

**Report to
Rapport au:**

**Community and Protective Services Committee
Comité des services communautaires et de protection
7 April 2016 / 7 avril 2016**

**and Council
et au Conseil
13 April 2016 / 13 avril 2016**

**Submitted on March 31, 2016
Soumis le 31 mars 2016**

**Submitted by
Soumis par:
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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2016-COS-EPS-0012

**SUBJECT: Regulating Vehicles-for-Hire in the City of Ottawa – Taxis,
Limousines and Private Transportation Companies**

**OBJET: Réglementation des véhicules de location à la Ville d'Ottawa – Taxis,
limousines et exploitants de transport privé**

REPORT RECOMMENDATIONS

**That the Community and Protective Services Committee recommend that
Council:**

1. **Receive the KMPG report entitled “City of Ottawa Taxi and Limousine Regulation and Service Review”, attached as Document 1 and referenced in this report.**
2. **Approve new regulations for Private Transportation Companies (PTCs) , effective June 30, 2016, as described in this report and in the draft by-law attached as Document 2, including the following:**
 - a. **Establishing a license fee that includes a per trip charge of \$.105 and an annual license fee that reflects the size of the company, as follows:**
 - i. **A PTC with 1 to 24 affiliated vehicles: \$ 807;**
 - ii. **A PTC with 25 to 99 affiliated vehicles: \$ 2,469;**
 - iii. **A PTC with 100 or more affiliated vehicles: \$ 7,253;**
 - b. **Requiring each PTC to obtain minimum insurance levels of \$5 million in Commercial Liability and \$5 million in Non-Owned Automobile insurance for itself, and require that each PTC driver obtain Automobile Insurance suitable for part-time drivers providing transportation services for compensation;**
 - c. **Requiring all drivers to provide mandatory annual Police Vulnerable Sector Records Check, Statement of Driving Record and a Ministry of Transportation safety standards certificate for vehicles to the company;**
 - d. **Requiring all vehicles be no more than 10 years old, with biannual inspections for vehicles greater than 5 years of age;**
 - e. **Requiring that rides can only be procured through a pre-arranged app;**
 - i. **Accepting hails is prohibited;**
 - ii. **Using taxi stands is prohibited;**
 - f. **Delegating to the General Manager, Emergency and Protective Services, in consultation with the City Clerk and Solicitor, the authority to negotiate, finalize and execute the establishment of a voluntary, per-trip surcharge for accessibility, with any funds**

received from this surcharge to be directed to a dedicated reserve fund, as described in this report;

- g. Directing that the General Manager, Emergency and Protective Services work with the City's Accessibility Unit, the Accessibility Advisory Committee, Para Transpo and other internal and external stakeholders to develop a strategy with respect to how new fees generated through an accessibility levy could be used to offset costs for a number of programs supporting accessible transportation, including but not limited to enhancing the taxi coupon program, and report back to Committee and Council with a recommended approach;
 - h. Requiring that Private Transportation Companies comply with other administration- and enforcement-related requirements with respect to the by-law, as outlined in this report.
3. Subject to the approval of Recommendation 2, approve the amendments to the Taxi By-law (2012-258, as amended), effective June 30, 2016, as described in this report and in the drafting instructions attached as Document 3, including the following:
- a. Reducing standard taxi driver license fee from \$170 to \$96;
 - b. Waiving the accessible taxi driver license fee;
 - c. Eliminating the requirement for the Taxi Driver Education Program and the refresher training course (retaining the Accessible Taxicab Training Course);
 - d. Eliminating the uniform and street guide requirements;
 - e. Permitting that rides pre-arranged through an app may be set at a rate below the maximum fare prescribed in the by-law;
 - f. Eliminating the \$1.50 credit card processing fee;
 - g. Eliminating taxicab vehicle standards with respect to interior and trunk size, seating capacity and window tinting;

- h. Increasing the allowable vehicle age from 8 to 10 years, with authority delegated to the Chief License Inspector to disqualify a vehicle in the interest of public safety;
 - i. Amending the requirement for in-vehicle cameras to specify minimum standards rather than specific makes and models;
 - j. Expanding the regulated area to include the entire City of Ottawa;
 - k. Amending the ratio of plates-to-population from 1:784 to 1:806;
 - l. Increasing liability insurance requirement from \$2 million Commercial General Liability to \$5 million Motor Vehicle Liability for Taxi Plate Holders (covering all drivers who drive a taxicab), and introducing similar insurance requirements for Taxi Brokers;
 - m. Including the minor administrative and technical amendments outlined in Document 3.
4. Subject to approval of Recommendation 2, approve the amendments to Schedule 10 to the Licensing By-law (2002-189, as amended) relating to limousine service, effective June 30, 2016, as described in this report and in the drafting instructions attached as Document 4, including the following:
- a. Establishing an auxiliary service category to address other service models, such as special senior assistance services and “responsible choice”-type services;
 - b. Establishing a maximum vehicle age of 10 years, with biannual inspections for vehicles greater than 5 years of age, except for the “vintage” category;
 - c. Refining the definition of limousine and realigning vehicle features to ensure vehicles are “luxury” and are distinguished from other vehicles for hire;
 - d. Requiring a minimum insurance level of \$5 million in Commercial General Liability and Motor Vehicle Liability;
 - e. Requiring all limousine drivers to provide mandatory Police Vulnerable Sector Records Check, to be coordinated by the

limousine operator, and an annual acceptable Statement of Driving Record;

- f. Increasing the minimum fare from \$67.50 for the first 90 minutes and \$45.00 for each additional hour, to \$75.00 and \$50.00 respectively, exclusive of HST;
 - g. Including the minor administrative and technical amendments outlined in Document 4;
5. Petition the Province to approve legislative amendments to:
- a. Provide enhanced enforcement powers and amend penalties in relation to municipal vehicle-for-hire by-laws and under the *Highway Traffic Act* for both Municipal and Provincial enforcement staff related to unauthorized vehicles-for-hire, including the ability to:
 - i. tie outstanding violations to plate denial;
 - ii. issue higher fines (not less than \$500 and no more than \$30,000);
 - iii. apply three demerit points for non compliance;
 - iv. impose administrative license suspensions.
 - b. Provide authority for the City of Ottawa (either through the *City of Ottawa Act, 1999* or the *Municipal Act, 2001*) to impose and implement, as part of any vehicle-for-hire regulations, an accessibility levy to be applied to those Private Transportation Companies that do not offer accessible vehicle-for-hire services to the City's standards, where such payment is to be used to promote and foster accessible transportation services;
 - c. Amend the *Accessibility for Ontarians with Disabilities Act, 2005* to include a reference to Private Transportation Companies to establish a linkage to the accessibility levy referenced in recommendation 5.b), to ensure that appropriate accessible transportation requirements are mandated for Private Transportation Companies and to foster a more level playing field with taxicabs and accessible taxicabs already captured in the Act and its regulations.

6. **Delegate the authority to the General Manager, Emergency and Protective Services and the City Clerk and Solicitor to combine the by-laws referenced in and amended by Recommendations 2, 3 and 4 to create a consolidated Vehicle-for-Hire By-law, and to finalize and make any necessary adjustments to the Vehicle-for-Hire By-law to give effect to the intent of Council.**

RECOMMANDATIONS DU RAPPORT

Que le Comité des services communautaires et de protection recommande au Conseil :

1. **de prendre acte du rapport de KMPG intitulé « Examen de la réglementation et des services de taxi et de limousine pour la Ville d'Ottawa » (document 1 ci-joint), cité dans le présent rapport.**
2. **d'approuver le nouveau règlement sur les exploitants de transport privé, pour entrée en vigueur le 30 juin 2016, tel qu'il est présenté dans le présent rapport et en tant que projet de règlement ci-joint (document 2), ce nouveau règlement visant :**
 - a. **à imposer des frais de permis, soit 0,105 \$ par course et des frais annuels en fonction de la taille de l'exploitant :**
 - i. **entre 1 et 24 véhicules affiliés : 807 \$;**
 - ii. **entre 25 et 99 véhicules affiliés : 2 469 \$;**
 - iii. **100 véhicules affiliés ou plus : 7 253 \$;**
 - b. **à obliger les exploitants de transport privé à souscrire une assurance responsabilité civile et une assurance automobile responsabilité civile des non-propriétaires d'au moins cinq millions de dollars chacune et à obliger les chauffeurs affiliés à un exploitant de transport à souscrire une assurance automobile adéquate pour les chauffeurs à temps partiel offrant des services de transport contre rémunération;**
 - c. **à obliger les chauffeurs à fournir à l'exploitant une preuve de vérification des antécédents annuelle en vue d'un travail auprès de personnes vulnérables, un relevé du dossier de conduite et le certificat de sécurité du véhicule du ministère des Transports;**

