



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

Court Application and Clarification, Correction, and Updating of By-law No. 706-2005 respecting limousine businesses

Date:	November 14, 2007
To:	Licensing and Standards Committee
From:	City Solicitor
Wards:	All
Reason for Confidential Information:	The Confidential Attachment to this report is about litigation or potential litigation that affects the City and contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

The purpose of this report is to seek clarification of a previous recommendation adopted by City Council respecting stretch/sedan vehicle ratios, to advise of various matters in By-law No. 706-2005 which require correction and to recommend deletion of archaic regulations respecting residency requirements and advertising approvals governing limousine businesses. In addition, this report advises of a court application challenging the validity of By-law No.'s 706-2005 and 217-2006.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council confirm that recommendation 1(c) contained in Planning and Transportation Committee Report No. 4, Clause No. 1 entitled Licensing of Livery Vehicles in the City of Toronto, as adopted by City Council on May 17, 18 and 19, 2005 was intended to mean that every limousine service company shall have and maintain service agreements for at least one stretch limousine and at least two sedan limousines;

2. The residency requirement governing limousine owners contained in section 545-142A(4)(a) of Chapter 545, Licensing, be repealed;
3. The advertising approval requirements governing limousine owners contained in section 545-136B of Chapter 545 be repealed;
4. The draft bill attached hereto be enacted;
5. The Confidential Attachment to this report remain confidential and not be publicly released; and
6. The appropriate City Officials be authorized and directed to take all necessary steps to give effect thereto.

FINANCIAL IMPACT

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

DECISION HISTORY

Since 2001, the former Licensing Sub-Committee and the former Planning and Transportation Committee have considered various reports regarding the licensing and regulating of limousine businesses. Most recently, at its meeting on May 17, 18 and 19, 2005, City Council adopted the recommendations contained in Planning and Transportation Committee Report No. 4, Clause No. 1 entitled Licensing of Livery Vehicles in the City of Toronto (the "2005 recommendations").

ISSUE BACKGROUND

By the adoption of the 2005 recommendations, City Council authorized various changes to the regulations governing limousine businesses. These changes included repealing the previous limit on the number of limousine owners' licences, mandating a minimum fare, establishing a licence requirement for limousine service companies and mandating that these companies operate both sedan and stretch vehicles.

By-law No. 706-2005, enacted on July 21, 2005, was intended to implement the 2005 recommendations. For various reasons, this by-law contains various drafting and other errors which require correction. In addition, recommendation No. 1(c) contained in the 2005 recommendations is ambiguous and requires clarification in order to be properly implemented. This recommendation deals with the number and type of vehicles required to be operated by limousine service companies.

COMMENTS

The Toronto Livery Association, the Ontario Limousine Owners Association and Taras Danylevich have commenced a court application challenging the validity of By-law Nos. 206-2005 and 217-2006. The court application was issued on July 20, 2006 and served on the City on or about February 14, 2007. The City received the Applicants' affidavits on or about May 31, 2007. My assessment of this court application is contained in the confidential attachment to this report.

As a result of this court application, my office has reviewed the by-law in detail and we have become aware of various drafting and other errors contained in the by-law. These matters are of varying significance, ranging from very minor technical matters to more significant issues involving ambiguous provisions and provisions which were enacted without authority and without notice.

Action Item: Clarification of Recommendation No. 1(c) respecting Fleet Ratios

Recommendation No. 1(c) contained in the 2005 recommendations requires limousine service companies to operate a set ratio of stretch vehicles to sedan vehicles. The provisions of By-law No. 706-2005 which implement this recommendation are ambiguous and require clarification. Part of the reason for this ambiguity is that recommendation No. 1(c) itself is ambiguous.

Recommendation No. 1(c) requires, among other things, that as "a minimum licence requirement", limousine service companies must operate "at least one stretched vehicle for every two sedan vehicles up to a maximum of four sedan vehicles..."

It is arguable that there are at least three possible interpretations of this part of the recommendation. First, it could mean that these businesses must operate at least one stretch vehicle and at least two sedan vehicles. Second, it could mean that these businesses must operate at least one stretch vehicle and, if they do so, they may operate up to 4 sedan vehicles. Third, it could mean that these businesses can operate without a stretch vehicle if they operate only one sedan vehicle.

The Municipal Licensing and Standards Division advises that the intent in proposing the stretch/sedan ratio was that these businesses must, as a minimum licence requirement, operate at least one stretch vehicle and at least two sedan vehicles. I further understand that this interpretation is the one which has been applied by the Municipal Licensing and Standards Division following the enactment of By-law No. 706-2005.

To ensure that By-law No. 706-2005 is corrected such that it accurately reflects City Council's intentions, it is recommended that City Council confirm that its intention in adopting recommendation No. 1(c) was that every limousine service company shall have and maintain service agreements for at least one stretch limousine and at least two sedan limousines.

Action Item: Deletion of Archaic Provisions

In dealing with this matter, we have become aware of two provisions which have governed limousine businesses for some time but which are now of little utility and which have not been enforced for some time. The first provision requires purchasers of limousines to be residents of the City of Toronto. The second provision deals with advertising and requires limousine owners to submit their advertising materials to the Municipal Licensing and Standards Division for approval prior to use. This applies to all forms of advertising including handbills and posters.

