

To: Corporate Services Committee

From: David J. Potts, City Solicitor and Head,  
Legislative and Regulatory Directorate

Report Number: CORP-14-75

Date of Report: May 22, 2014

Date of Meeting: May 26, 2014

Subject: Regulation of Designated Drivers and Industry Consultation  
Initial Update

File: D-2300

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## **1.0 Purpose**

The purpose of this report is to provide an update on the industry consultation process regarding the regulation of the Designated Driver (D.D.) Industry.

## **2.0 Recommendation**

That the Corporate Services Committee recommend to City Council:

That report CORP-14-75 “Regulation of Designated Drivers and Industry Consultation Initial Update” be received for information.

## **3.0 Executive Summary**

Not applicable.

## **4.0 Input From Other Sources**

A City of Oshawa Taxicab Industry consultation meeting was held on May 7, 2014 to present staff’s findings and options respecting the regulation of D.D.’s and to obtain feedback from the Taxicab Industry. A separate City of Oshawa D.D. Industry consultation meeting will be scheduled in the third quarter of 2014.

## **5.0 Analysis**

### **5.1 Background**

At its June 24, 2013 meeting, City Council directed staff to conduct a study and initiate consultation with stakeholders from Oshawa’s Taxicab and Designated Driver industries and to report back to the Corporate Services Committee with recommendations.

**Attachment 1** is a copy of staff report CORP-13-98 which provides an overview of the issues regarding D.D.'s and identifies a number of policy options for consideration.

## 5.2 Industry Consultation Framework and Update

**Table 1** is a consultation framework developed by staff. The consultation process is currently underway and a final staff report presenting a summary of input and policy recommendations will be prepared for the first quarter of 2015.

**Table 1 Industry Consultation Framework and Progress**

	<b>Date</b>	<b>Status</b>
Taxi Industry Consultation	May 7, 2014	Complete
First Industry Consultation Status Report	May 26, 2014	Complete
Designated Driver Industry Consultation	Q3 2014	Pending
Second Industry Consultation Status Report	Q3 2014	Pending
Summary of Input and Policy Recommendations Report	Q1 2015	Pending

## 5.3 Taxi Industry Consultation

Staff conducted the first consultation meeting with the Taxi Industry on May 7, 2014. Approximately 50 City of Oshawa licensed taxicab drivers, owners, and brokers attended the consultation meeting. A number of participants from the taxi industries of neighbouring municipalities were also in attendance.

Notification of the meeting was provided through various sources including:

- Notifications in the local newspapers
- A posting of the notice on the City's website
- Notification to the City's taxi brokerages to post the notice at their respective offices

At the meeting, staff overviewed the issues, presented several potential regulatory options, and received feedback from the Taxi Industry summarized in the next section.

### 5.3.1 Taxi Industry Feedback

Below is a general summary of input received at the meeting. A more comprehensive account of the Taxi Industry's input will be provided in the final report.

- There was consensus that the regulation of D.D. services is necessary on the basis of addressing public safety concerns including: the need to ensure that D.D.'s are operating with adequate insurance coverage and that D.D. service drivers had appropriate training and were subject to criminal records checks. A number of participants were of the opinion that the D.D.'s should be prohibited from operating in the City.

- Participants expressed their concerns regarding the policy gap between the heavily regulated Taxi Industry and the lack of regulations in the D.D. Industry.
- Participants have observed a sizeable number of D.D.'s operating in the City some of which are based in surrounding municipalities. A number of D.D. services are operating as taxicabs transporting individuals in their "chase" vehicles and certain D.D. service vehicles have been outfitted with top lights making such vehicles resemble taxicabs. These D.D. services have been observed soliciting rides/customers at local entertainment establishments and at shopping centres.
- D.D. services that are operating as taxicabs are "stealing" business from the heavily regulated Taxicab Industry and there are concerns that the continuation of such actions may destabilize the Taxicab Industry.
- More enforcement of the Taxicab By-law 50-2003 is necessary.

#### **5.4 Next Steps: Designated Driver Industry Consultation**

A second consultation meeting will be scheduled with the City's D.D. Industry in the third quarter of 2014. Notification of the meeting will be posted in the local media and on the City's website.

