staff to report back on the City's licensing thresholds as well as on the requirement to maintain a trip sheet:

<http://www.toronto.ca/legdocs/mmis/2007/ls/decisions/2007-06-29-ls06-dd.pdf>

## **ISSUE BACKGROUND**

Licensing thresholds are an administrative mechanism used as part of the evaluation process under which new licence applicants and those renewing their licences are scrutinised to determine whether or not the licence should be issued. The thresholds identify offence convictions (and the frequency with which an applicant may be

convicted of the specified offences) that may trigger a staff report to the Toronto Licensing Tribunal (the Tribunal). These staff reports contain recommendations to either grant (with or without conditions), revoke, suspend or set conditions on a licence.

Industry stakeholders have expressed some concern that the thresholds may be flagging licences for relatively minor bylaw infractions. In particular, stakeholders have pointed to bylaw charges for not maintaining a trip sheet (a provision in the bylaw which industry stakeholders feel is no longer relevant for both drivers and the regulator) as a common trigger for thresholds.

## **COMMENTS**

The thresholds are divided into those that apply to mobile businesses and those that apply to stationary businesses and trades. The thresholds identify convictions of offences found in the Toronto Municipal Code, the *Criminal Code of Canada*, the *Controlled Drugs and Substances Act* and, in the case of mobile businesses, the *Highway Traffic Act*. These convictions are considered when determining if a licence will be issued. The thresholds are found in Appendix K of Toronto Municipal Code Chapter 545, Licensing:

[http://www.toronto.ca/legdocs/municode/1184\\_545.pdf](http://www.toronto.ca/legdocs/municode/1184_545.pdf)

If the thresholds are breached by an applicant the licence is not issued and the applicant is given the right to appeal before the Tribunal. The Tribunal may uphold, reject or amend staff recommendations with respect to the licence in question.

## **Thresholds**

### Incidents versus multiple convictions per incident

Concern was expressed by the industry over the fact that threshold violations are based on the number of convictions as opposed to the number of incidents in which those convictions took place. Some stakeholders argued that it was not fair that a licensee might end up in violation of the thresholds because he or she was charged for a number of offences at once. They believed that only the incident and not the convictions should count.

Staff disagree with this perspective. Multiple convictions are indicative of multiple problems. This is especially true if the convictions are of a more serious nature, such as refusing to serve a blind customer or failing to be civil and well-behaved. By not accounting for such charges, their seriousness would effectively be diluted. On the other hand, it is also worth noting that a violation of the thresholds does not result in an automatic revocation or suspension of a licence. If a licensee requests an appeal before the Licensing Tribunal, his or her licence will be deemed to continue until the appeal has been heard. If there are extenuating circumstances that might warrant reconsidering

multiple convictions, staff have the discretion to recommend a lesser penalty and ultimately, even if they do not do so, the Tribunal, as an independent quasi-judicial body, may impose a lesser penalty or none at all.

Despite this, staff have made recommendations to address some of the concerns from the industry by proposing a system that accounts for less serious bylaw infractions. This system is discussed later on in the report, in the section dealing with seriousness of offences.

Owners with multiple locations or vehicles

On a related matter (although not included as part of the original Committee direction), some industry stakeholders pointed out what they considered the inherent unfairness of the thresholds on multiple owners. Under the current system, for example, an owner of ten taxicabs is subject to the same number of convictions as the owner of one taxicab before being flagged by the threshold system. In other words, the thresholds do not take into account the greater exposure faced by multiple owners.

In reality, however, staff have not found this to be a significant issue. Depending on the circumstances of the particular case, staff can raise before the Tribunal the greater exposure of the multiple owner as a mitigating circumstance. The Tribunal, as well, considering the matter on a case-by-case basis, can take into account such circumstances in its deliberations.

Traffic violations on personal vehicles

During the consultation, some industry stakeholders questioned the need to include some types of convictions not directly related to the business activity in the thresholds. For example, should traffic violations in a personal vehicle count towards the thresholds of a licensed driver?

Currently, Criminal Code and Controlled Drugs and Substances Act convictions, whether or not they pertained to a matter directly related to the business, are considered for purposes of the thresholds. Although Highway Traffic Act convictions are counted towards the thresholds, the fact that such a conviction is non-business related would generally be considered a mitigating factor by staff making recommendations to the Tribunal. Bylaw convictions not related to the business activities of the licensee do not count towards the thresholds (e.g., a conviction for failing to comply with a property standards Order relating to the licensee's residence).

Staff believe that it is important to consider the context in which all convictions take place. The Tribunal can then decide whether there are any mitigating circumstances that should be considered.

