

To: Corporate Services Committee

From: Jacqueline Long, Interim Commissioner,
Corporate Services Department and H.R.

Report Number: CORP-15-160

Date of Report: October 22, 2015

Date of Meeting: October 26, 2015

Subject: Regulating Designated Driving Services: Designated Driver
Support Vehicles and Insurance Requirements

File: D-2300

1.0 Purpose

This report responds to City Council's September 28, 2015 direction to clarify issues with respect to Designated Driver (D.D.) chase cars (referred hereafter as D.D. Support Vehicles) and insurance requirements.

2.0 Recommendation

That the Corporate Services Committee recommend to City Council:

That Council pass a by-law in the form of Attachment 2 to Report CORP-15-160 to establish a licensing system for Designated Driving Services operating within the City of Oshawa.

3.0 Executive Summary

Not applicable.

4.0 Input From Other Sources

Finance Services and Legal Services were consulted in the preparation of this report.

5.0 Analysis

5.1 Background

At its June 29, 2015 meeting, Council directed staff (**Attachment 1**) to prepare a by-law to amend Licensing By-law 12-2005, as amended, General Fees and Charges By-law 13-2003, as amended and Taxicab By-law 50-2003 as amended to establish a system of licensing for Designated Driving Services. Staff prepared amending By-law 111-2015 for

Council's consideration at its September 28, 2015 meeting. Council referred By-law 111-2015 back to staff to provide greater clarification with respect to D.D. Support Vehicles and insurance requirements; this report responds to Council's direction.

5.2 D.D. Support Vehicles

A D.D. Support Vehicle (also commonly known as a chase car) is a motor vehicle used by a D.D. to assist their D.D. colleagues while providing a Designated Driving Service. This assistance typically involves a D.D. operating the Support Vehicle to deliver a D.D. to a customer's vehicle; following the customer's vehicle to the customer's residence; and picking up the D.D. once they have finished providing the Designated Driving Service.

Council directed staff, at its June 29th and September 28th meetings, to establish the following standards respecting D.D. Support Vehicles:

- Standards pertaining to the size, placement and content of roof lights
- Restriction on the conveyance of passengers (with the exception of D.D.'s) in the D.D. Support Vehicle
- Requirement to display D.D. Broker markings, contact and City of Oshawa licensing information
- Requirement to be insured for how the motor vehicle is being used

As per Council's direction, staff reviewed the requirements for D.D. Support Vehicles and have identified a need to regulate the operator of the D.D. Support Vehicle. Staff are recommending that the operator of the D.D. Support Vehicle be licensed as a Designated Driver for the following reasons:

- The City will be able to enforce standards that regulate D.D. Support Vehicles in a more efficient and effective manner
- Ensures that the D.D. Support Vehicle is insured for how the vehicle is being used
- Enhances the safety for the customer and the other D.D.
- Individuals providing Designated Driving Services occasionally interchange between roles as a D.D. operating a customer's vehicle and an as a D.D. operating a Support Vehicle

5.3 Insurance Requirements for Designated Driving Services

Staff have contacted various sources within the Insurance Industry to enquire about applicable insurance coverages for businesses operating as a Designated Driving Service in addition to how such services may affect a customer's personal vehicle insurance.

While the Insurance Industry is presently examining the topic of Designated Driving Services, staff are not aware of any insurance product that is specifically tailored for the D.D. Industry. The insurance requirements proposed by staff, and endorsed by Council, establish a minimum level of protection for customers and the D.D. Industry.

In general terms, automobile insurance provides coverage for the driver and passengers of the vehicle in which they are travelling while the insured vehicle is being operated with the owner's permission. Given that the customer's automobile insurance policy is considered as primary coverage, when using a Designated Driving Service, any claims resulting from an accident with the customer's vehicle caused by the D.D. may affect the customer's insurance record regardless of the fact that the D.D. was operating the customer's vehicle.

It is incumbent on the customer who considers using a Designated Driving Service to contact their automobile insurance provider to ensure that they have appropriate coverage prior to using a Designated Driving Service.

Similarly, it is necessary for the D.D. and Designated Driving Broker to ensure that the D.D. Support Vehicle is appropriately insured for how the vehicle is being used.

5.4 Amendment to Designated Driving Broker Insurance Requirements

City Council and the Corporate Services Committee have received comments from Designated Driving Brokers expressing concerns that a proposed standard requiring all Designated Drivers who have entered into an agreement with the Designated Driving Broker be insured under its Commercial General Liability (C.G.L.) insurance policy presented two (2) significant barriers to compliance. Specifically, because some Designated Drivers are hired as contractors, it may not be feasible:

- a) for the Designated Driving Broker to continually insure its D.D. contractors in a timely manner given their transient nature; and
- b) that it may not be possible to insure contractors under their C.G.L. insurance policy.

