

REPORT

ADMINISTRATIVE SERVICES COMMITTEE

MEETING DATE: DECEMBER 5, 2016

FROM: Municipal Enforcement Services Department

DATE: November 22, 2016

SUBJECT: Transportation Network Company Licensing By-law 2016-083

LOCATION: Town wide

WARD: Town wide

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RECOMMENDATION:

1. That By-law 2016-083, being a by-law to licence and regulate Transportation Network Companies, attached as Appendix D to the November 22, 2016 report from the Municipal Enforcement Services department be passed;
2. That new licensing fees listed in Appendix F to the November 22, 2016 report from the Municipal Enforcement Services department, be approved and effective immediately, and such fees be included in the 2017 rates and fees schedules; and
3. That staff be directed to review the taxicab by-law to address impacts of Transportation Network Company regulations and report back to Council by the first quarter of 2018 with a new taxicab by-law.

KEY FACTS:

The following are key points for consideration with respect to this report:

- Council directed staff to create a licensing by-law for Transportation Network Companies
- Multiple public consultations were held to gather information
- A regulation comparison review was conducted to determine best practices
- Staff held discussions with Uber representatives to understand their operations and the impact of municipal regulation
- Legal impacts of introducing a Transportation Network Company by-law were reviewed
- A Transportation Network Company by-law has been prepared for Council's consideration

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BACKGROUND:

When discussing the taxicab industry and emerging technology on December 14, 2015, Town Council passed the following resolution:

“That staff investigate Option #2 presented in the November 18, 2015 report from the Clerk’s department on emerging technology impacts to the taxicab industry and report back to Council as soon as possible.”

Option #2 of the November 18, 2015 report proposed the creation of a licensing by-law to regulate and govern Transportation Network Companies (TNC).

Staff have since conducted a comprehensive public engagement process that included:

- Idea forum comments (April 2016)
- Pollara Strategic Insights ridesharing study (April 2016)
- Accessible Advisory Committee (May 2016)
- Public consultation session (June 2016)
- Uber consultation (July 2016)

Staff have also monitored several municipalities that have enacted TNC licensing by-laws. Municipalities to enact a by-law include Edmonton, Calgary, Ottawa, Niagara Region, Waterloo Region and Toronto. Staff have reviewed these by-laws for best practices.

Using the data collected and best practices from other municipalities, staff are presenting a TNC licensing by-law that:

- Focuses on health and safety and consumer protection
- Considers new technology and improved provincial safety requirements
- Reduces regulatory burden where safety and consumer protection are not impacted
- Institutes a full cost recovery model

Greater Toronto Area Experience - Uber

The largest TNC operator in Ontario is Uber. Uber began operation in Toronto in 2012 and has expanded in the GTA since that time. Uber has advised staff that it has provided reliable service in Oakville for the last year.

Uber dispatches to a network of vehicles for hire using an app based dispatch technology. Customers are able to download the Uber app, register, and request a ride. The trip transaction is fully completed using the app. Once a customer enters trip parameters, the app calculates costs and provides a fee range for customer approval. When the trip is completed, payment is made electronically through the app.

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During high volume times, Uber will surge its pricing in busy geographical areas. This adds a demand multiplier to the regular fare, increasing normal costs. This is done in hopes of enticing more Uber drivers to the area during the high demand period. When surge pricing is in effect, the customer has options that include requesting notification when the surge drops, accepting the surge price or using an alternative transportation method. An Uber vehicle is not dispatched until a customer accepts the surge multiplier.

Once an Uber vehicle has been requested, the app provides the customer a picture of the driver, type of vehicle, licence plate number, and wait time. When the vehicle arrives, no transaction or exchange of information is required. The driver has the trip details and can take the customer to their destination.

For enhanced safety, Uber tracks its vehicles using GPS (allowing customers to share their location) and requests feedback from customers and drivers at the conclusion of each trip. Uber has a 24/7 customer support team available who are able to suspend the account of drivers if an issues occurs.

Consultation

Multiple public consultation opportunities were held from March to July 2016.

Idea forum

In April of 2016, staff opened an idea forum on the town's website to solicit feedback from the community on TNC licensing. The forum asked the question "How would you regulate ride-sharing companies like Uber". Suggested discussion topics included:

- Vehicle safety/mechanical fitness
- Driver criminal record checks
- Insurance
- Ability to street hail
- Accessibility
- Passenger safety
- Regulation not needed

Staff have grouped the feedback into categories and included the information in the table below. Overall, 44% of participants support allowing TNCs with reasonable regulation. Detailed responses can be found at <https://oakville.uservoice.com/>.