#### **6.0 Financial Implications**

There are no financial implications directly related to this report.

#### **7.0 Relationship to the Oshawa Strategic Plan**

The recommendation in this report is consistent with Goal 4.5, Accountable Leadership by seeking feedback from stakeholders with a view to addressing policy issues respecting the Taxicab Industry and Designated Driver Services.



Jerry Conlin, Director,  
Municipal Law Enforcement and Licensing Services



David J. Potts, City Solicitor and Head,  
Legislative and Regulatory Directorate

<b>To:</b> Corporate Services Committee	<b>Item:</b> CORP-13-98-CM	<b>Date of Report:</b> June 13, 2013
<b>From:</b> David J. Potts, City Solicitor & Head Legislative and Regulatory Directorate	<b>File:</b> D-2300	<b>Date of Meeting:</b> June 20, 2013
<b>Subject:</b> <i>Designated Driver Service Providers</i>		<b>PUBLIC REPORT</b>

## 1.0 PURPOSE

This report overviews issues regarding designated driver services, identifies policy options and seeks Council's instruction to study, consult and to report back.

## 2.0 RECOMMENDATION

That the Corporate Services Committee recommends to Council:

That staff be directed to conduct a study and initiate consultation with stakeholders including the taxi industry and designated driver service providers and report back to Corporate Services Committee with recommendations.

## 3.0 EXECUTIVE SUMMARY

Customers of Designated Driver Services pay a fee in return for which a Designated Driver drives the customer, the customer's vehicle and sometimes the customer's passengers to at least one destination. Designated Driver Services were regulated but are currently unregulated in Oshawa. Designated Driver Services overlap with services provided by the taxicab industry to the extent that Designated Driver Services includes the conveyance of the customer (and the customer's passengers). The result is a policy gap. Further study and consultation is recommended.

## 4.0 INPUT FROM OTHER SOURCES

### 4.1 General

➤ Legal Services

### 4.2 Auditor General

➤ Not applicable.

## 5.0 ANALYSIS

### 5.1 Background

- For a fee, designated driving service providers (“Designated Drivers”) drive a vehicle, usually its driver and sometimes the driver’s passengers from one location (most often a licensed establishment) to at least one destination. The Designated Driver is accompanied by a second person in a “chase vehicle” who picks up the Designated Driver at the destination (“Designated Driver Services”).
- Designated Driver Services are unregulated in Oshawa.
- The Taxicab By-law comprehensively regulates the taxicab industry for the purposes of health and safety, consumer protection and nuisance control. It seeks to achieve these objectives by regulating:
  - tariff rates;
  - mechanical safety of taxis;
  - insurance coverage; and
  - Taxicab Drivers and Brokers
- The Taxicab By-law requires Taxicab Brokers and Taxicab Drivers to be licensed. Taxicab Drivers must:
  - complete and pass a driver training course;
  - attend refresher and accessible driver training;
  - complete and pass first aid/CPR training;
  - submit a criminal information report (background check); and
  - submit a medical clearance letter.
- There is a policy gap resulting from the regulation of the taxicab industry and non-regulation of Designated Driver Services to the extent that elements of Designated Driver Services overlap with services provided by the taxicab industry. Specifically, the Taxicab By-law defines “Taxicab” as including “[...] 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 [...]”. The Taxicab definition excludes certain vehicles such as an ambulance or a funeral hearse but does not exclude a vehicle that is used in relation to Designated Driver Services. *Accordingly, when providing Designated Driver Services, Designated Drivers are effectively operating a Taxicab contrary to the Taxicab By-law by conveying the driver (and passengers) in a vehicle.*
- For a period, the City sought to address the policy gap including by regulating Designated Driver Services. **Attachment 1** is a chronology.