These provisions have been in place at least since 1969. The rationale for these provisions when first enacted is currently unclear. Whatever that rationale, the Municipal Licensing and Standards Division advises that these provisions have not been enforced for some time. As it pertains to the residency requirement, given the growth of the GTA area in the past few decades, it is not unusual for people who work in Toronto to live outside of the City. The residence requirement governing limousine purchases appears, therefore, onerous and serves little purpose at this time. As for the requirement for prior approval of all advertising, in addition to the apparent lack of any rationale for this regulation, there is a strong argument that it is not consistent with the right to freedom of expression within the meaning of section 2(b) of the *Canadian Charter of Rights and Freedoms*. In effect, this provision gives the Municipal Licensing and Standards Division complete control over the content of all advertising used by these businesses. This form of prior restraint of expression, particularly where there is no apparent justification for the prior restraint, is highly vulnerable to successful legal challenge.

Information Item: Corrections Required

The remainder of this report summarizes the reasons for the technical corrections to By-law No. 706-2005. In the ordinary course, technical amendment bills can be submitted without an accompanying report. In this case, given the nature and extent of the corrections, I felt it prudent to advise City Council of these corrections.

Before the enactment of By-Law No. 706-2005, limousine businesses and taxicab businesses were both regulated by Article VIII of Chapter 545. By-law No. 706-2005 implemented the 2005 recommendations by separating limousines from Article VIII of Chapter 545 and creating a new article governing limousine businesses.

The difficulty is that recommendation 2(b) contained in the 2005 recommendations contemplated further review prior to the creation of a separate article governing limousine businesses. Although it would have been preferable for the new article to have been created only after this further consultation, this is essentially a technical matter which does not affect the content of the regulations governing limousine businesses. The fact that limousine regulations are now contained in an article separate from the taxicab article does not affect the substance of these regulations.

Chapter 545 is structured such that the different classes of businesses required to be licensed are governed by regulations contained in separate articles under that Chapter. Accordingly, in and of itself, the creation of a new article governing limousine businesses is entirely consistent with the structure of the chapter as a whole.

However, as a result of the creation of a new article governing limousine businesses, some regulations which only governed taxicabs were inadvertently applied to limousines in the new article and some regulations which previously only applied to limousine owners were inadvertently extended to apply to limousine service companies. These matters require correction by way of the attached bill as they were not authorized by the 2005 recommendations. This includes such matters as regulations governing the use of child safety locks, seat belts and air-conditioning, a minimum age requirement for replacement vehicles, the provision of receipts for fares, custody and control of limousines, smoking (this has been superseded by the *Smoke-Free Ontario Act*), advertising, maximum shift hours, filing of corporate documents and fare schedules, transfers in controlling interest, signs, plates, and inspection decals on limousines, taximeters, exclusive concession agreements, male/female wage equity provisions (this is also governed by the *Human Rights Code*), and prohibitions against false representations and the use of limousines for prostitution.

In addition to the above matters, By-law No. 706-2005 contains a number of additional provisions which require correction because they were not authorized by the 2005 recommendations or because they do not properly implement the 2005 recommendations. As described below, the Municipal Licensing and Standards Division is continuing to review the limousine regulations. This review will include consideration of regulations which were inserted in By-law No. 706-2005 in error but which may be regulations necessary for the proper regulation of these businesses. These various corrections can be summarized as follows:

- Repeal of provisions governing limousine service companies regarding custody and control of limousine vehicles and provisions which require these businesses to ensure that limousine owners and drivers are licensed by the City;
- Re-instatement of the previously-existing sale and death-transfer provisions governing limousine owners;
- Correction of fare regulations: correction of the rationale for the minimum fare provisions in the preamble to the by-law; potential conflict between the minimum fare regulation and other provisions of By-law No. 706-2005 which require limousine businesses to file a schedule of rates and to only charge fares in accordance with those schedules of rates; repeal of an ambiguous provision which has the effect of extending the minimum fare regulations beyond the 2 hour period authorized by Council.

- Inclusion of minimum number of vehicle inspections and inclusion of requirement that fares be pre-arranged at least 20 minutes prior to the pick-up time.
- repeal of provisions which:
 - make it an offence for limousine service companies to prevent limousines from attending scheduled vehicle inspections;
 - govern the stationary used by limousine service companies;
 - require limousine service companies to ensure compliance with insurance regulations governing limousine owners, and provisions which permit limousine service companies to insure limousine vehicles as an alternative to the requirement that limousine owners file proof of such insurance; and
 - deal with the use of direct dial telephones in limousine vehicles.

Continuing review and consultation

Following the adoption of the 2005 recommendations, the Municipal Licensing and Standards Division has continued its review of the limousine regulations and has continued to hold industry consultation meetings. I understand that this review will include consideration of regulations which were inserted in By-law No. 706-2005 in error but which may be regulations necessary for the proper regulation of these businesses. This includes review of such matters as custody and control of limousines and sales and transfers of limousines. I understand that the Municipal Licensing and Standards Division will be reporting further in due course on the outcome of this further review.

CONTACT

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SIGNATURE

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ATTACHMENTS

1. Confidential Attachment 1 – Toronto Livery Association, et al v. City of Toronto Court Application
2. Draft Bill