- d. à exiger que les véhicules aient au plus 10 ans, et que les véhicules de plus de cinq ans fassent l'objet d'une inspection semestrielle;
 - e. à n'autoriser que les courses réservées à l'aide d'une application;
 - i. à interdire de prendre des passagers sur la rue;
 - ii. à interdire l'utilisation des stations de taxis;
 - f. à déléguer au Directeur général, Services de protection et d'urgence, de concert avec le greffier municipal et chef du contentieux, l'autorité de négocier, de conclure et d'instaurer des frais supplémentaires volontaires pour financer le fonds de réserve pour les services accessibles dont il est question dans le présent rapport;
 - g. à donner au Directeur général, Services de protection et d'urgence le mandat de travailler avec l'Unité des services et de l'accessibilité, le Comité consultatif sur l'accessibilité, Para Transpo et d'autres intervenants internes et externes à l'élaboration d'une stratégie sur l'utilisation des fonds générés par la nouvelle taxe d'accessibilité pour financer certains programmes de transport accessible, notamment l'amélioration du Programme de coupon de taxi, et finalement recommander une approche au Comité et au Conseil;
 - h. à exiger que les exploitants de transport privé respectent les exigences administratives et les exigences d'application du règlement municipal présentées dans le présent rapport;
3. d'approuver, sous réserve de l'approbation de la recommandation n° 2, les modifications au *Règlement sur les taxis* (2012-258, dans sa version modifiée) présentées dans le présent rapport et dans les instructions de rédaction (document 3 ci-joint), pour entrée en vigueur le 30 juin 2016, lesquelles modifications consistent à :
- a. réduire les frais de permis des chauffeurs de taxi standard de 170 \$ à 96 \$;
 - b. abolir les frais de permis pour les chauffeurs de taxi accessible;
 - c. abolir l'exigence de suivre le Programme de formation des chauffeurs de taxi et la formation d'appoint (tout en conservant le cours de formation de taxi accessible);

- d. **abolir l'obligation de porter un uniforme et de disposer d'un plan des rues;**
 - e. **autoriser les tarifs inférieurs à ceux prescrits dans le règlement municipal pour les courses réservées à l'aide d'une application;**
 - f. **abolir les frais de 1,50 \$ pour les paiements par carte de crédit;**
 - g. **éliminer les normes concernant la taille de l'habitacle et du coffre, le nombre de sièges et les vitres teintées;**
 - h. **augmenter l'âge maximal des véhicules de 8 à 10 ans, et déléguer à l'inspecteur en chef des permis le pouvoir d'interdire un véhicule dans l'intérêt de la sécurité publique;**
 - i. **modifier les exigences quant aux caméras dans les véhicules afin de préciser des normes minimales plutôt que d'imposer des marques ou des modèles précis;**
 - j. **agrandir le secteur réglementé pour englober l'ensemble de la ville d'Ottawa;**
 - k. **faire passer le ratio de plaques par habitant de 1:784 à 1:806;**
 - l. **relever l'exigence en matière d'assurance pour la faire passer d'une assurance responsabilité civile de deux millions de dollars à une assurance responsabilité automobile de cinq millions de dollars pour les détenteurs de plaques (couvrant tous les chauffeurs qui conduisent un taxi), et instaurer une exigence semblable pour les agents de taxi;**
 - m. **intégrer les modifications mineures et les modifications techniques présentées dans le document 3;**
4. **d'approuver, sous réserve de l'approbation de la recommandation n° 2, les modifications à l'annexe 10 sur les services de limousine du *Règlement harmonisé sur les permis* (2002-189, dans sa version modifiée), présentées dans le présent rapport et dans les instructions de rédaction (document 4 ci-joint), pour entrée en vigueur le 30 juin 2016, lesquelles modifications consistent à :**

- a. créer une catégorie de services auxiliaires pour les autres modèles de service, comme les services d'aide spéciale pour les aînés et les services de raccompagnement;
 - b. établir à 10 ans l'âge maximal des véhicules et exiger la tenue d'une inspection semestrielle pour ceux de plus de cinq ans, sauf pour les véhicules d'époque;
 - c. préciser la définition de « limousine » et redéfinir les caractéristiques des véhicules pour s'assurer qu'il s'agit de véhicules « de luxe » et qu'on les distingue des autres véhicules de location;
 - d. exiger une assurance responsabilité civile et une assurance responsabilité automobile d'au moins cinq millions de dollars;
 - e. obliger les chauffeurs de limousine à subir une vérification des antécédents en vue d'un travail auprès de personnes vulnérables, qui doit être coordonné par l'exploitant de services de limousine, et à présenter un relevé du dossier de conduite acceptable chaque année;
 - f. augmenter le tarif minimal, qui est de 67,50 \$ pour les 90 premières minutes et de 45 \$ pour chaque heure supplémentaire, à 75 \$ et 50 \$ respectivement, hors TVH;
 - g. intégrer les modifications mineures et les modifications techniques présentées dans le document 4;
5. de demander à la province d'approuver les modifications législatives visant à :
- a. établir des pouvoirs d'exécution supplémentaires et modifier les pénalités fiscales des règlements municipaux sur les véhicules de location, conformément au *Code de la route*, de sorte que les agents d'application des règlements municipaux et provinciaux puissent :
 - i. refuser une plaque d'immatriculation en cas d'infraction non résolue;
 - ii. augmenter les amendes (minimum 500 \$, maximum 30 000 \$);
 - iii. déduire trois points d'inaptitude en cas d'infraction;

- iv. **suspendre le permis;**
- b. **donner à la Ville d'Ottawa (par la *Loi de 1999 sur la ville d'Ottawa* ou la *Loi de 2001 sur les municipalités*) le pouvoir de fixer et de percevoir, dans le cadre d'un règlement sur les véhicules de location, une taxe d'accessibilité pour les exploitants de transport privé qui n'offrent pas de services accessibles répondant aux normes de la Ville, afin de promouvoir et de favoriser l'accessibilité des services de transport;**
- c. **modifier la *Loi de 2005 sur l'accessibilité pour les personnes handicapées de l'Ontario* afin qu'elle vise les exploitants de transport privé et prévoie la taxe d'accessibilité dont il est question à la recommandation 5 b), afin que les exploitants de transport privé soient soumis à des exigences adéquates sur l'accessibilité des transports et afin de contribuer à l'équité de l'industrie du taxi et du taxi accessible, comme le prévoient déjà la *Loi* et ses règlements;**
- 6. **de déléguer au Directeur général, Services de protection et d'urgence et au greffier municipal et chef du contentieux le pouvoir de combiner et modifier les règlements dont il est question aux recommandations n° 2, 3 et 4 pour former un règlement municipal unique sur les véhicules de location, de parachever le règlement et d'y apporter les modifications nécessaires conformément à la volonté du Conseil.**

EXECUTIVE SUMMARY

Taxi and limousine companies have long filled in the gap between public transportation and private vehicles, “providing demand responsive services that are particularly important at the major transportation hubs, in the downtown core where parking seems to be limited and expensive, for those without cars, and those potentially under the influence.”¹ For almost all of those years, the two streams operated as virtual monopolies. This, in turn, led to the public's call for regulations that would guarantee their safety and security, while protecting the consumer – which itself led to government response and the current regulated taxi and limousine industry.

The introduction of ride service applications to the private transportation industry in Ottawa in 2014 has caused a rapid shift in the economics of that industry – and this kind of disruptive shift in any industry can lead to both tension and innovation.

¹ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 1.

This report addresses three major vehicle-for-hire businesses: the regulated taxi and limousine industries, and the new, internet application-based ride service companies, which are currently unregulated. These three vehicle-for-hire streams offer similar services, but respond to very different consumer demands: in general, ride service app users enjoy the convenience of an app, knowing both the price of the trip and the wait time in advance, the ability to see the driver and vehicle ratings and make a selection from there, and the absence of a cash transaction; taxi users value the safety and security of the ride, the ability to use cash, the confidence of having a professional driver, the ability to street hail and use taxi stands, protection from surge pricing, and the benefit of a formal complaint process; and limousine users have the ability to receive a tailored, specialized experience from a professional driver, pre-booked, with the price negotiated and understood in advance.

As indicated above, Ottawa's ride service app users – both riders and drivers – have been operating within an unregulated, unlicensed system. While the consumer inherently understands the 'buyer beware' risk they are assuming when they use an app to book a ride from another resident who has a car, there is a strong desire among Ottawa residents for some baseline consumer protection and public safety standards to be established, particularly in the area of driver insurance – and to make using these apps 'legal'. In other words, municipal governments (and the provincial governments that provide municipalities with their authority) are now faced with the same kinds of requests for regulation that led to the licensing and control of taxis and limousines.

At the same time, the taxi industry has expressed its concern that the City's regulatory framework is making it impossible for it to compete with this new and emerging service provider. The taxi industry currently plays an integral role in the public transportation system, providing 24/7 service in a regulated environment where taxicabs are required, among other things, to be identified by roof sign and vehicle number and to have in-vehicle cameras. As such, taxicabs are permitted to pick up passengers through street hails and at taxi stands, as well as to access lanes set aside for their exclusive use that facilitate expeditious travel through the city. Both the taxi industry and the City benefit from the thoughtful and progressive use of the accessible taxi fleet as an adjunct to the public transportation system.

The City, as the regulator, is now faced with the challenge of recognizing that new technologies are here to stay while at the same time continuing to acknowledge that taxis are a critical part of the public transportation network. The public wants both

options – they want choice – and they want adequate protection. The City also recognizes this should be done in a way that allows all players to be able to innovate and compete without changing the basic advantages of each system.

Given how recently the ride service app industry came to be a major player in the vehicle-for-hire field, there are very few municipal regulatory frameworks in place for these companies. Further, where there are municipal regulations, most have been put in place recently, and there is not enough data yet to see how they are working. As well, there is currently no specific provincial legislation that establishes consistency with respect to how Ontario municipalities should be using their legislative authority to address the companies that provide that service.