## Seriousness of offences

In its direction, the Licensing and Standards Committee expressed some concern over a system that might equate Criminal Code with bylaw charges in the application of the licensing thresholds, or which might consider all bylaw infractions of equal seriousness.

Convictions relevant to the thresholds are classified into codes. Code 01 convictions, for example, relate to Criminal Code offences involving minors, including: Interference, exploitation, and luring a child. Code 05 convictions, on the other hand, include less serious offences such as mischief and possession. Generally speaking, an applicant with any Code 01 convictions is not eligible for a licence. Those with Code 02 convictions are not permitted a licence if the conviction occurred in the last ten years. As one moves through the conviction codes, the seriousness of the offence is considered to be less and the number of convictions required to trigger the threshold tends to be higher.

By the time bylaw convictions are considered, a two-tier system is employed. Code 08 convictions, representing mostly adult-business related offences, are currently considered to be the most serious. These trigger the thresholds when three or more convictions have taken place within a twelve-month period. Other bylaw offences are currently not classified. In order for the thresholds to be triggered by these, six convictions are required within a twelve month period. It is worth noting that under the current system, Code 08 and general bylaw convictions cannot combine to trigger the thresholds. They are mutually exclusive for the purposes of the thresholds.

Staff reviewed the way it currently applies bylaw convictions to the thresholds and considered comments from the taxi industry at its consultation session to arrive at its recommendation that a “demerit-point” style system be adopted for bylaw convictions in place of the current system, as described above. Other options explored included leaving the bylaw threshold system as is or eliminating it altogether.

Although in the opinion of staff, the current bylaw thresholds system has worked relatively well, there is some concern from the industry that it may not be appropriate to count minor bylaw offences for threshold purposes. An argument might additionally be made that under the current system certain serious bylaw offences are not being adequately weighed. For this reason staff believe that this review presented a good opportunity to review this aspect of the bylaw and propose a more balanced approach.

Eliminating the bylaw thresholds (but leaving thresholds for *Criminal Code*, *Controlled Drugs and Substances Act* and *Highway Traffic Act* convictions) would not materially reduce total threshold cases. It would, however, eliminate a formal system for tracking and disciplining chronic bylaw offenders. For this reason staff do not recommend outright elimination.

A demerit point system that better balances public interest by tracking and acting on more serious bylaw convictions, staff concludes, is both a more effective and efficient use of

resources. Such a system follows the general structure of the system used for Highway Traffic Act convictions. Different convictions are worth a different number of points. When a licensee reaches a specified point threshold, an enforcement process is triggered.

There are currently over 1,200 applicable bylaw offences for licensed businesses. Staff propose that convictions for these offences be classified in accordance to the seriousness of the charge. Point values would be accorded each conviction accordingly. When a licensee reached seven points within a twelve-month period the thresholds would be triggered. This system would attribute a zero-point value to minor offences, which would in turn not have a thresholds impact for the licensee. This feature would address the widely-held concern amongst the taxi industry that the thresholds are sometimes triggered because of multiple minor tickets.

In determining the most appropriate approach, staff modelled the impact of different point thresholds using 2006 actual offence data. This was done to better understand the impact of the combination of new zero-point offences and more two-point offences on licensees. Compared to the current system, the weight of the various offences under the proposed system (and their relative number as a percent of total offence types) is as follows:

Offence Weight	Proportion of offence types	
	Current System	Proposed System
Two points (equivalent to Code 08 offences)	1.3%	22.7%
One point (equivalent to general bylaw offences)	98.7%	62.1%
Zero points (no equivalent)	0.0%	15.2%
Can offence types be combined for thresholds?	No	Yes

Although there are many more two-point offences under the proposed system, these do not have a major impact on the total number of violations, but do put a greater emphasis on more serious offences, including operating without a licence.

The proposed new seven-point system best balances the overall number of violations as well as the distribution of those violations. The system does not have an unfavourable impact on taxicab drivers; the number of bylaw threshold violations falls from 1 (based on 2006 actual data) to 0 (based on the seven-point model).

#### Raising of bylaw conviction threshold to ten convictions annually

The intent of the licensing thresholds is to ensure public safety by addressing the dangerous and otherwise negligent behaviour of licensees. In 2006, out of 9,954 applicants, 110 taxicab driver licence applicants (both new and renewals) were refused licences by Municipal Licensing and Standards Division for all threshold-related violations. This represents 1.1% of all taxicab driver applicants for that year. It does not

include, however, any potential new applicants that might have walked away after realising that their application would not be successful. However, even if the rate of new applicants flagged by the thresholds were twice as high as that for existing licensees, the overall rate would still not exceed 1.4% of all taxicab applicants. Conversely, it is important to remember that this means that between 98.5 and 99.0 percent of taxicab drivers that operate responsibly in the City were unaffected by the thresholds.