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Idea Forum Feedback		
Comment Type	Number of Comments	Overall Support
Regulate TNCs*	33	44%
Allow but don't regulate	21	36%
Let the free market decide	9	13%
Ban TNC's	4	7%

* 8 of 33 comments suggest minimal regulation

Pollara Strategic Insights – Ridesharing Study

Between March 31 and April 10, 2016, Pollara Strategic Insights conducted a survey of 809 Oakville residents aged 18 years and older through a hybrid telephone and online survey (Appendix A). Pollara advised that based on the sample size, the margin of error is plus/minus 3.5%, 19 times out of 20.

The survey concluded:

- Oakville residents strongly support allowing ridesharing companies such as Uber to operate legally – 73% support

Accessible Advisory Committee consultation

On May 12, 2016, staff consulted with the Accessible Advisory Committee (AAC), on TNC licensing. The AAC supported licensing regulations that would allow TNCs to operate legally in Oakville. In addition, AAC members felt that many of their accessibility needs were met by Uber's accessible app, which estimates trip costs, allows customers to pre-set destinations, and make payment electronically.

Consultation session at Town Hall

On June 22, 2016, staff held a TNC information meeting at Town Hall. A media release was issued and advertisements were placed in the Oakville Beaver and on the town website. A direct mail out and/or direct email was sent to members of the Oakville taxi industry and Uber representatives. Any person with an interest in TNC licensing was invited to pre-register for the meeting.

Approximately 33 people attended and were asked to vote on possible elements of a TNC licensing by-law including driver training, surge pricing, accessibility, vehicle identification, vehicle safety, driver and passenger safety and vehicle age limits.

Detailed responses and comments are provided in Appendix B. Generally, response was mixed on all questions but support seemed to parallel regulations that are currently applicable to Oakville taxicabs.

Regulation comparison

Several Canadian municipalities (Edmonton, Calgary, Ottawa, Niagara Region, Waterloo Region and Toronto) have approved ridesharing regulations. Each by-law has some differences, reflecting individual community needs, while maintaining key by-law elements consistent across the spectrum. A detailed municipal comparator summary has been included in Appendix C.

Areas of general consistency:

- No requirement for cameras or security screens
- No required mandatory driver training
- No surge pricing cap
- No vehicle supply cap
- All require annual vehicle inspections
- All require annual criminal record checks

COMMENT/OPTIONS:**TNC licensing recommendations and rationale**

Using information gathered during the consultation and review phase, staff have prepared regulations to licence and govern TNCs (Appendix D). Regulations are minimal compared to those historically placed on taxicabs but in-line with those recently approved in other municipalities and with advice from the Canadian Competition Bureau (Appendix E).

TNC Framework

The licensing by-law places the onus on licensed TNCs to ensure that vehicles and drivers using their platform have obtained inspections and met licensing standards. This methodology places licensing responsibility and accountability on the TNC to ensure platform users are in compliance with regulations. Audits will be conducted by enforcement services and if violations are found, a range of enforcement options are available including fines, suspensions and licence revocation, to prevent future noncompliance.

Searchable Electronic Data

To ensure staff are able to enforce new licensing regulations, TNCs are required to provide enforcement services with driver and vehicle information in a format that will allow electronic compliance checks.

Enforcement Accounts

TNCs are required to establish passenger and driver accounts for use by enforcement services staff to conduct investigations. In addition to accounts created by the TNC, enforcement services will have the ability to create ghost accounts to conduct inspections without TNC knowledge.

Contact Information

All TNCs will be required to provide a telephone number and email address available to enforcement services on a 24/7 basis. In addition, TNCs must maintain an Ontario business address for service of legal documents.

Consumer Information

To ensure user safety and consumer protection, TNCs must provide passengers with a cost range, vehicle description, licence plate number, driver name and photo, prior to commencement of ride.

Driver requirements

All TNC drivers must be at least 18 years of age, have an unrestricted Class G licence and be legally permitted by the *Highway Traffic Act* to drive passengers in their vehicle.

Driver security screening

All third party criminal reference check providers must be approved by the licensing commissioner. TNC operators must obtain the results of driver criminal reference checks prior to allowing them accessing the app and conduct checks on a yearly basis thereafter. Once a check has been completed, the TNC must provide municipal enforcement services confirmation the criminal reference check has occurred and the details of any failed checks. Minimum screening thresholds for criminal reference checks have been established and are provided in the by-law.