Each municipality, therefore, is able to establish a regulatory framework under its general authority to ensure public safety and protect the consumer in a manner that reflects the community they serve.

On May 27, 2015, as part of the consideration of the report, “Response to Taxi-Related Motions of April 2012” (ACS2015-COS-EPS-0016), City Council directed staff to undertake a comprehensive review of Ottawa’s taxi and limousine regulations, “including potential regulations to recognize the emergence of new hailing technologies and transportation-for-a-fee service models”, in recognition of the need to address the pressures being created by the non-traditional service models.

Council directed that the review bring forward a proposal that would ensure sustainable and efficient services that meet the needs of residents and visitors based on the guiding principles of public safety (including vehicle condition, insurance requirements, driver qualifications and other screening processes), accessibility (ensuring that the service delivery model considers the aging population and meets the needs of the accessible community), and consumer protection (including measures to protect both the passenger and the driver, means by which to establish reasonable fares for service, and thorough complaint resolution processes). City Council identified this review as a strategic initiative in the 2014-2018 Term of Council priorities, and set aside funding for an external consultant to assist staff in developing a proposed regulatory framework.

Following a competitive process, KPMG was engaged to conduct the review under Council’s guiding principles. KPMG engaged three groups to assist in this task: the Mowat Centre (a public policy think tank), Hara Associates (a firm of economists with expertise in this field), and Core Strategies Inc. (a marketing firm specializing in public policy issues). KPMG first researched the industry and the major issues, and produced six discussion papers that were released to the public in October 2015, and are

included with this report as Documents 9 through 14. Following the release of the papers, KPMG held seven workshops with stakeholders from the taxi industry and the app-based ride service, as well as members of the public. These discussions led to the development of a Policy Options paper, which was released on November 28, 2015 and is attached as Document 15. Two subsequent webinars were held. In total, over 6,000 submissions were received during the consultation phase of this project. The final report, containing 70 specific recommendations, was submitted to the City on December 31, 2015.

At approximately the same time, Canada's Competition Bureau was examining this issue. On November 26, 2015, the federal government's Competition Bureau released a White Paper addressing the emerging and evident challenges in the vehicle-for-hire industry, titled "Modernizing Regulation in The Canadian Taxi Industry", attached as Document 16. The paper cites several of the KPMG papers as sources for the Bureau's conclusions. The paper recognizes the challenges faced by the taxi industry and by municipal and provincial regulators as a result of the emergence of ride-sharing applications, referred to as Transportation Network Companies or "TNCs" by the Competition Bureau. Ultimately, the Competition Bureau is advising municipal and provincial governments that app-based ride services should be allowed to compete in local markets because "[g]reater competition benefits consumers in terms of lower prices, higher quality of service, increased consumer convenience, and higher levels of innovation."²

The Competition Bureau recommends that regulations for the app-based ride services (called Private Transportation Companies, or PTCs, in the City of Ottawa's recommended by-law) be strictly tied to public policy objectives. They also recommend that municipal taxi regulations be overhauled and made 'lighter' – to allow the industry to compete fairly.

The recommendations in this report, if approved, will see the City of Ottawa establish a regulatory regime that is consistent with the Competition Bureau's recommended approach and City Council's guiding principles of public safety, consumer protection and accessibility. It incorporates common measures across the three vehicle-for-hire classes, with specific measures that recognize the different consumer expectations and requirements for each, designed to ensure that the regulations will give consumers a greater choice, and allow current industry participants the freedom they need to be able to innovate.

² "Modernizing Regulation in The Canadian Taxi Industry", Competition Bureau, November 26, 2015, Section 6.

Common Elements

The recommended common elements are driver screening (all vehicle-for-hire drivers will require a Police Records Check for Service with the Vulnerable Sector and a Statement of Driving Record), the maximum age limit for all vehicles-for-hire will be set at 10 years (except classic, vintage and specialty limousines), and an annual Ontario Ministry of Transportation (MTO) Safety Standards Certificate (inspection) will be required for all vehicles-for-hire. A biannual inspection will be required for all vehicles over five years of age.

On the advice of the City of Ottawa's insurance broker and an external senior insurance consultant, staff is recommending that a minimum of \$5 million commercial general liability insurance coverage be required across all categories of vehicles-for-hire.

The sections below highlight staff's recommended regulatory proposals for each of Private Transportation Companies (PTCs), Taxis and Limousines.

Private Transportation Companies (PTCs)

The recommended regime for PTCs is minimal, consistent with the Competition Bureau's advice and also with the presumption of 'buyer beware' risk assignment between passenger and driver on which the entire business model is based.

In addition to requiring all drivers to provide a mandatory Police Vulnerable Sector Records Check, Statement of Driving Record and annual MTO safety standards certificate for vehicles to the company; requiring each PTC to obtain minimum insurance levels of \$5 million in Commercial Liability and \$5 million in Non-Owned Automobile insurance for itself as well as requiring each PTC driver to obtain \$5 million Automobile Liability insurance coverage for part-time drivers; and requiring that all vehicles be no more than 10 years old, with biannual inspections for vehicles greater than five years of age, the recommended by-law will:

- Establish a license fee that includes a per-trip charge of \$.105 and an annual license fee that reflects the size of the company (i.e. a PTC with 1 to 24 affiliated vehicles will pay \$807 annually, a PTC with 25 to 99 affiliated vehicles will pay \$ 2,469 annually and a PTC with 100 or more affiliated vehicles will pay \$ 7,253 annually); and
- Require that rides can only be procured through a pre-arranged app – drivers will not be able to use taxi stands or accept street hails.

In recognition of the fact that PTCs, because they use private vehicles, don't have standards for accessible vehicles and drivers don't have the comprehensive driver

training that accessible taxi drivers do, and given that there is no ability for the City to accurately monitor requirements with respect to accessible service hours given the numbers of affiliated vehicles and the ebb and flow of part-time vehicles active at any given time, staff is not recommending an accessibility standard for PTCs.

Instead, staff is proposing that the City work with the PTCs it is licensing to attempt to put in place a voluntary per-ride surcharge that would, as a good faith gesture, see PTCs partnering with the City to ensure that vehicle-for-hire service supports the guiding principle of accessibility. Staff is also recommending that Council petition the Province for enabling legislation to authorize the City of Ottawa to charge an accessibility levy (and to use the revenues for enhancing the City's ability to deliver accessible transportation services), understanding that this approach will take time.

It should be noted that staff is aware that, on March 23, 2016, Uber announced that its accessibility service called "uberASSIST" would be launching in Ottawa that same day. As the uberASSIST option is not required to meet the City's accessibility standards for vehicles-for-hire, staff does not consider this option to be an accessibility service within the proposed new regulatory framework for vehicles-for-hire.

Taxis

The proposed changes to taxi licensing are significant and, again, consistent with the Competition Bureau's advice to reduce regulations that may impede the taxi industry's ability to compete in a changing environment.

Staff believes the proposed changes 'take the handcuffs off' of the taxi industry, providing it with the flexibility it needs to innovate and compete while still recognizing the important role it plays in the overall transportation system. It should be noted that, in recognition of the fact the City is recommending these changes in light of the fact that a monopoly on private vehicle-for-hire services no longer exists, that the proposed de-regulation measures for taxis and limousines only be enacted if there is competition, i.e. only if Council approves the regulations for the Private Transportation Companies, should the proposed changes to the taxi regulations also be approved.

The following is the summary of the recommended changes to the City's Taxi By-law:

- Reduce the standard taxi driver license fee from \$170 to \$96;
- Waive the accessible taxi driver license fee;
- Eliminate the requirement for the Taxi Driver Education Program and the refresher training course (retaining the Accessible Taxicab Training Course);
- Eliminate the uniform and street guide requirements;

- Allow that rides pre-arranged through an app may be set at a rate below the maximum fare prescribed in the by-law;
- Eliminate the \$1.50 credit card processing fee;
- Eliminate taxicab vehicle standards with respect to interior and trunk size, seating capacity and window tinting;
- Increase the allowable vehicle age from 8 to 10 years, with authority delegated to the Chief License Inspector to disqualify a vehicle in the interest of public safety;
- Change the requirement for in-vehicle cameras so that only minimum standards are specified, rather than specific makes and models;
- Expand the regulated area to include the entire City of Ottawa;
- Increase the ratio of plates-to-population from 1:784 to 1:806; and,
- Consistent with all three vehicle-for-hire classes, increase the liability insurance requirement from \$2 million to \$5 million Commercial General Liability and Motor Vehicle Liability for Taxi plate holders (covering all drivers who drive a taxicab), and introduce similar insurance requirements for Taxi Brokers.

City of Ottawa staff believes this proposed regime meets the Competition Bureau's recommendation to retain only those regulations that are necessary to meet Council's public policy goals, to help ensure the industry is freed up to make the kind of businesses decisions it believes it needs to make to compete.

