



**STAFF REPORT
ACTION REQUIRED**
with Confidential Attachment

**Calgary Injunction Decision regarding Unlicensed
Ground Transportation Providers**

Date:	January 8, 2016
To:	Licensing & Standards Committee
From:	City Solicitor
Wards:	All
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City. This report also contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

This report summarizes information regarding the decision of the Court of Queen's Bench of Alberta which granted an interim injunction to the City of Calgary prohibiting individuals from offering services through the UberX platform without a municipal taxicab or limousine licence. The confidential portion of this report (Attachment 1) provides information and legal advice regarding this decision.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council receive this report for information.
2. Council direct that the confidential attachment remain confidential indefinitely as it contains advice that is subject to solicitor-client privilege.

Financial Impact

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

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On November 26, 2015, the Licensing and Standards Committee requested the City Solicitor to report back to the Committee on January 22, 2015 on the outcome of the recent Calgary court injunction and the implication, if any, for the City of Toronto's enforcement activities with respect to unlicensed ground transportation providers.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.LS8.4>

ISSUE BACKGROUND

Taxis and Limousines are Regulated by By-law in Toronto and Calgary

City of Toronto Municipal Code, Chapter 545, Licensing, contains language comparable to Calgary's *Livery Transport By-law* requiring drivers and owners of vehicles to obtain a municipally issued licence to operate a taxicab or limousine if they are transporting passengers for a fare.

In Toronto, following the July, 2015 Superior Court of Justice decision dismissing the City's application against Uber, Chapter 545 of Toronto's Municipal Code was amended to define a "taxicab" as a "passenger motor vehicle for hire, which may be hired by pre-arrangement or by hail for the transportation of persons". A "limousine" is defined as "any automobile, other than a taxicab as defined by this chapter, used for hire for the conveyance of passengers" in the City. Read together, the taxicab and limousine definitions are intended to require that any vehicle used for hire in Toronto must hold a municipal licence.

Uber Operations In Calgary and Toronto

On October 15, 2015, Uber began operating its UberX service in Calgary. At that time, Uber had approximately 500 UberX drivers in Calgary.

UberX services are provided by drivers without a municipal taxicab owner's or driver's licence using their personal vehicles to take passengers to their destinations. Similar to licensed taxis, the fares for UberX rides are based on time and distance travelled. Uber did not offer any other services in Calgary.

In contrast, Uber has operated in multiple capacities in Toronto since 2012 and, specifically, has operated UberX since September, 2014. Uber has said that it has approximately 10,000 UberX drivers registered in the GTA now and UberX drivers provide more than 500,000 UberX rides each month. In Toronto, Uber also operates UberTaxi and UberBlack, among other services, through which individuals may obtain

rides in municipally licensed taxis and limousines. Uber advises, however, that UberX constitutes approximately 85% of its business in Toronto.

COMMENTS

Calgary's Court Application Against UberX Drivers and Vehicle Owners

On November 9, 2015, the City of Calgary issued a court application and named 56 Uber drivers and vehicle owners as respondents, as well as "all other persons who operate as an Uber driver in the City of Calgary". The City of Calgary requested an injunction to prohibit individuals from operating as Uber drivers and transporting passengers for fares in violation of Calgary's by-law. Calgary did not name Uber Canada Inc. or any of its affiliated corporations as parties to the court application.

Calgary's application for an interim injunction was heard on November 13, 2015.

On November 16, 2015, Council of the City of Calgary requested staff to report back to Council by February 22, 2016 proposing amendments to its by-law that would maintain a limit on the number of licensed taxicabs, but create an open-entry system for private for-hire vehicles, such as UberX.

The November 16, 2015 decision of the Council of the City of Calgary directing staff to amend its by-law to permit private for-hire vehicles can be found at the following link: <http://agendaminutes.calgary.ca/sirepub/mtgviewer.aspx?meetid=1810&doctype=MINUTES>

On November 20, 2015, Justice Poelman granted Calgary an interim injunction prohibiting all Uber drivers from operating in the City of Calgary. The next day, Uber shut down all operations in Calgary.

Justice Poelman's November 20, 2015 order was to be in effect until Calgary's application for a permanent injunction was heard on December 17, 2015. However, on December 9, 2015, the City of Calgary and Uber reached an agreement that Uber would suspend its services in Calgary without the need for a further hearing. Calgary and Uber agreed to cooperate in the development of amendments to Calgary's by-laws to allow private for-hire vehicles to operate.

Ongoing Enforcement Action in Toronto

Enforcement action against both individual vehicle owners and Uber is ongoing in Toronto.

In a report dated November 2, 2015, Item LS7.7, Municipal Licensing and Standards ("ML&S") reported to Council on enforcement activities ongoing at that time.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.LS7.7>

Staff Report with Confidential Attachment on Court Decision regarding Uber Transportation Service

Specifically, in August and September, 2015, ML&S has charged owners of vehicles used to provide UberX service for failing to obtain a limousine owner's licence. Presently, over 100 individuals have charges before the Ontario Court of Justice for these offences. In addition, after the City amended Chapter 545 on September 30, 2015, new charges were brought against Uber entities for failing to obtain a taxicab broker licence and entering into prohibited arrangements or agreements to connect unlicensed drivers and owners of taxicabs with passengers seeking taxicab service.

ML&S has also issued, and is continuing to issue, new charges against owners of vehicles being used as unlicensed taxicabs based upon the amendments to Chapter 545. These charges are also before the Ontario Court of Justice.

ML&S is continuing its enforcement actions.

ML&S To Report Further in April, 2016

At its meeting on September 30, October 1, and 2, 2015, Council directed ML&S to report back to the Licensing and Standards Committee on a framework to equitably regulate all ground transportation providers and to begin consultations on the appropriate regulations in the ground transportation industry.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.LS6.1>

ML&S advises that it will report to the Licensing and Standards Committee on these issues in April, 2016.

The Executive Director, Municipal Licensing and Standards, has been consulted in the preparation of this report.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1: Confidential Attachment

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