Staff have reviewed the aforementioned concern and have identified the following two (2) types of Designated Drivers that require C.G.L. coverage:

- D.D.'s who are **employees**; and
- D.D.'s who operate as **contractors**.

The principal issue is that D.D.'s who operate as contractors may require their own C.G.L. insurance policy as Designated Driving Brokers may not be able to extend their C.G.L. coverage to contractors. To address this issue, Staff are recommending that the original proposed provision in Schedule "A" requiring a Designated Driving Broker's C.G.L. insurance policy to:

3.(a)iii) "[insure] all Designated Drivers who have entered into an agreement with the Designated Driving Broker for dispatch services;"

be amended to:

3.(a)iii) "insure all Designated Drivers who are employees of the Designated Driving Broker;"

This will ensure that the Designated Driving Broker's C.G.L. insurance policy provides coverage for D.D.'s who are **employed** by the Broker.

Additionally, staff are recommending that an additional Designated Driving Broker Licence Condition be included requiring Designated Driving Brokers to ensure that D.D.'s who are affiliated with their Brokerage are appropriately insured. This requires the Designated Driving Broker to ensure that their D.D. **contractors** have appropriate insurance coverage such as C.G.L. insurance.

5.5 Proposed By-law

Attachment 2 is the draft proposed by-law based on Council's June 29, 2015 and September 28, 2015 approved licensing framework and staff's review of Designated Driver Support Vehicle standards and insurance requirements; following are its key features (parenthetical references are to section numbers in the proposed draft by-law):

- a) defines "Designated Driving Services" (1 (a)), "Designated Driving Broker" (1 (b)), "Designated Driver" (1 (c)), "Designated Driver Support Vehicle" (1 (d)) and "Registered Motor Vehicle Owner" (1 (e));
- b) establishes licensing fees for Designated Drivers and Designated Driving Brokers (4);
- c) amends definition of "Taxicab" to exclude licensed Designated Drivers (6);
- d) establishes licensing requirements (Schedule "A" (1)) and licensing conditions (Schedule "A" (2)) for Designated Drivers;
- e) requires Designated Driving Brokers to be appropriately insured (Schedule "A" (3)) and establishes licensing conditions for Designated Driving Brokers (Schedule "A" (4)); and,
- f) establishes standards for Designated Driver Support Vehicles (Schedule "A" (5)).

6.0 Financial Implications

There are no financial implications directly related to the recommendations in this report.

7.0 Relationship to the Oshawa Strategic Plan

The recommendation in this report is consistent with the theme “A Safe Community” of the Goal, “Social Equity”, by developing by-laws that address community safety and consumer protection concerns.

A handwritten signature in black ink, appearing to read 'J. Conlin', with a large loop at the start and a long horizontal stroke at the end.

Jerry Conlin, Director,
Municipal Law Enforcement and Licensing Services

A handwritten signature in blue ink, reading 'Jackie Long', with a large loop at the start and a long horizontal stroke at the end.

Jacqueline Long, Interim Commissioner,
Corporate Services Department and H.R.

Attachments

Twelfth Report of the Corporate Services Committee

1. Colleen Monk on Behalf of A Ryde Home Designated Drivers Advising They Do Not Carry Passengers in Their Personal Vehicles (CORP-15-75)

Luke Bazely, DriverSeat Inc., Expressing Concerns Related to Report CORP-15-74 (CORP-15-82)

James Lyle Hie, Peoples Choice Professional Designated Drivers In Support of the Regulation of Designated Driving Services (CORP-15-83)

Regulation of Designated Drivers Follow-Up Report (CORP-15-74)

Recommendation

That staff prepare a by-law to amend Licensing By-law 120-2005, as amended, General Fees and Charges By-law 13-2003, as amended, and Taxicab By-law 50-2003 as amended in a form consistent with Option "C" in Report CORP-15-22 and the following changes be made to Attachment 1 of CORP-15-74 to establish a system of licensing for Designated Driver Service Providers:

D.D. Driver Licensing Requirements

1. Criminal Information Report with Vulnerable Sector Screening;
2. Driver's Abstract;
3. Proof of "G" (minimum) Driver Licence;
4. Proof of Affiliation with Licensed D.D. Broker;
5. Medical Clearance Letter;
6. D.D. Drivers must be 25 years of age and over.