Limousines

The recommendations for the limousine industry largely modernize the current regulations, and provide consistency with the overall vehicle-for-hire framework. Specifically, staff is recommending the following changes:

- Establish an auxiliary service category to address other service models, such as special senior assistance services and "responsible choice"-type services;
- Establish the maximum vehicle age of 10 years, with biannual inspections for vehicles greater than 5 years of age, except for the "vintage" category;
- Refine the definition of limousine and realign vehicle features to ensure vehicles are "luxury" and are distinguished from other vehicles for hire;
- Require a minimum insurance level of \$5 million in Commercial General Liability and Motor Vehicle Liability;

- Require all limousine drivers to provide mandatory Police Vulnerable Sector Records Check, to be coordinated by the limousine operator, and an annual acceptable Statement of Driving Record;
- Increase the minimum fare from \$67.50 for the first 90 minutes and \$45.00 for each additional hour, to \$75.00 and \$50.00 respectively, exclusive of HST.

Accessibility

Staff has considered the guiding principle of accessibility in all aspects of the proposed new regime. As indicated, staff recommends completely waiving the accessible taxi driver license fee in recognition of the importance of accessible taxicab service to residents. The \$55 processing fee would however be maintained to cover administration costs.

With respect to the proposed accessibility surcharge for PTCs, staff is requesting the delegated authority to negotiate a voluntary per-ride accessibility surcharge for ride service app providers and report back on the results of the negotiations and a recommended process. In addition, staff recommends that the General Manager, Emergency and Protective Services work with internal and external stakeholders to develop a strategy with respect to how new fees generated through an accessibility levy could be used to offset costs for a number of programs supporting accessible transportation, and report back with a recommended approach.

Conclusion

The City of Ottawa, as the regulator, is solely charged with putting rules in place that meet the public's reasonable expectations of consumer protection and public safety and other public policy considerations like accessibility.

As the regulator, the City is unable to consider or address the disruptive influences that may be affecting a private industry it regulates, or secondary markets that may exist under a current regulatory framework. However, the City can review how its current regulatory framework might hinder an industry's ability to compete effectively when a disruption occurs – and can change and reduce its regulations in a way that allows the industry to innovate and, potentially, thrive.

However, the City recognizes that these regimes are new, and it will continue to monitor whether the regulations continue to meet Council's public policy goals. Where necessary, the City can revisit measures that have unintended outcomes, or that need to change because of unanticipated pressures.

BACKGROUND

The “check engine” light is glowing on the dashboard of the Canadian taxi industry. What has traditionally been a tightly controlled business is now threatened by ride-sharing services that operate outside existing regulations. These new services, like Uber and Lyft, use technology to deliver advanced offerings that can sometimes provide cheaper, higher-quality services for Canadian consumers. Much-maligned taxi operators, bound by existing regulatory rules, are calling on cities to do something about these entrants. Regulators need to make sure that their rules get the overhaul they desperately need, before the whole taxi system seizes up.

[Modernizing Regulation in the Canadian Taxi Industry](#), Competition Bureau, November 26, 2015

* * *

Cost, convenience, personal safety and security, as well as vehicle safety are what customer [sic] view as most important...

Customers desire and expect that regulatory reviews will serve to instill a new, more level playing field in which Uber is “here to stay” yet operates in concert with the Taxi industry. Customers expect to see slightly higher fares as regulatory issues are resolved, however still anticipate significant long term customer benefits resulting from an overall more competitive industry.

“Customer Experience”, Core Strategies, October 14, 2015, p. 1
City of Ottawa Taxi and Limousine Regulation and Service Review

* * *

This is the advice the Competition Bureau is delivering to municipalities across Canada. We are urging regulators to recognize that the growing sharing economy offers an opportunity to inject greater competition into the Canadian marketplace and give consumers access to a wider range of innovative, high-quality products and services at better prices.

Needlessly burdensome regulations on the taxi industry – such as rigid fare structures and restrictions on the number of taxis that can operate – need to be reconsidered.

John Pecman, federal Commissioner of Competition
[The Globe and Mail, November 26, 2015](#)

In Ottawa, as in other municipalities in Canada (and in the United States as well as many other jurisdictions across the globe), the taxi industry is heavily regulated, with the limousine industry slightly less so, as summarized below:

Traditionally, the vehicle-for-hire regulation in Ottawa has established two different regimes – one for taxis and another for limousines. Taxis are subject to stricter requirements for fares, vehicle inspection and equipment, record-keeping, and driver selection and training. Limousines require pre-arrangement and have a minimum price, but fewer regulations over-all.

Taxis are limited in number, while there is no limit on the number of limousines. Taxi brokers, vehicles and drivers are all licensed, while only limousine companies are licensed. Regulations keep the two services separate, based on the markets they serve. Taxis have a prescribed fare, while limousines only have a minimum fare, advance booking is required, and they generally use luxury vehicles. One reason to keep the regimes separate is to prevent a taxi-like service from evading stricter oversight by operating as a licensed limousine.

With distinct products, the taxi and limousine markets co-exist. Profitability in the taxi market can be maintained, even though limousines are not limited in number.

“Policy Options”, KPMG, November 18, 2015, p. 6

City of Ottawa Taxi and Limousine Regulation and Service Review

The establishment of regulatory regimes for the taxi industry pre-dates amalgamation, brought in by a number of the former municipalities to ensure public safety and provide consumer protection in an industry that has traditionally been controlled by very few players. Presently, the primary brokers operating in Ottawa are Blue Line, Capital and West-Way. The City of Ottawa’s current regulatory framework is the result of a substantial amount of work by Council, staff, citizen stakeholders and the taxi industry following amalgamation, to help establish consistent rules across the City. While described in more detail below, it is important to remember that establishing a single regime from six was difficult – there were inevitably some individuals who benefitted and some who equally may have lost ground – but municipally-mandated public safety and consumer protection measures were established and the industry adapted.

Ultimately, it has meant that the Ottawa consumer has some assurance that taxis and limousines are clean, well-maintained, safe and adequately insured – and driven by professionals who have undergone training, a police records check and who abide by standards of courtesy, helpfulness and support. The fare is predictable and standardized, established to provide a safe ride at a reasonable cost and still allow the driver to earn a living. Both the driver and the customer are protected by in-vehicle security cameras.

Further, there is a complaint process that is established, with enforcement and consequences – and there is an appeal procedure, so that there is due process for the driver who has been the subject of a complaint that has been determined to have been founded.

Moreover, the City of Ottawa has established an accessible taxi regime that is recognized as a best practice in other jurisdictions. The City has one of the highest percentages of accessible taxicabs within the licensed taxicab fleet in comparison to other cities across North America. In addition to providing on-demand accessible taxicab service 24/7, the City's accessible taxis have also supported the service needs of Para Transpo through its Taxi Coupon Program and serviced Para Transpo calls that do not require higher capacity vehicles.

The taxi industry itself is fairly complex – there are taxi brokers, taxi plate owners and drivers. There are accessible taxi plates, and regular or standard taxi plates. There are plate owners who are also brokers. There are plate owners who are drivers. There are principal drivers who lease plates and drivers who neither own nor lease plates. There are specific regulations for each of these categories, with the result that Ottawa's taxi regulations are themselves complex.

The City of Ottawa and the industry have developed practices and protocols over the years to address pressure points that arise from time to time. As well, as detailed below, there have been regular reviews of the relevant by-law, where more substantive amendments have been adopted.

This process was established for many years for the public, the industry and the City of Ottawa as the regulator – until the vehicle-for-hire industry began to change unexpectedly and very rapidly with the advent of new technologies in Internet-based ride service applications (apps).

As noted by the University of Toronto's Mowat Centre, "[t]he sharing economy is quickly reshaping industries ranging from accommodation to transportation by harnessing the

value of under-utilized assets and facilitating peer-to-peer or shared use transactions to maximize the value of those assets.... Technological advances, such as smartphones with GPS-capability and advanced data collection and analytics that reduce the time and effort to negotiate transactions, have laid the groundwork for an explosion in app-based sharing economy firms.

Uber, Lyft, Sidecar and Hailo are just some of the companies that have entered the transportation sector in recent years to offer consumers new options for getting around. The basic premise of this business model commonly known as ride-sharing –is simple – they offer drivers and passengers an app-based interface on smartphones that connects people seeking rides with those offering rides.”³

Consumers have embraced this option, even though the use of personal vehicles-for-hire is not currently permitted in Ottawa.

At this time, Uber is currently the only app-based ride service company operating in Ottawa. The “Customer Experience” paper prepared by the Core Strategies marketing firm as part of the City of Ottawa Taxi and Limousine Regulations and Services Review found, “resoundingly higher customer service and customer experience ratings for Uber over Taxi.”⁴ The primary reasons cited were Uber’s lower cost-per-regular ride fare and the convenience and perceived superiority of its app.⁵

In addition, consumers expressed their preference for Uber over taxis in nearly every other customer experience category, including the payment process, driver courtesy and professionalism, wait times, and vehicle comfort and cleanliness. Uber and taxis were perceived as nearly the same with respect to knowledge of the route, vehicle safety and feeling safe and secure. The only customer service factor that consumers believed taxis were preferable is whether the vehicle is properly insured.

This preference is being tangibly expressed by more people choosing Uber as their vehicle-for-hire even though it is unregulated and not permitted. The result is that taxi drivers are claiming a significant loss of market share somewhat unexpectedly and in a very short period of time. As Hara Associates observed in the “Taxi Economics – Old and New” paper,

³ “Emerging Issues in the Taxi and Limousine Industry”, Sunil Johal, Sara Ditta & Noah Zon for the Mowat Centre, City of Ottawa Taxi and Limousine Regulation and Service Review, October 22, 2015, p. 3.