In 2006, only 1 of the 110 taxicab driver threshold violations was due to bylaw convictions. The remaining were due to *Criminal Code, Controlled Drugs and Substances Act* or *Highway Traffic Act* convictions. Raising the number of annual bylaw convictions required to trigger the thresholds to ten (the equivalent of ten points under the proposed system) is akin to eliminating the bylaw requirement from the thresholds, as no licensee has obtained ten bylaw convictions within one year in the recent past. For this reason staff recommend against raising the bylaw threshold limit beyond that already recommended.

## **Trip Sheets**

When the requirement to maintain trip sheets was introduced over 30 years ago, driver compensation was often based on a percentage of revenue generated. The trip sheet was a vital record in supporting that system. In addition, it was a tool for investigating complaints and, perhaps more importantly, criminal activity.

In the last twenty years, the compensation systems for drivers have changed. Generally, the driver keeps what he or she makes after paying a daily or monthly fee and deducting operating costs. There is no regulatory need for much of the information recorded on trip sheets. Additionally, the introduction of in-car cameras, global-positioning system dispatching and the transition to point-of-purchase electronic payment systems are further diminishing the need for trip sheets.

At the same time, however, it is still important for Municipal Licensing and Standards to be able to determine who is operating a given taxicab on any given day and time. The information may be particularly important for investigative staff when following up on complaints from the public. For this reason, staff recommend the trip sheet be eliminated, and replaced with a mandatory operator log.

The log would contain information on who was operating the taxicab at any given date and time. The person in custody of the vehicle would be responsible for maintaining such a log, ensuring it is kept up to date, and providing it to Municipal Licensing and Standards staff upon request. A sample taxicab operator log is provided in Appendix B.

The log would only require two entries per shift: one to sign in at the beginning of their shift and the other to sign out at the end of the shift. It would also provide an incident log in which an extraordinary event should be recorded. The operator log is intended to

eliminate unnecessary work for the driver while still maintaining a record of information important for the purposes of Municipal Licensing and Standards.

## **CONTACT**

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## **SIGNATURE**

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Municipal Licensing and Standards

## **ATTACHMENTS**

Appendix A: Proposed Amendments to Licensing Thresholds  
Appendix B: Proposed Amendments to Chapter 545, Licensing  
Appendix C: Proposed Sample Taxicab Operator Log



Appendix A  
Proposed Amendments to Licensing Thresholds

Replace Appendix K, 1-A (ix) with the following:

- (ix) seven or more bylaw demerit points within the last year;

Repeal Appendix K, 1-A (x)

Replace Appendix K, 1-A (xii) with the following:

- (xii) five or six bylaw demerit points within the 12 months immediately preceding the date of application for a licence or renewal in addition to a suspension pursuant to 1-G or 1-H pertaining to the twelve-month period immediately preceding the previous date of issuance or renewal.

Replace Appendix K, 1-C (xi) with the following:

- (xi) seven or more bylaw demerit points that are more than a year old, but not more than three years old.

Replace Appendix K, 1-E (i) with the following:

- (i) five or six bylaw demerit points concerning the licensed business or individual, or any other of the individual's businesses that are licensed or are required to be licensed, or any of the individual's prior businesses that were licensed or were required to be licensed, within the 12 months immediately preceding the date of application for a licence or renewal; and

Replace Appendix K, 1-G (i) with the following:

- (i) five or six bylaw demerit points concerning the licensed business or individual, or any other of the individual's businesses that are licensed or are required to be licensed, or any of the individual's prior businesses that were licensed or were required to be licensed, within the 12 months immediately preceding the date of application for a licence or renewal; and

Replace Appendix K, 2-A (viii) with the following:

(viii) seven or more bylaw demerit points within the last year;

Repeal Appendix K, 2-A (ix)

Replace Appendix K, 2A (xi) with the following:

(xi) five or six bylaw demerit points within the 12 months immediately preceding the date of issuance or renewal in addition to a suspension pursuant to 2-G or 2-H pertaining to the twelve-month period immediately preceding the previous date of application for a licence or renewal.

Replace Appendix K, 2C (vi) with the following:

(vi) seven or more bylaw demerit points that are more than a year old, but not more than three years old.