D.D. Broker Licensing Requirements

1. Proof of Commercial General Liability (C.G.L.) Insurance in an amount of not less than \$2 million per accident or occurrence. The C.G.L. insurance policy required by D.D. Brokers, shall not be limited to, but shall include:
 - a) a liability limit of not less than \$2 million per accident or occurrence;
 - b) the D.D. Broker and owner(s) of the D.D. Broker named as Named Insured(s);
 - c) all D.D. Drivers affiliated with the D.D. Broker are insured; and,
 - d) include Non-owned Automobile liability coverage.

2. That the D.D. Broker Licensing Requirements include an Ontario Master Business Licence or Articles of Incorporation.

D.D.s and the Calculation of Fares

1. Fare is negotiated between D.D. Driver and Client.

D.D.s and the Conveyance of Passengers

1. D.D. Driver is prohibited from conveying passengers in their chase vehicle.
2. D.D. Drivers may convey the registered vehicle owner or authorized operator and their passengers subject to the following conditions:
 - a) only passengers that arrived to a destination in the client's vehicle are to be transported by the D.D. Driver in the client's vehicle;
 - b) the D.D. Driver is permitted to convey passengers subject to the availability of seat belts in the client's vehicle and in compliance with applicable law.
3. D.D. Driver is allowed to transport passengers and the client's vehicle to more than one (1) residence.

D.D. Chase Vehicle Standards

1. D.D. chase vehicle must be insured for how the vehicle is being used.
2. Must display D.D. Broker Markings, Contact, and Licensing information on D.D. chase vehicle.

D.D. Driver Operating Requirements

1. Must confirm/obtain: Ownership and insurance and registered vehicle owner's or authorized user's consent.
2. D.D. Driver must prominently display D.D. Driver Licence.
3. D.D. Driver must maintain a paper or electronic trip log.

Attention: Corporate Services Department, Municipal Law Enforcement and Licensing Services

Action Taken: Carried as amended



**By-law -2015
of The Corporation of the City of Oshawa**

Being a By-law to further amend Licensing By-law 120-2005, as amended, General Fees and Charges By-law 13-2003, as amended and Taxicab Licensing By-law 50-2003, as amended to provide for the licensing, regulating and governing of Designated Driving Services.

WHEREAS:

1. Council of The Corporation of the City of Oshawa considers it desirable and necessary to license, regulate and govern Designated Driving Services for social well-being, for the health, safety and well-being of persons and for the protection of persons and property.

NOW THEREFORE the Council of The Corporation of the City of Oshawa enacts as follows:

1. Section 2 of By-law 120-2005, as amended, ("Licensing By-law") is further amended by adding each of the following definitions:

(a) "Designated Driving Services" means the transportation of an impaired Registered Motor Vehicle Owner and their passengers, where applicable, in the Registered Motor Vehicle Owner's vehicle from a licensed establishment or social engagement within the City to one or more residences for payment of a salary, a fee or for any other consideration;

(b) "Designated Driving Broker" means any Person who accepts or communicates orders or information in any way related to the provision of Designated Driving Services by a Designated Driver to another Person ("dispatch services");

(c) "Designated Driver" means:

i) any Person who operates a Motor Vehicle owned by another Registered Motor Vehicle Owner for the purposes of providing Designated Driving Services; or

ii) any Person who operates a Designated Driver Support Vehicle,

but does not include a "Driver" while operating a "Taxicab" as those two terms are defined by the City's Taxicab Licensing By-law.

(d) “Designated Driver Support Vehicle” means a Motor Vehicle operated by a Designated Driver for the purposes of assisting another Designated Driver in the provision of Designated Driving Services.

(e) “Registered Motor Vehicle Owner” means the person shown to be the owner of a Motor Vehicle according to the records maintained by the Registrar of Motor Vehicles for the Province of Ontario and includes a lessee of a Motor Vehicle pursuant to a written lease contract or an authorized operator of a Motor Vehicle.