⁴ “Customer Experience”, Core Strategies, City of Ottawa Taxi and Limousine Regulation and Service Review, October 14, 2015, p. 1.

⁵ Ibid., p. 5.

“When more taxis enter the business, or when Uber begins to compete, the gross revenue by each taxi declines immediately. Financial arrangements within the industry mean that the driver bears almost this entire burden. The plate holder and dispatch company are insulated from impact, at least in the short-run.

A taxi driver earns money by collecting fares from customers, and paying expenses. Aside from gas, most of these expenses are fixed in the case of Ottawa. There is a fixed rental on the car (if rented), a given insurance premium, and a fixed amount paid to the dispatch fee for service. This is a typical arrangement.

The driver keeps what’s left after expenses are paid. This is one explanation for the long hours worked by drivers. The last dollars earned are the dollars the driver gets to keep. Similarly, if gross revenue falls – that money comes out of the driver’s pocket. Proportionately, if revenue per taxi falls 10%, the driver’s income may have fallen 20%.”⁶

As the regulator, the City of Ottawa, like other municipalities, is faced with the challenge of revising and reconsidering its licensing regime for the vehicles-for-hire it currently oversees, namely taxis and limousines, while acknowledging consumer demand to license and regulate those private transportation vehicle companies which operate through ride-service apps.

In recognition of the need to address the pressures being created by the non-traditional service models, on May 27, 2015, as part of the consideration of the report, “Response to Taxi-Related Motions of April 2012” (ACS2015-COS-EPS-0016), City Council directed staff to undertake a comprehensive review of Ottawa’s taxi and limousine regulations, “including potential regulations to recognize the emergence of new hailing technologies and transportation-for-a-fee service models”.

Council directed that the review was to bring forward a proposal that would ensure sustainable and efficient services that meet the needs of residents and visitors based on the following guiding principles:

- 1) **Public Safety** – including vehicle condition, insurance requirements, driver qualifications and other screening processes

⁶ “Taxi Economics—Old and New”, Hara Associates, City of Ottawa Taxi and Limousine Regulation and Service Review, October 10, 2015, p. 7.

- 2) **Accessibility** – service delivery model that considers aging population and meets the needs of the accessible community
- 3) **Consumer Protection** – including measures to protect both the passenger and the driver, means by which to establish reasonable fares for service, and thorough complaint resolution processes.

The scope of the work was to include:

- A review and analysis of the existing regulatory framework, such as the current Taxi By-law and the Limousine Licensing Schedule of the Licensing By-law, including the City's fees and charges, the formula for establishing taxi and limousine fares, the formula for determining the number and type of plates issued, and the manner in which the plates are managed by the industry;
- A review and analysis of emerging technologies and alternate service models;
- A review and evaluation of the current taxi and limousine system in terms of its service delivery, including:
 - a) collection of data such as average wait times, average cost of a fare, ability to service all neighbourhoods and client groups in Ottawa;
 - b) identification of the pros and cons of limited and unlimited taxi plates, and transferability;
 - c) assessment of whether or not the current system sufficiently supports the City's long-term accessibility and transportation needs (i.e. Para Transpo and Light Rail operations); and
- Benchmarking with other major cities.

The comprehensive review was to be undertaken using the most appropriate and effective methods, design and coordination of both stakeholder and public consultations to solicit input on client satisfaction and ways to improve the current system, and on the impacts of new technologies and service models. On July 8, 2015, Council approved the review of the taxi and limousine regulation and service as a priority in the 2015-2018 City Strategic Plan, with funding to retain a consultant to undertake the review.

Following a competitive procurement process, KPMG was engaged on August 25, 2015, to conduct the review under Council's guiding principles. KPMG engaged three groups to assist them in this task:

- Mowat Centre: an independent public policy think-tank based at the University of Toronto. The Mowat Centre has expertise in intergovernmental economic and social policy, and undertakes research, proposes innovative research-driven recommendations and engages in public dialogue on issues of national importance;
- Hara Associates: a firm of economists advising on policy and regulatory options, evaluating programs and assessing economic impacts; and
- Core Strategies Inc.: a marketing firm specializing in the analysis, development and implementation of corporate and communications strategies and issues of public policy. Core Strategies leads customer measurement programs and other internal and external consultation processes.

KPMG's review was comprised of three phases: a Research Phase, a Consultation Phase and an Analysis and Reporting Phase.

Research Phase

KPMG and its partners developed six discussion papers, released on Ottawa.ca and attached to this report, which facilitated discussions on potential amendments to the taxi and limousine regulations and services. Released in October 2015, the discussion papers included the following:

- “Case Studies”, prepared by KPMG, examines the current status of the vehicle-for-hire industry in jurisdictions outside of Ottawa, including Toronto, Waterloo, Vancouver, New York City, San Francisco and Washington, D.C., including how these jurisdictions reacted to the emergence of app-based ride service models (Document 9);
- “Current Regulatory Regime”, prepared by Hara Associates, discusses elements of Ottawa's regulatory framework under the topics of Legislative Authority; the Taxi By-law; Enforcement; and Limousines and Regime Separation (Document 10);
- “Emerging Issues in the Taxi and Limousine Industry”, prepared by the Mowat Centre, provides an overview of the current business models that are reshaping the industry globally. The paper explores the issues of market performance and business models of emerging technologies in Ottawa and other markets; current and emerging policy approaches and regulatory environments for new business models; economic implications of emerging technologies; and the service impacts (e.g. geographic, accessibility and socio-economic) of these models (Document 11);

- “Accessibility”, prepared by KPMG, reviews the four tiers of public transportation in Ottawa for persons with disabilities, including accessible buses, Para Transpo, accessible taxicabs and subsidized taxi coupons (Document 12);
- “Taxi Economics – Old and New”, prepared by Hara Associates, provides an explanation of the economics of regulatory issues surrounding the taxi industry and the impact of app-based service models (Document 13); and
- “Customer Experience”, prepared by Core Strategies, provides an overview of the results of a series of focus groups conducted by Core Strategies in September 2015 to acquire a sense of the experience of customers using vehicles-for-hire as a viable mode of travel in Ottawa (Document 14).

Consultation Phase

As a follow-up to the public release of the six discussion papers, a series of seven workshops were held, with 66 participants, to obtain input from the taxi drivers, Uber drivers and members of the public. City staff attended the workshops to hear the discussions. The workshops took place between October 28 and November 6, 2015, in locations throughout the City, in English and in French.

Following the conclusion of the workshops, KPMG, on November 18, 2015, released a document titled “Policy Options” (attached as Document 15) for comment. “Policy Options” identified three strategies the City could follow in regulating vehicles-for-hire and reviewed options for regulations to address each of the principles identified in the three strategies, as well as to improve customer service and other related topics. Two webinars were held, with 44 participants, to solicit feedback on the “Policy Options” paper; City staff attended the webinars as well.

The Taxicab and Limousine Regulation and Service Review page on Ottawa.ca, which was updated regularly by city staff, provided an overview of the review process, details regarding the review mandate and timelines, links to all discussion papers, and information on the various ways in which to participate. The City’s Twitter and Facebook accounts were also used to inform the public of the review, the release of the various documents and to solicit feedback.

Stakeholders and the public were encouraged to submit comments to the dedicated Taxi Hotline e-mail address. In excess of 6,000 submissions were received from mid-October to November 30, 2015; some submissions were also submitted directly to KPMG and staff.

Analysis and Reporting Phase

Analysis of the research and discussion papers as well as input from the consultation phase informed the development of KPMG's final report, the "Taxi and Limousine Regulation and Service Review," dated December 31, 2015.

Developing the proposed new Regulatory Framework for Vehicles-for-Hire in the City of Ottawa

Staff has considered the following in developing the recommended framework presented in the Discussion section of this report and in the accompanying documents:

- The history of taxi and limousine regulation in the City of Ottawa;
- KPMG's City of Ottawa Taxi and Limousine Regulation and Service Review;
- The City's authority to regulate and license vehicles-for-hire;
- Regulations in other Canadian municipalities;
- Public safety, consumer protection, accessibility; and
- The Competition Bureau's White Paper, "Modernizing Regulation in the Canadian Taxi Industry".

A high-level summary of each of these inputs is found below.

History of Taxi and Limousine Regulation in the City of Ottawa

On July 11, 2001, City Council approved a staff report titled, "Taxi and Limousine Licensing" (ACS2001-EPS-BYL-0005) concerning the regulation of the taxi industry in the new City of Ottawa. The report focused on a number of reforms that were intended to promote quality customer service and safe, reliable and well-maintained taxicabs with a committed and trained taxi industry, to be applied to each of the existing taxi by-laws in the former municipalities of Ottawa, Vanier, Cumberland, Gloucester, Nepean and Kanata.

Although different in some respects, these by-law amendments were enacted to serve the same objectives:

- To ensure health and safety for both passengers and drivers;
- To provide some measure of consumer protection;

- To regulate rates and tariffs and establish license fees; and
- To regulate the responsibilities and conduct of taxi drivers, taxi plate holders and brokers.

Council also approved the recommendation that there would be one new City taxi licensing by-law that provided for a single zone by January 1, 2006.

At its meeting of September 28, 2005, City Council considered the staff report titled, “By-laws – Taxis” (ACS2005-CPS-BYL-0036), which recommended harmonizing the pre-amalgamation taxi by-laws into one regulatory regime, and provided the broad framework for the current regulatory regime for the taxi industry. This report was the result of a detailed review of the by-laws from the six pre-amalgamation municipalities that regulated taxis, the regulations in place across the Province of Ontario and by-laws from other Canadian cities that enacted progressive, safety-specific taxi provisions.