- **Uber** uses ISB Canada or First Advantage Canada to conduct criminal reference checks for all of their drivers. The criminal reference check is completed by Cobourg Police Service who conduct what is commonly known as a "CPIC" search. This involves screening the applicants name and date of birth against the RCMP National Repository of Criminal Records for any criminal convictions and reviewing the Canadian Police Information System (CPIC) for any cases before the court or any withdrawn charges that involve serious offences. Uber has a zero tolerance policy for criminal records.

Driver training

Mandatory driver training will not be required for TNC drivers. Training for drivers has historically revolved around knowledge of the town and accessible training to assist persons with disabilities. With the proliferation of GPS systems, it is no longer necessary for a driver to have specific knowledge of the town to provide transportation services to residents.

It will continue to be a requirement that any driver operating an accessible vehicle receive accessible driver training.

Driver duties

The by-law will require TNC drivers produce their driver's licence, proof of insurance, and evidence that they are logged into a TNC platform when requested to do so by a by-law enforcement officer. This will allow officers to conduct spot checks and confirm the eligibility of TNC drivers to operate in Oakville.

Vehicle requirements

Insurance requirements

The by-law will required all TNC drivers to maintain automobile liability insurance at all times when the automobile is operated on a roadway (required by the *Compulsory Automobile Act*). Due to increased risk associated with operating a vehicle for hire, an additional \$2,000,000 ridesharing coverage will be required by the TNC driver, as an endorsement to their personal policy or commercial insurance.

If a TNC chooses to obtain insurance for all vehicles using its platform, the insurance must be effective from the moment a ride is accepted up until the moment of passenger drop-off. The insurance must have limits of not less than \$2,000,000 inclusive per occurrence for bodily injury, death and damage to property.

In Ontario, there are now two forms of ridesharing insurance available.

Aviva provides insurance specific to the driver based on specific eligibility:

- *Work a maximum of 20 hours per week*
- *Be contracted by a Transportation Network Company*
- *Be licensed for a minimum of 6 years in Canada or the US*

Intact provides blanket fleet ridesharing insurance that covers the period from when a ridesharing app is turned on to when the passenger exits the vehicle.

- *Covers stationary accident benefits*
- *Uninsured motorist coverage and third party liability up to \$1 million dollars while the app is in use but no ride has been accepted*
- *Coverage increases to \$2 million dollars once a ride has been accepted*
- *Collision and comprehensive coverage would apply through the driver's personal policy*

Vehicle Safety Standards

To ensure the safety of passengers using TNCs, each vehicle will be required to obtain a safety standards certificate from a licensed Ontario mechanic at a motor vehicle inspection station on an annual basis. If a TNC vehicle exceeds 50,000 KMs in any yearly licensing cycle, a second safety standards certificate will be required.

Driver/passenger safety

Safety measures such as video surveillance, driver/passenger screens or panic flashers will not be required in TNC vehicles. This parallels other Canadian TNC by-laws and Oakville taxi regulations.

TNCs will be required to have a GPS locating system incorporated into their app, as well as the functionality that would allow them to lockout drivers should public complaints of a serious nature be made.

Age of vehicle

A municipal comparator review indicates that vehicle age limits have been included by all Canadian comparators. The most common maximum age limit is ten years but Toronto has set their limit at seven years. Considering the maximum age of a taxicab in Oakville is seven years, TNCs will be limited to the same vehicle age limit.

Vehicle identification

When reviewing the municipal comparator summary, it was identified that some municipalities have required TNC vehicles to be identifiable, although most have not. In Toronto, a window marking is required on TNC vehicles. Staff have reviewed this issue and concluded that all TNCs operating in Oakville should be identified by a window marking. This will assist residents using TNCs and enforcement officers conducting investigations.

Vehicle size requirements

To ensure that customers have ease of entry and exit, and some separation from the driver, TNC vehicles will be limited to four-door models.

Accessibility

The town's Accessibility Advisory Committee was consulted with respect to TNC accessibility issues. At that time, the committee suggested that Uber was, in some ways, more accessible than traditional taxicabs. The committee felt that the accessible app allowing pre-arrange trips provided convenience and met accessible needs.

Considering this feedback, the by-law will require all TNC apps to be accessible. Staff will continue to monitor the provision of accessible services in Oakville and where possible recommend enhancements to the service.