2. Schedule “A” to the Licensing By-law is further amended by adding after the row, “Carnival”, the following row:

Designated Driving Services	See Schedule “N”
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3. The Licensing By-law is further amended by adding Schedule “A” to this By-law as Schedule “N” to the Licensing By-law.
4. The General Fees and Charges By-law 13-2003, as amended, is further amended by adding to its Schedule “A” within the table entitled, “Licensing – annual fee unless otherwise noted”, the following rows:

Designated Driver	\$150 (valid for two years)
Designated Driving Broker	\$250

5. The Taxicab Licensing By-law 50-2003, as amended, is further amended by adding to section 3.1 in the definition of “Driver” the words at the end of the sentence “but does not include a licensed Designated Driver as defined in the Licensing By-law 120-2005”.
6. The Taxicab Licensing By-law 50-2003, as amended, is further amended by replacing in section 3.1 the definition of “Taxicab” with the following:

“**Taxicab**” includes any Motor Vehicle used for hire in the conveyance of Persons from place to place within the City to any point inside or outside that area, but does not include a bus operated by Oshawa Transit Commission or under licence under The Public Vehicles Act, an ambulance, a funeral hearse, a Motor Vehicle operated by Handi Transit

Incorporated, a Motor Vehicle operated by a licensed Designated Driver pursuant to the Licensing By-law 120-2005, as amended, or a Limousine or a Motor Vehicle used for hire in the conveyance of Persons from within the City to an airport owned and operated by the Crown in right of Canada situate outside that area if the Motor Vehicle bears a valid and subsisting plate issued in respect of such airport under The Government Airport Concession Operations Regulations made under the Department of Transport Act (Canada);

7. The Taxicab Licensing By-law 50-2003, as amended, is further amended by adding to section 3.1 in the definition of "Taxicab Broker" the words at the end of the sentence "but does not include a licensed Designated Driving Broker as defined in the Licensing By-law 120-2005".
8. This By-law shall be effective on April 4, 2016.

By-law passed this day of , 2015.

Mayor

City Clerk

Schedule "A" to By-law -2015

Schedule "N" to By-law 120-2005

Designated Driver Licence Requirements

1. In addition to other requirements of the Licensing By-law, the Director may refuse to accept an application for a licence unless the application is submitted on forms approved by the Director and includes the following respecting the Designated Driver:
 - (a) a Criminal Information Report containing the results of a search of the Canadian Police Information Centre which includes a list of all criminal convictions for which a pardon has not been received, all outstanding criminal charges, and the results of a Vulnerable Sector Check, issued within the thirty (30) day period immediately preceding the date on which the application is submitted;
 - (b) an Ontario Driver's Record from the Ministry of Transportation (Driver's Abstract) issued within the thirty (30) day period immediately preceding the date on which the application is submitted;
 - (c) proof of, minimally, a current class "G" driver's licence issued by the Province of Ontario which is in good standing according to the records of the Ministry of Transportation;
 - (d) proof of having entered into an agreement with a licensed Designated Driving Broker for the provision of dispatch services;
 - (e) proof that the Applicant is an individual who is at least twenty-five (25) years of age;
and
 - (f) a City-prescribed certificate prepared by a duly qualified medical practitioner which states that the Applicant is physically and mentally capable of performing the duties of a Designated Driver and is free from communicable diseases.

Designated Driver Licence Conditions

2. In addition to other requirements of the Licensing By-law, no Person shall act as a Designated Driver except pursuant to a licence issued pursuant to this Licensing By-law and except pursuant to the following conditions, each of which is a condition as a requirement of continuing to hold the licence:
- (a) the Designated Driver's driver's licence is maintained in good standing at all times;
 - (b) the Designated Driver is, at no time, convicted of an offence, for which a pardon has not been granted, pursuant to any one or more of Parts V (Sexual Offences), VIII (Offences Against Persons) or IX (Offences Against Property) of the Criminal Code of Canada, R.S.C. 1985 c. C-46, as amended;
 - (c) the Designated Driver maintains an agreement with a licensed Designated Driving Broker;
 - (d) the Designated Driver prominently displays their licence, issued pursuant to Licensing By-law 120-2005, at all times when providing Designated Driving Services and produces it for inspection when requested to do so by a Registered Motor Vehicle Owner or by an Officer;
 - (e) immediately prior to each occasion on which they propose to operate a Registered Motor Vehicle Owner's Motor Vehicle, the Designated Driver shall have:
 - i) reviewed the necessary documents to satisfy themselves that the Motor Vehicle has a currently valid permit and is insured under a contract for automobile insurance;
 - ii) secured the Registered Motor Vehicle Owner's consent to operate the Motor Vehicle;
 - iii) ensured that only the Registered Motor Vehicle Owner and any passengers who arrived in the Registered Motor Vehicle Owner's Motor Vehicle at the location from which it is proposed to provide Designated Driving Services are to be conveyed in that Motor Vehicle;