The harmonized, city-wide regulations that were adopted, for the most part, reflected the intent of existing regulations. The major changes were put in place to improve accessible taxicab service, passenger and driver safety and dispatching capabilities.

The most contentious change involved the move to a single fare zone. While the six different by-laws had been previously amended to bring about consistent regulations and taxi service throughout the City, taxi service had continued to be divided into three passenger pick-up zones (Ottawa-Vanier, Nepean-Kanata and Gloucester-Cumberland). After a number of years, staff observed the zones created artificial boundaries where taxicabs licensed in one jurisdiction could not pickup passengers inside another jurisdiction (this restriction did not apply to accessible taxicabs). Staff recommended that the City’s taxi industry be regulated by a single Taxi Licensing By-law, which would permit drivers to pickup and dropoff passengers anywhere within the City.

At the time, stakeholders within the taxi industry felt the multi-zone regulatory system eliminated the potential for a convergence of cabs in the downtown core; however, the elimination of the zone system redirected enforcement from ensuring licensed cabs were operating in their respective zones to focusing on unlicensed “bandit” cabs. Further, in the spirit of customer service, the establishment of one zone eliminated “deadheading” following trips out-of-zone.

As well, the number of taxi license plates issued had remained stagnant since 1991 with the exception of the 25 accessible plates issued in 2003, even though the population

had increased by 120,000 residents between 1991 and 2005. In 2005, there were 1,026 licenses taxicabs operating within the regulated area of the City of Ottawa – 1,001 standard taxicabs and 25 accessible taxicabs.

As part of this review, the City commissioned Hara Associates Inc., in partnership with KPMG, to determine if there was a need for more taxicab plates in Ottawa. The Hara/KPMG report concluded there was an immediate need for 25 more taxicabs and recommended that any new plates issued in the future should all be for accessible vehicles. They also concluded that the City required at least 160 new accessible taxicabs in the future to meet the anticipated demand for service, particularly from individuals with disabilities.

Council directed that the number of accessible taxicabs be increased from 25 to 185 by 2010, to be achieved by issuing 40 new accessible taxicab plate holder licenses each year starting in 2006 until the end of 2009, with the underlying objective that the majority of requests for accessible taxicab trips would be served within the same timeframe that one would wait for a standard taxicab.

In addition, as a means of protecting and enhancing driver and passenger safety, staff recommended that all taxicabs be equipped with security cameras as a deterrent to bad behaviour and acts of violence. Other jurisdictions noted that cameras were a cost-effective way to reduce robberies and other violent crimes. Cameras would also improve the working environment of taxi drivers by improving passenger behaviour.

Council also established a lower age of acceptable taxicab vehicles.

Between 2005 and 2012, City Council adopted a number of amendments to the taxi by-law, typically in response to industry or consumer concerns or changes in legislation, with changes that could be most accurately described as standard 'tweaks' to the existing regime, as follows:

- July 11, 2007 – Taxi By-law – Accessible Service – Amendments (ACS2007-CPS-BYL-0024), which addressed the issuance of the remaining 120 accessible plates, not to be transferrable, and eligibility requirements for accessible taxi plate holders;
- May 28, 2008 – Taxi By-law - Amendments (ACS2008-CPS-BYL-0024), which provided for a fare increase, amended police record checks requirements as a condition of license renewal, and increased the plate transfer fee and introduced a nominal surcharge on all license fees, in place only until the costs of in-vehicle cameras were recovered;

- June 23, 2010 – Taxi By-law – Amendments Related to Vehicle Standards, Meter Rate Adjustments and Minor Administrative Corrections (ACS2010-COS-EPS-0027), which approved a meter rate adjustment, allowed low emission and hybrid vehicles as taxi cabs; and permitted drivers with more than 10 years' experience to be exempt from basic and accessible education training if their licenses had lapsed; and
- July 13, 2011 – Illegal (bandit) Taxicabs – Additional Enforcement Powers (ACS2011-COS-EPS-0024), which provided for the City to apply for legislative amendments to allow greater enforcement of pick-up of passengers by unlicensed cabs and to allow the City of Ottawa's municipal law enforcement officers to seize and impound vehicles where the owners, drivers or brokers of such vehicles have been found to be operating as or dispatching unlicensed taxicabs.

At its meeting of April 11, 2012, City Council considered the staff report titled, "Review of Taxi By-law – Various Amendments" (ACS2012-COS-EPS-0018), which was brought forward to respond changes in legislation, including the *Accessibility for Ontarians with Disabilities Act, 2005* (AODA) as well as advancements in vehicle manufacturing.

With this report, Council expanded accessible taxicab service to the unregulated rural area, made accessible plates transferrable, increased the maximum age limit for a taxicab from seven to eight model years, and increased the maximum replacement age limit from four to five years. It established that cabs five model years or newer would be subject to one annual inspection in the fall, while cabs older than five model years would continue to require a spring and fall inspection to ensure public safety.

City Council also directed staff to review and report back on:

- All possible options for restructuring taxi plate fees, including options for capturing the market value of such plates for the taxpayers of the City of Ottawa;
- Options to determine how service demands could be met, which may include identifying mechanisms that would not allow for the transfer of standard taxicab plates to occur unless such plates were made accessible;
- The potential to require taxicab owners, when they are purchasing their next vehicle, to purchase an accessible vehicle;
- Having a commission paid to the City on the value of any transfer sale of a taxi license, e.g. if a license is sold for \$200,000, at 10% commission, the City would receive a \$20,000 commission plus the license transfer fee; and

- The potential for the City to obtain first right of refusal to purchase taxi licenses being transferred – this would be an option to be exercised as funding is available with the objective that, over time, the licenses would all be non-transferrable.

Staff responded to those directions in the report titled, “Response to Taxi-related Council Motions of April 2012” (ACS2015-COS-EPS-0016), which Council considered and approved at its meeting of May 27, 2015, as discussed earlier in this report.

It is important to note that, in addition to directing the comprehensive review that this report addresses, City Council affirmed in this report that, **“the City’s role is to regulate taxi service, not operate it, within the parameters of its enabling authority in the *Municipal Act, 2001*. Further, as regulator, it is not appropriate for the City to be directly involved in the economic status of the industry. It is the objective of the City, as regulator, to ensure public safety, public interest and consumer protection.”**

Understanding the municipality’s governance role is important to the new regulatory framework being proposed. While there are very good public policy reasons to restrict the number of plates issued by the municipality under its *Municipal Act, 2001* authority, these regulations have led to a secondary market in taxi plates, “neither established by nor under the control of the City”.⁷ How and why this occurs in Ottawa and other municipalities is described in detail in the “Taxi Economics – Old and New” paper by Hara Associates. The issue of plate value was out of scope for the comprehensive review and, staff believes, out of scope for the City as the regulator.

Further, although staff is aware that the recommendations in this report will have an impact on all three vehicle-for-hire industry segments being regulated to varying degrees, it is also important to note that this is the case with most regulatory changes and that the industry has adapted in the past.

KPMG’s City of Ottawa Taxi and Limousine Regulation and Service Review

KPMG’s final report, the “Taxi and Limousine Regulation and Service Review,” dated December 31, 2015, and attached to this report as Document 1, was based on an analysis of the research and discussion papers as well as input from the consultation phase.

KPMG’s report outlines 70 separate recommendations based on the City’s guiding principles of Public Safety, Accessibility and Consumer Protection. Based on these

⁷ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 4.

guiding principles, and in consideration of the feedback received from stakeholder groups and research outcomes, KPMG recommended the following broad-based reforms to the taxi and limousine industry:

1. That a new licensing category for Transportation Network Companies (herein referred to as Private Transportation Companies or PTCs) be established in support of improved customer service;
2. That the existing taxi and limousine regulatory framework be reformed to reflect emerging issues and new technologies; and
3. That the existing taxi and limousine regulatory framework be simplified in support of leveling the playing field.

Staff agrees with the overwhelming majority of the KPMG recommendations, which are described in the Discussion section of this report, as they pertain to the major elements of the regulatory proposals.

A full listing of the KPMG recommendations can be found in Document 5, along with a brief indication of whether City staff is bringing forward the recommendation as is or modified, or whether staff is not accepting the recommendation and why.

The City's General Authority to Regulate and License Vehicles-for-Hire

Section 10(2) of the *Municipal Act, 2001* authorizes the City to pass by-laws with respect to a variety of areas, including the health, safety and well-being of persons as well as the protection of persons and property, including consumer protection. These two areas in particular have been interpreted by Courts as providing an ability for municipalities to provide for the legitimate interests of the municipality and its inhabitants. In addition, Section 151 of the *Municipal Act, 2001* authorizes a municipality to license, regulate and govern a business or trade carried out wholly or partly within the municipality, and Section 156 of the *Municipal Act, 2001* provides further authority for the licensing, regulating and governing of the owners and drivers of taxicabs, including the establishment and regulation of fees and fares, and the placement of a limit on the number of taxicabs.

Overall, the specific licensing authorities provided in the *Act* together with the broad by-law making powers found in Section 10, noted above, allow municipalities to create complete licensing regimes for businesses and trades, which, depending on the particular circumstances, can include comprehensive requirements and standards to

address the municipality's concerns as regulator, as further discussed in the Legal Implications Section of this report.