Hail Prohibition

The by-law includes a prohibition on hail service for TNCs. All municipal comparators have excluded TNCs from picking up hail passengers. Although there are fewer hail requests in Oakville, staff believe the regulations for TNCs would be difficult to administer and provide reduced passenger safety if hail service was included.

Prohibition of mandatory arbitration clauses

For consumer protection purposes, the by-law will require arbitration processes to be held locally.

*The **Consumer Protection Act** in Ontario generally prohibits companies from imposing mandatory arbitration clauses in consumer agreements. The Act may not be applicable in the case of TNCs for two reasons:*

- 1. The definition of consumers in the Act excludes people acting for business purposes which may exclude drivers from protection*
- 2. The definition of consumer agreement in the Act is specific that a supplier must be providing a service for payment. Passengers may not pay for the use of the TNC platform and, in that case, the Act would not apply*

Uber has included a mandatory arbitration clause, which requires individuals to participate in arbitration in Amsterdam and limits damages. Without additional requirements in the by-law, consumers may not be protected.

Reporting

TNCs will be required to maintain and provide the town details on drivers, vehicles and trips taken and provide reports aggregating that data. This information will be used to further define community needs and improve regulatory response.

Booking TNC vehicles and payment of fares

The by-law will require TNC customers to pre-book trips through an app. Rates will not be regulated but TNCs will be required to provide pricing details and estimated trip costs in advance of the trip. Ensuring customers are aware of pricing models and estimated trip costs will address consumer protection issues associated with the unregulated fare model.

Surge pricing

TNCs will be permitted to include surge pricing as part of their pricing model. Surge pricing will allow a TNC to respond to demand. Although this may result in higher fares during peak periods, customers will be able to make a transportation choice based on information available from the app in comparison with other forms of ground transportation.

Conclusion

The TNC licensing by-law (Appendix D) provides reasonable regulation on an emerging technology. The level of regulation is proportionate to the risk associated with the new business type and continues to ensure customers are afforded protection in the key areas of health and safety and consumer protection.

CONSIDERATIONS:

(A) PUBLIC

Public consultation was held from March to July 2016. During this period, several options and opportunities were provided for public feedback:

- Idea forum (April 2016)
- Pollara Strategic Insights ridesharing study (April 2016)
- Accessible Advisory Committee consultation (May 2016)
- Consultation session at Town Hall (June 2016)
- Public comments as submitted (email, mail)
- Uber consultation (July 2016)

Public Notice of the by-law has been published in the Oakville Beaver, sent to affected stakeholders and posted on the Town website in accordance with the public engagement policy and guidelines.

The enactment of a TNC licensing by-law will improve TNC customer health and safety, and consumer protection.

(B) FINANCIAL

TNC Fees

A TNC licensing fee review was conducted. The review was based on full recovery of costs related administrative and enforcement.

Staff are recommending a varied approach to TNC fee collection. Traditionally, licensing fees have been collected through an initial application fee and yearly renewals. It is recommended TNC licensing fees be tiered and escalate based on the number of driver operators associated

with the TNC. Using this methodology, costs for TNCs with 100 or more vehicles are anticipated to require the bulk of enforcement resources and as such have a significantly higher fee. Resource costs associated with larger TNCs are recovered through two licensing fee streams, fixed and per trip. This method of collecting licensing fees will provide the ability to measure cost recovery and the flexibility to adjust fees if necessary.

Fee recommendation (Appendix F):

TNC Fee Tiers

1. 0-24 vehicles - \$786 annually
2. 25-99 vehicles - \$854 annually
3. 100⁺ vehicles
 - a. \$50,000/annually; and
 - b. \$.11 per trip on all trips initiated in Oakville

(C) IMPACT ON OTHER DEPARTMENTS & USERS

N/A

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- continuously improve our programs and services
- be innovative in everything we do
- be fiscally sustainable

(E) COMMUNITY SUSTAINABILITY

Ensuring that emerging technology, specifically related to ground transportation, is regulated and the key areas of health and safety, nuisance control and consumer protection are addressed, affects the social, economic, environmental and cultural pillars of sustainability.

APPENDICES:

- Appendix A – Pollara Strategic Insights Ridesharing Survey
- Appendix B – Feedback from public consultation at Town Hall, June 22, 2016
- Appendix C – Ridesharing regulation comparison
- Appendix D – Transportation Network Company By-law
- Appendix E – Competition Bureau white paper on ridesharing
- Appendix F – Fee schedule

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