- iv) ensured that the number of individuals to be transported in the Registered Motor Vehicle Owner's Motor Vehicle does not exceed the number of available seatbelts and will otherwise be in compliance with applicable safety and highway traffic laws;
 - v) secured the Registered Motor Vehicle Owner's instructions respecting the operation of the Motor Vehicle including, minimally, the residence(s) to which the Motor Vehicle is to be moved and the residence(s) to which the Registered Motor Vehicle Owner and any passengers are to be conveyed; and shall have
 - vi) struck an agreement with the Registered Motor Vehicle Owner respecting the Designated Driver's fee or other consideration for operating the Motor Vehicle;
- (f) the Designated Driver shall not operate a Motor Vehicle in the provision of any Designated Driving Services under this By-law except:
- i) without any passengers, except in the case of passengers that may be permitted pursuant to clauses 2(e)(iii) and (iv) of this Schedule;
 - ii) in accordance with all applicable law, including the provisions of this By-law; and
 - iii) subject to the preceding clauses 2(f)i) and ii) of this Schedule, pursuant to the Registered Motor Vehicle Owner's instructions provided pursuant to clause 2(e)v) of this Schedule;
 - iv) the Designated Driver must maintain, for a minimum of three (3) months, a paper or electronic trip log respecting all Designated Driving Services provided pursuant to this By-law; and
 - v) the Designated Driver shall not charge any fee or other consideration for operating a Motor Vehicle that exceeds that to which is agreed pursuant to clause 2(e)vi) of this Schedule.

Designated Driving Broker Licence Requirements

3. In addition to other requirements of the Licensing By-law, the Director may refuse to accept an application for a licence, unless the application is submitted on forms approved by the Director and includes the following respecting the Designated Driving Broker:

- (a) proof of a Commercial General Liability insurance policy that:
 - i) includes a limit of liability of not less than two million dollars (\$2,000,000.00) per accident or occurrence;
 - ii) names the Designated Driving Broker and/or owner(s) as Named Insured(s);
 - iii) insures all Designated Drivers who are employees of the Designated Driving Broker;
 - iv) includes Non-owned Automobile Liability and Legal Liability for Damage to Automobiles in the Care, Custody or Control of the Insured coverage; and that
 - v) requires that the Director be notified of any intended cancellation by the insurer no fewer than fifteen (15) days prior to such cancellation; and
- (b) proof of an Ontario Master Business Licence and/or Articles of Incorporation.

Designated Driving Broker Licence Conditions

4. In addition to other requirements of the Licensing By-law, no Person shall act as a Designated Driving Broker except pursuant to a licence issued pursuant to this Licensing By-law and except pursuant to the following conditions, each of which is a condition as a requirement of continuing to hold the licence:

- (a) ensures all Designated Drivers who are affiliated with the Designated Driving Broker for dispatch services:
 - i) are appropriately insured; and
 - ii) operate in accordance with the provisions established in this By-law.

Designated Driver Support Vehicle

5. Every Designated Driver licensed as such under this By-law shall cause the Designated Driver Support Vehicle used in the provision of any services under this By-law to, at all times:
 - (a) be insured for how the Motor Vehicle is being used;
 - (b) display markings, contact, and licensing information for the Designated Driving Broker with whom the Designated Driver is affiliated on the exterior of the Motor Vehicle in an area approved by the Director; and
 - (c) be well maintained and in good repair, and meet the standards for the issue of a Safety Standard Certificate of mechanical fitness.

6. Every Designated Driver employing the use of a roof light or roof sign ("roof light") on their Designated Driver Support Vehicle shall at all times ensure:
 - (a) that the length and width of the roof light is no greater than the length and width of the roof of the Designated Driver Support Vehicle the roof light is affixed to;
 - (b) that the roof light does not encroach on any part of the vehicle outside the area of the roof of the Designated Driver Support Vehicle;
 - (c) that the roof light complies with City of Oshawa Sign By-law 72-96 and all applicable highway traffic laws;
 - (d) that the roof light shall not display the words "Taxi", "Cab", "Taxicab" and/or any other words that may indicate the vehicle is providing a licensed taxicab service pursuant to Taxicab By-law 50-2003; and,
 - (e) that the roof light is not displayed on the Designated Driver Support Vehicle when the Motor vehicle is not being used to support a Designated Driver providing a Designated Driving Service.

7. The Designated Driver is prohibited from conveying passengers, with the exception of other Designated Drivers, in the Designated Driver Support Vehicle.

Advertising Requirements

8. No Person shall advertise or promote themselves as providing Designated Driving Services, or as a Designated Driver or Designated Driving Broker unless they are licensed pursuant to this Licensing By-law.