The City currently licenses and regulates taxicab brokers, taxi plate holders, and taxicab drivers, as well as limousine service providers, under the above-noted authorities in the *Municipal Act, 2001*. The Taxi By-law 2012-258 was enacted on July 11, 2012, and it updated and repealed the former Taxi By-law 2005-481, which was the City of Ottawa's first harmonized Taxi By-law since the amalgamation of municipalities in Ottawa-Carleton in 2001. Schedule 10 of the Licensing By-law 2002-189, as amended by By-law 2004-209, currently regulates limousine service providers.

Based on a review of the *Municipal Act, 2001*, the City has the legislative authority to regulate and to license Private Transportation Companies, and furthermore to amend its current taxi and limousine service regulatory regimes.

Regulations in Other Canadian Municipalities

KPMG Case Studies Review

As part of the First Phase of KPMG's Taxicab and Limousine Regulation and Service Review, a Case Studies discussion paper was released on October 15, 2015, examining the status of the vehicle-for-hire industry in jurisdictions outside of Ottawa, including Toronto, Vancouver and Waterloo. The report was released before Edmonton and Calgary brought in their new regulations. The KPMG report notes that jurisdictions have responded to the emergence of app-based service models in a variety of ways. Vancouver, for example, has forced these companies to leave its markets through regulatory and enforcement efforts. Others are, like Ottawa, in the process of considering and developing new regulations to manage app-based services. KPMG's review was framed around the City's guiding principles of Public Safety, Accessibility and Consumer Protection.

The study noted that among the cities that have amended their regulations, most have chosen to establish a new class of vehicle-for-hire. Similarly, in most cities, cars in the new category cannot accept hails or use taxi stands. Drivers will be required to undergo criminal record checks in all jurisdictions but the extent of mandated training varies. Regulations concerning vehicles range widely with respect to age restrictions, visible markings, and vehicle inspection requirements. There is also no uniform approach to accessible service – some jurisdictions have not included requirements, while others have imposed a fee or levy for each trip that can be used to support other accessible

service models. Some cities, like Toronto, have also proposed modifying taxi and limousine regulations as part of adapting to a new service model.

Jurisdictions outside of Ontario

Since the release of KPMG's Case Review study, both the cities of Edmonton and Calgary have undergone extensive reviews of their respective licensing by-laws and introduced regulatory regimes for vehicles-for-hire.

Below is a summary of Edmonton and Calgary's revised framework:

Edmonton

- Taxis, limousines and shuttles are governed by the Vehicle for Hire By-law, which was amended on January 27, 2016, and came into effect on March 1, 2016;
- Under the amended by-law, app-based ride-sharing programs can operate legally in Edmonton under a new class called Private Transportation Providers (PTPs);
- There are 1,235 taxi vehicle licenses and 95 accessible taxi vehicle licenses;
- There is a minimum price of \$3.25 per-trip for rides offered through PTPs; and
- Fares are deregulated – with the exception of the \$3.25 minimum fare – for rides with PTPs and rides with Taxi arranged through an app. Fares for taxi rides hailed on the street, at a cab stand or ordered by phone are regulated by the City. PTPs cannot be hailed or use a cab stand.

License Fees

- Commercial PTPs (more than 200 vehicles)
 - Driver's License: \$60 annually or \$100 for two years
 - Dispatch License: \$50,000 annually; per-trip fee: \$0.06; accessibility surcharge: \$20,000 per year
 - The \$20,000 surcharge can be waived if proof is provided that the dispatcher is providing accessible service equivalent to the accessible taxi service industry
- Regional PTPs (less than 200 vehicles)
 - Driver's License: \$60 annually or \$100 for two years

- Vehicle License: \$400 annually and a \$50 annual accessibility surcharge
- Dispatch License: \$1,000 annually
- Taxicabs
 - Driver's License: \$60 annually or \$100 for two years
 - Vehicle License: \$400 annually
 - Dispatch License: \$1,000 annually

Calgary

- Taxis, limousines and Transportation Network Companies (TNCs) are regulated under the Livery Transport By-law, which was amended on February 22, 2016;
- Under the amended by-law, TNCs are eligible to operate in Calgary;
- As of April 4, 2016, the City will accept Private Vehicle-For-Hire (PVFH) drivers license applications;
- 1,470 standard taxi plate licenses and 189 accessible taxi plate licenses (as of January 2016 [report](#)); and
- Fares are unregulated for trips arranged through an app for both taxis and PVFHs. For street hail and dispatch trips, taxis are required to charge a regulated rate, as a maximum.

License Fees

- TNCs required to pay an annual business license fee of \$1,753
- TNC Driver
 - Driver's License: \$220
 - Police check: \$30
 - Vehicle Inspection: \$140-190
- Taxi Driver
 - Driver's License: \$135
 - Police check: \$30

- Vehicle Inspection: \$140-190
- Taxi Driver Training: \$330
- Taxi Plate License: \$877

Accessibility-related surcharges have not been determined. Phase 2 of Calgary's Accessible Taxi Review is ongoing and will conclude in Q4 2016.

Current Status of 'PTPs' and 'TNCs' in Edmonton and Calgary

While there are overarching similarities that exist between Edmonton and Calgary's regulatory framework – the most significant being approval for PTPs and TNCs to operate legally – there remain different approaches to achieving cost neutrality through their respective licensing fee structures.

However, one common element in both Edmonton and Calgary's regulatory amendments is the issue of commercial insurance coverage. Both cities' approval to allow PTPs and TNCs to operate is contingent on the Province introducing an insurance policy.

PTPs and TNCs were to be legal in Edmonton and Calgary on March 1, 2016, and April 4, 2016, respectively; however, the Province of Alberta says insurance for Uber drivers, while notionally approved, will not be ready until July 1, 2016, at the latest. As a result, Uber has suspended its operations in Edmonton and Calgary. Further, the Provincial Government is also requiring Uber drivers to obtain a Class 4 license, which is a requirement for taxi drivers.

Uber has requested that the Class 4 license requirement be waived, and has initiated a public campaign to lobby the Provincial Government to expedite insurance approval.

Given how recent the regulatory changes in Alberta are, and the fact that they have not come in to practice due to the issue of insurance coverage, it is too soon to identify which elements might (or might not) be working as intended.

Ontario Municipalities

While Edmonton and Calgary have both formally approved amendments to their respective taxi by-laws, pending Provincial approval of insurance coverage, Ontario municipalities are still in the process of reviewing amendments to their regulatory framework.

Like Ottawa, Toronto and Waterloo are at similar stages in reviewing their regulatory regimes, while London and Hamilton are monitoring this progress and its outcome.

Below is a summary of Toronto and Waterloo's efforts to date:

Toronto

In 2015, Ipsos Reid, on behalf of the City of Toronto, surveyed 1,004 Toronto residents and found strong sentiment that residents should be able to choose for themselves whether they want to use an app-based ride service or a licensed taxicab service, but there was an expectation that the City would regulate the app-based ride service industry to protect passengers' personal safety and ensure safe driving behaviour.

At its September 30, 2015 meeting, City Council requested a framework to equitably regulate all ground transportation providers, including taxicabs, limousines and vehicle-for-hire services.

The public consultation component of the City's Ground Transportation Review Process concluded in February. Staff is expected to present a report to the City's Licensing and Standards Committee in April 2016.

City of Ottawa staff has worked closely in collaboration with City of Toronto regulators and believes the recommendations in both municipalities will be consistent, while respecting the individual requirements of each.

Waterloo

The Region of Waterloo is in the process of reviewing its taxi regulations, following Uber's arrival in July 2015. In August 2015, a proposed by-law was brought forward to the Region's Licensing and Hearings Committee.

The intent of the draft by-law was to license all vehicles for hire, regulate the full industry to ensure consumer protection and passenger safety, resolve issues related to accessibility and develop appropriate regulations for the industry.

Highlights of the proposed by-law amendments include:

- All vehicles-for-hire are to be regulated;
- Existing by-laws for Special Transportation, Limousine and Taxis to be combined into one by-law;
- Vehicles will fall into two categories – Taxi (metered) or Auxiliary Taxi (no meter)

- Auxiliary taxis cannot be hailed or use taxi stands;
- Taxi drivers and auxiliary taxi drivers are required to complete or obtain: Ontario Driver's license, vulnerable sector screen, sensitivity training, and limits on drive time without rest;
- Both categories of vehicles require insurance, inspections, record of trip, GPS systems and closed-circuit in-vehicle cameras; and
- 7% of the taxi fleet must be accessible by 2017 and 10% by 2022.

The first phase of public consultation commenced in August 2015 following the report's release and focused on taxi license limits, different classes of taxis, fares and tariffs, market competition, defining good driving and safe vehicles, and understanding the role of the Region as a regulator.

The second phase of public consultation is ongoing, with comments due April 8, 2016. The second phase of consultation focuses on whether the Region should regulate taxis and taxi-type service; whether the Region should regulate fares for taxi services, whether the Region should govern and require accessible vehicles, and whether the Region should require cameras in all vehicles.

Accessibility

As discussed throughout this report, City Council has made accessible transit a priority. Currently, there are four tiers of public transportation in Ottawa for people with accessibility issues: accessible buses, Para Transpo, subsidized taxi coupons for registered Para Transpo users and accessible taxicabs.