- In 2008, the Finance and Administration Committee recommended a licensing system for Designated Drivers. On Sep 22/08, Council passed by-law 102-2008 to establish the system (“2008 DD By-law” **Attachment 2**).
- In 2009, members of the Designated Driver Services industry expressed concerns related to licensing and insurance costs and that the 2008 DD By-law would not permit a Designated Driver to transport passengers in a client’s vehicle. Council directed staff to hold a public meeting to solicit feedback from all stakeholders.
- On Mar 4/10, the Committee considered report FA-10-41 summarizing input from the public meeting. Committee recommended to Council that the 2008 DD By-law be repealed. On Mar 8/10, Council repealed the 2008 DD By-law.
- On Jun 23/11, Committee considered report FA-11-168 which responded to a May 12/11 Committee direction to provide an overview of reports and public input respecting initiatives to license and regulate Designated Driver Services. Committee and Council adopted the report’s recommendation to receive it for information.
- On Mar 29/12, Committee considered a request to set up a committee of representatives from the taxi industry, designated driving service providers and City staff to clearly define the roles of each industry and referred it to staff to report back.

## **5.2 Issues**

- As noted, the principal issue continues to be the policy gap resulting from the regulation of the taxicab industry and non-regulation of Designated Driver Services. When providing Designated Driver Services, Designated Drivers are effectively operating a Taxicab contrary to the Taxicab By-law to the extent that Designated Driver Services include the conveyance of the driver and, as applicable, the driver’s passengers.

### **5.2.1 Taxicab Industry Concerns**

- The following is a general summary of concerns expressed by the taxicab industry:
  - There is a policy gap, as noted, resulting from the regulation of the taxicab industry and the non-regulation of Designated Driver Services.
  - Designated Driver Services are also directly competing with the taxicab industry by conveying customers who have no vehicles at fares that are lower than those prescribed for the taxicab industry.
  - The competition is doubly unfair to the extent that the taxicab industry operates within a highly regulated licensing system with a correspondingly higher cost structure.

- There is no consumer protection for customers of Designated Driver Services. (To date, staff has not received complaints from Designated Driver Service customers).
- Designated Driver Services should be subject to regulations that are similar to the taxi industry respecting fares, minimum driver standards, insurance and business/driver licensing.

### 5.2.2 Designated Drivers Concerns

- Designated Driver Services are not currently regulated so it is not possible to accurately assess the number of Designated Driver Services currently operating in Oshawa. MLELS is familiar with three main Designated Driver Services and is aware of several smaller operations. Following is a general summary of concerns expressed by Designated Driver Services:
  - Designated Driver Services contribute to keeping impaired drivers from driving their vehicles. They charge very little and cannot absorb the costs of licensing, insurance, training and other costs resulting from regulation.
  - Designated Driver Services provide a service that is not provided by the taxi industry: driving a person's vehicle home. Again, the costs of regulation may impede service delivery.
  - There is a lack of consensus among Designated Driver Services respecting regulation. Some support licensing of Designated Driver Services. Others do not.
  - Any regulation of Designated Driver Services should be undertaken at the Regional level to ensure a level regulatory playing field between lower tier municipalities.

### 5.3 Options

- The various options that could be considered moving forward have been summarized in the chart provided as Attachment 3. The options are additionally listed below for reference purposes:
  - **Option 1:** Status quo – no regulation of Designated Driver Services.
  - **Option 2:** Relax current regulations for taxi drivers in the Taxicab By-law 50-2003.
  - **Option 3:** Exempt Designated Driver Services from the definition of Taxicab in the Taxicab By-law.
  - **Option 4:** Re-introduce a system to license Designated Driver Services substantially in the form originally established by By-law 102-2008.

- **Option 5:** Undertake further study and consultation with stakeholders including from the taxicab industry and Designated Driver Services and report back to Committee with recommendations.
- Staff recommends option 5 and would endeavor to report by the 4<sup>th</sup> quarter of 2013.

## 6.0 FINANCIAL IMPLICATIONS

- There are no financial implications associated with this report.

## 7.0 RELATIONSHIP TO THE OSHAWA STRATEGIC PLAN

- The recommendation in this report is consistent with Goal 4.5, Accountable Leadership, by seeking feedback from stakeholders with a view to addressing policy issues respecting the taxicab industry and Designated Driver Services.