Replace Appendix K, 2-E (i) with the following:

(i) five or six bylaw demerit points concerning the licensed business or individual, or any other of the individual's businesses that are licensed or are required to be licensed, or any of the individual's prior businesses that were licensed or were required to be licensed, within the 12 months immediately preceding the date of application for a licence or renewal; and

Replace Appendix K, 2-G (i) with the following:

(i) five or six bylaw demerit points concerning the licensed business or individual, or any other of the individual's businesses that are licensed or are required to be licensed, or any of the individual's prior businesses that were licensed or were required to be licensed, within the 12 months immediately preceding the date of application for a licence or renewal; and

Delete from Appendix K, City of Toronto Municipal Code Offences (Code 08).

Add the following schedule:

For purposes of this table, the following terms shall refer to the offence types indicated:

**ACCESSORY** – includes any bylaw offences in which the licensee knowingly concurs with a bylaw offence.

**ADMINISTRATIVE** – includes any bylaw offences deemed as administrative or minor in nature.

**HEALTH AND SAFETY** – includes any bylaw offences that have a negative impact on the health or safety of the public. This may include, but is not limited to offences relating to:

- (a) the failure to maintain premises or equipment in a sanitary or appropriate working condition;
- (b) the failure to have, or to not have functioning properly, safety equipment; and
- (c) the carrying on of practices that are unsafe or could have negative health implications.

**IMPEDIMENT** – includes any bylaw offences that serve as an impediment to conducting an inspection, but which do not require a specific design to do so. This may include, but is not limited to offences relating to:

- (a) the failure to provide a licence upon request;
- (b) the failure to display a licence, plate or licence number; and
- (c) the failure to provide a required document upon request.

**MISREPRESENTATION** – includes any bylaw offences that deceive the public as to, or otherwise generally misrepresent:

- (a) the legal status of the business, such as whether the owner or the operator are licensed; or
- (b) the service being provided (including the rates or fees being charged).

**OBSTRUCTION** – includes any bylaw offences that are a premeditated measure to obstruct an inspection or a disregard of an order by the Executive Director or his or her designate.

**OPERATIONAL** – includes any bylaw offences that have a negative impact on the goods or services being provided.

<b>Offence Type*</b>	<b>Number of Bylaw Demerit Points</b>
1. Administrative	0
2. Operational, Impediment	1
3. Accessory, Health and Safety, Misrepresentation, Obstruction	2

\* The terms are for reference purposes only. A complete listing of offences, their classification, and bylaw demerit point value is available from Municipal Licensing and Standards.

Appendix B  
Proposed Amendments to Chapter 545, Licensing

Replace 545-141 with the following:

A. Information to be recorded by driver.

- (1) A driver or owner who drives a cab shall keep a record in the form attached hereto as Appendix D at the end of this chapter (hereinafter referred to as an “operator log”) of the operation of the cab, and such record shall contain the following information:
  - (a) The number of the taxicab;
  - (b) The provincial plate number of the vehicle;
  - (c) The date and time of the start and end of each continuous working period;
  - (d) The taxicab driver licence number of the driver for each continuous working period;
  - (e) The signature of the driver for each continuous working period; and
  - (f) The details of any incidents, as per 545-148K(3).
- (2) A driver shall record the starting information required on the operator log prior to the commencement of any continuous work period and shall record the ending information required on the operator log at the conclusion of any continuous working period.

- B. The records shall be kept by the owner, designated custodian, designated agent or lessee, who is responsible for the taxicab or otherwise rents out the taxicab to a taxicab driver, for a period of at least 12 months and shall be open to inspection by the Municipal Licensing and Standards Division which may remove such records and retain the same for a reasonable time.

Amend 545-148K(3) to read:

An owner who drives his or her cab, or a driver, may refuse to serve the first person requesting the service of his or her cab, provided that such owner or driver immediately records his or her reasons for such refusal on his or her taxicab operator log, if such person requiring the service:

Replace Appendix D in Toronto Municipal Code Chapter 545 with the form provided in Appendix C of this report.

Appendix C  
Proposed Sample Taxicab Operator Log

**TAXICAB OPERATOR LOG**

**Taxicab No.** \_\_\_\_\_

**Prov. Plate No.** \_\_\_\_\_

Date			Time	Licence No.	Name	Signature
dd	mmm	yy				
			In:			
			Out:			
			In:			
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Appendix C (continued)

**TAXICAB OPERATOR LOG**  
(Incident Log)

Date			Time	Driver Lic. No.: D01										Location
dd	mm	yy												
<b>Particulars</b> <i>(attach a separate sheet, if necessary):</i>														

Date			Time	Driver Lic. No.: D01										Location
dd	mm	yy												
<b>Particulars</b> <i>(attach a separate sheet, if necessary):</i>														

Date			Time	Driver Lic. No.: D01										Location
dd	mm	yy												
<b>Particulars</b> <i>(attach a separate sheet, if necessary):</i>														