Jerry Conlin, Director,  
Municipal Law Enforcement & Licensing Services



David J. Potts, City Solicitor & Head  
Legislative and Regulatory Directorate

Attachments

**Chronological Count of the Designated Driver Issue (2007 to date)**

Date	Details
March 12, 2007	➤ Committee considered a written request to regulate fees for Designated Driving Services and staff were directed to report back to Committee.
September 17, 2007	➤ Correspondence suggesting regulation of Designated Driver Services providers was received and considered by Committee and staff were directed to report on the advantages and disadvantages of regulating these services.
April 29, 2008	➤ Committee considered report FA-08-45 which overviewed the advantages and disadvantages of regulating Designated Driver Services. The report was referred back to staff with direction to prepare a simplified licensing plan requiring a criminal check and insurance coverage and to outline the associated costs.
September 9, 2008	➤ Committee considered report FA-08-171 which included a simplified licensing plan to regulate Designated Driver Services.
September 22, 2008	➤ Council passed By-law 102-2008 introducing a regulatory regime for Designated Driver Services. The By-law regulated drivers and business owners and was consistent with the Taxicab By-law by making it unlawful to convey passengers in the client's vehicle or the chase vehicle.
May 19, 2009	➤ Council suspended the enforcement of By-law 102-2008 over concerns brought forward by stakeholders in the Designated Driver Services industry regarding insurance costs and the restrictions on conveying passengers. Staff were directed to conduct a public meeting to solicit views from all stakeholders.
January 25, 2010	➤ A public meeting was held to obtain input regarding the regulation of Designated Driver Services.
March 4, 2010	➤ Committee considered report FA-10-41 which summarized the issues raised at the public meeting. Committee recommended that, "Designated Driving Service Providers By-law 102-2008 be repealed" to Council.
March 8, 2010	➤ Council adopted the recommendation to repeal By-law 102-2008.
April 21, 2011	➤ Committee considered a delegation from a taxi driver requesting that Council reconsider its decision to repeal By-law 120-2008 and directed staff to prepare a report on the developments related to licensing and regulating Designated Driver Services.
June 23, 2011	➤ Staff reported back to Committee with report FA-11-168 which provided an update as directed.
March 29, 2012	➤ Corporate Services Committee considered a request to set up a committee of representatives from the taxi industry, Designated Driving Services and City staff to clearly define the roles of each industry and referred it to staff to report back to Committee.



Being a By-law to further amend Licensing By-law 120-2005 to provide for the licensing, regulating and governing of designated driving service providers.

**WHEREAS:**

1. Council of The Corporation of the City of Oshawa considers it desirable and necessary to license, regulate and govern designated driving service providers 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 Service Provider" means each Person who, for payment of a salary, a fee or for any other consideration, operates a Motor Vehicle owned by another Registered Motor Vehicle Owner for the purpose of moving or causing to be moved the Motor Vehicle from a location within Oshawa or to a destination within Oshawa but does not include a "Driver" while operating a "Taxicab" as those two terms are defined by the City's Taxicab Licensing By-law.
  - (b) "Motor Vehicle" includes an automobile or any other device for the transportation of Persons or goods propelled or driven otherwise than by muscular power, but does not include the cars of electric or steam railways or other motor vehicles running only upon rails, or a motorized snow vehicle, traction engine, farm tractor, self propelled implement of husbandry or road building machine within the meaning of the *Highway Traffic Act*.

(c) "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.

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

Designated Driving Service Provider	\$125 per annum	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 row:

Designated Driving Service Provider	\$125
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5. This By-law shall be effective on May 1, 2009.

By-law passed this twenty-second day of September, 2008.

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Mayor

\_\_\_\_\_  
City Clerk

## Schedule "A" to By-law 102-2008

## Schedule "N" to By-law 120-2005

**Licence Application**

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 Driving Service Provider:
  - (a) a Criminal Investigation Report issued within the thirty-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-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; and
  - (d) proof of Commercial General Liability insurance that:
    - i) includes a limit of liability of not less than \$2,000,000.00 (two million dollars) per occurrence for property damage and bodily injury; and that
    - ii) requires that the Director be notified of any intended cancellation by the insurer no fewer than fifteen (15) days prior to such cancellation.

**Licence Conditions**

2. In addition to other requirements of the Licensing By-law, no Person shall act as a Designated Driving Service Provider 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 Driving Service Provider's driver's licence is maintained in good standing at all times;
- (b) The Designated Driving Service Provider is, at no time, charged with or convicted of an offence contrary to the *Highway Traffic Act* (Ontario) or the *Criminal Code* (Canada);
- (c) The Commercial General Liability insurance required by paragraph 1(d) of this Schedule is maintained at all times;
- (d) The Designated Driving Service Provider is in possession at all times of the licence issued pursuant to this Licensing By-law and forthwith 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 it is proposed to operate a Registered Motor Vehicle Owner's Motor Vehicle, the Designated Driving Service Provider shall have:
  - i) verified that there exists a currently validated permit for the Motor Vehicle pursuant to the Highway Traffic Act (Ontario) including by reviewing a copy of the permit;
  - ii) verified the Registered Motor Vehicle Owner's identity and ownership of the Motor Vehicle including by reviewing the Registered Motor Vehicle Owner's current driver's licence issued by the Province of Ontario and the Motor Vehicle's permit referenced in the preceding clause 2(e)i) of this Schedule;
  - iii) verified that the Motor Vehicle is insured under a contract of automobile insurance including by reviewing a current insurance card for the Motor Vehicle issued pursuant to the *Compulsory Automobile Insurance Act* (Ontario);

- iv) secured the Registered Motor Vehicle Owner's consent to operate the Motor Vehicle;
  - v) secured the Registered Motor Vehicle Owner's instructions respecting the operation of the Motor Vehicle including, minimally, the destination to which the Motor Vehicle is to be moved; and shall have
  - vi) struck an agreement with the Registered Motor Vehicle Owner respecting the Designated Driving Service Provider's fee or other consideration for operating the Motor Vehicle.
- (f) The Designated Driving Service Provider shall not operate a Motor Vehicle except:
- i) without any passengers;
  - ii) in accordance with all applicable 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;
- (g) The Designated Driving Service Provider 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.

3. No Person shall permit the advertising or promotion of the services of a Designated Driving Service Provider except a Person licensed as a Designated Driving Service Provider pursuant to this Licensing By-law.

Potential Options for Consideration	Benefits	Challenges
1) Status quo	<ul style="list-style-type: none"> <li>To date, MLELS has not received any complaints from citizens/customers regarding Designated Driver Services.</li> </ul>	<ul style="list-style-type: none"> <li>Policy gap resulting from the regulation of the taxicab industry and non-regulation of Designated Driver Services</li> <li>Unfair competition between Designated Driver Services and taxicab industry because the taxicab industry's tariffs are regulated (allowing undercutting by Designated Driver Services) and regulation results in higher costs in the taxicab industry</li> <li>No consumer protection for customers of Designated Driver Services</li> </ul>
2) Relax current regulations for taxi drivers in the Taxicab By-law	<ul style="list-style-type: none"> <li>Reduces policy gap</li> </ul>	<ul style="list-style-type: none"> <li>Less consumer protection in the taxicab industry</li> </ul>
3) Exempt designated driver services from the definition of Taxicab in By-law 50-2003	<ul style="list-style-type: none"> <li>Eliminates legal gap by simply deeming Designated Driver Services to not constitute operation of a taxicab</li> </ul>	<ul style="list-style-type: none"> <li>Does not address policy gap and other challenges associated with option 1) Status quo</li> </ul>
4) Pass a by-law substantially in the form of the 2008 DD By-law to regulate designated drivers in the Licensing By-law 120-2005	<ul style="list-style-type: none"> <li>Eliminates legal and policy gaps</li> <li>Consumer protection re Designated Driver Services</li> </ul>	<ul style="list-style-type: none"> <li>Costs of regulation may impede Designated Driver Services</li> <li>Does not address cross-border Designated Driver Services</li> </ul>
5) Study, consult with stakeholders and report back to Corporate Services Committee	<ul style="list-style-type: none"> <li>Possibility that further study and consultation will yield better information.</li> </ul>	<ul style="list-style-type: none"> <li>Risk that the resources allocated to further study and consultation will not yield better information.</li> </ul>