With respect to the City's accessible public transit fleet, all of OC Transpo's buses can now load and accommodate persons in wheelchairs or with limited mobility. OC Transpo also operates the Para Transpo service dedicated to serving registered users that have permanent or short-term disabilities and who are unable to use conventional transit all or some of the time. The service provides door-to-door service at the same price as transit fares, but generally requires advance booking of the trip. Service is provided using a combination of accessible vehicles and contracted taxis (both regular sedan and accessible taxis). For contracted services, the taxi companies are paid the metered taxi fare plus a 15% overhead surcharge by Para Transpo, which in total represents an annual cost of approximately \$9 million. Para Transpo also provides subsidized taxi coupons for registered users.

The City's commitment to accessible public transit also extends to its taxicab service, which is a model for other jurisdictions across Canada. The City of Ottawa requires that all new taxicab plate holder licenses issued be for accessible vehicles only. There are currently 187 accessible taxicab licenses in the City, representing 15.7% of the City's taxicab licenses, substantially above municipal averages across the country.

According to KPMG's Accessibility discussion paper, 5% of Montreal's taxi permits are accessible, while 8% of Edmonton's are accessible. In Ontario, 12% of Toronto's taxicabs are accessible and the Region of Waterloo proposes amending its taxi by-law such that by 2017, 7% of its taxi fleet will be accessible and 10% by 2022.

KPMG notes that while the total number of dispatched accessible taxicab fares has increased in Ottawa from 9,764 in 2011 to 15,610 in 2013, it still represents less than 1% of dispatched fares. By contrast, Para Transpo reports that there were approximately 12,000 registered users who were served on nearly 884,000 trips in 2014.

As seen in other jurisdictions, in particular Edmonton and Calgary, accessible standards are being contemplated for the private transportation provider industry. Edmonton's Vehicle for Hire By-law charges commercial PTPs an annual \$20,000 surcharge, which can be waived if the dispatcher can provide proof that it is providing an equivalent accessible service as the taxi industry. Similarly Calgary is contemplating an accessibility-related surcharge; a review is on-going and will conclude in Q4 2016.

It is important to note the statutory powers between municipalities in Alberta and Ontario differ. Specifically, Alberta's *Municipal Government Act, 2000* states:

8. Without restricting section 7, a council may in a bylaw passed under this Division

(i) provide for a system of licences, permits or approvals, including any or all of the following:

establishing fees for licences, permits and approvals, including fees for licences, permits and approvals that may be in the nature of a reasonable tax for the activity authorized or for the purpose of raising revenue;

The permissive difference between Alberta's legislation and the *Municipal Act, 2001* is that municipalities in Alberta are empowered to charge a fee that constitutes a reasonable tax for the purposes of raising revenue, whereas Ontario requires a fee to be related to cost.

At this point in time, then, staff is only able to propose that the City negotiate a voluntary per-ride accessibility surcharge for ride service app providers and report back on the results of the negotiations and a recommended process, and request the authority from the Ontario government to provide Ottawa with enabling legislation to allow the City to make an accessibility levy a mandatory requirement for these Private Transportation Companies. This is presented more fully in the Discussion section of this report.

The Competition Bureau's White Paper, "Modernizing Regulation in The Canadian Taxi Industry"

On November 26, 2015, the federal government's Competition Bureau released a White Paper addressing the emerging and evident challenges in the vehicle-for-hire industry, titled "Modernizing Regulation in The Canadian Taxi Industry". The paper cites several of the KPMG papers as sources for their conclusions, particularly "Case Studies" by KPMG, "Emerging Issues in the Taxi and Limousine Industry" by the Mowat Centre, "Taxi Economics – Old and New" by Hara Associates, and "Customer Experience" by Core Strategies.

The paper recognizes the challenges faced by the taxi industry and by municipal and provincial regulators as a result of the emergence of ride-sharing applications, referred to as Transportation Network Companies or "TNCs" by the Competition Bureau, as follows:

"While TNCs provide a number of competitive benefits to consumers, they also raise legitimate regulatory issues. Taxi regulations play an important role in addressing market failures and ensuring the safe, orderly operation of ground transportation services and keeping drivers, passengers and the general public safe. As TNCs operate outside of traditional regulatory frameworks, they raise a number of issues relating to ensuring public safety, consumer protection, and other public interests.

Many regulators have expressed concern that TNC drivers do not undergo sufficiently robust criminal background checks and/or that they do not carry adequate insurance coverage. Traditional taxi companies and drivers argue that not only does this create safety and liability concerns, the unlevel playing field may jeopardize investments made by companies and drivers to establish themselves in the taxi business. As discussed above, competition from TNCs may also cause a significant decrease in the value of taxi plates, which may represent significant investment losses to these stakeholders. These concerns

have led many regulators to restrict or discourage the entry of TNCs into local areas.”⁸

The Competition Bureau does not support restricting or discouraging the entry of these ride-sharing apps into the local market. It is its belief that “[g]reater competition benefits consumers in terms of lower prices, higher quality of service, increased consumer convenience, and higher levels of innovation.”⁹

The Bureau recognizes the need for and value of regulation in the ride-sharing industry as a whole, particularly with respect to standards for public safety, consumer protection and other issues, such as accessibility. It further advises that such a regulatory regime should be ‘light’, and focused on the achievement of public policy objectives. It also notes that the same principles of ‘light’ regulation should be applied to current industry members, including taxis, as follows:

“Regulations should not be designed or implemented in a manner that favours or protects certain industry participants over others in the absence of legitimate policy goals. Just as regulators should ensure that the regulatory burdens placed on TNCs are not excessively onerous and are strictly tied to achieving policy objectives, they should also consider whether regulatory frameworks governing traditional service providers are unduly burdensome or restrictive. When regulators contemplate how to resolve differences in the regulatory regimes that apply to different business models, they should first look at how the existing regulation can be overhauled, rather than solely imposing restrictions on new entrants.

Regulations should be made and tested using empirical evidence wherever possible. Industry participants have an incentive to convince regulators to impose rules that favour and protect their own interests, rather than the public interest. To keep this process honest, regulators should demand and rely on empirical evidence to test the efficacy of any new regulation wherever possible. This evidence-based approach to regulation provides a more objective basis on which regulations should be imposed. Regulators should be able to demonstrate that a rule will have an intended result prior to implementation, and progress should be measured on an ongoing basis to assess whether the rule is having its intended consequence.

⁸ “Modernizing Regulation in The Canadian Taxi Industry”, Competition Bureau, November 26, 2015, Section 4.

⁹ Ibid., Section 6.

Particularly when considering industries that are subject to disruptive innovations and rapid change, regulators should continually question the effectiveness of current restrictions. Existing regulations may no longer be serving their intended purpose and may even stand in the way of desired changes, or may be overly burdensome compared to less intrusive alternatives.”¹⁰

Staff has reviewed the City’s current regulatory regime and the proposals from KPMG in light of the above recommendations, and the recommended approach reflects this, particularly in the approach to reducing the regulatory burden on the taxi industry.

DISCUSSION

Overview

With distinct products, the taxi and limousine markets co-exist. Profitability in the taxi market can be maintained, even though limousines are not limited in number.

UberX does not fit in this model and the Uber vehicles currently operate without any oversight from the City, in contravention of the Taxi By-law, but with a service model that has attracted considerable customer support. Going forward, continuing a substantial Uber operation outside the regulated environment is not an option. Similarly, continuing the operation of the taxi industry in its current form should not be seen as an option either.

“Policy Options”, KPMG, November 18, 2015, p. 6

City of Ottawa Taxi and Limousine Regulation and Service Review

Competition is an effective means to ensure that consumers have access to the broadest range of products and services at the most competitive prices.

Regulatory limits on competition should be based on the best available data, be designed to address legitimate policy concerns, and be no broader than what is reasonably necessary to mitigate those concerns. Regulations should also be subject to regular review to ensure that they are still responsive to market conditions and are still achieving policy outcomes.

[Modernizing Regulation in the Canadian Taxi Industry](#), Competition Bureau, November 26, 2015

¹⁰ Modernizing Regulation in The Canadian Taxi Industry”, Competition Bureau, November 26, 2015, Section 4.

The arrival of ride-sharing services presents an important opportunity for regulators to inject increased competition into the taxi industry by creating a single, level playing field. The Competition Bureau supports efforts to regulate ride-sharing applications instead of prohibiting them. This will allow consumers to benefit from competitive prices on a variety of innovative choices, giving all service providers an equal chance to compete.

To even the playing field, where possible, regulators should relax restrictions on traditional taxis, rather than imposing additional regulations on new entrants. When new regulations are needed, they should be limited to meeting legitimate policy objectives, such as safety.

John Pecman, federal Commissioner of Competition
[The Globe and Mail, November 26, 2015](#)

Taxi and limousine companies have long filled in the gap between public transportation and private vehicles, “providing demand responsive services that are particularly important at the major transportation hubs, in the downtown core where parking seems to be limited and expensive, for those without cars, and those potentially under the influence.”¹¹ For almost all of those years, the two streams operated as virtual monopolies. This, in turn, led to the public’s call for regulations that would guarantee their safety and security, while protecting the consumer – which itself led to government response and the current regulated taxi and limousine industry.

The introduction of ride service applications to the private transportation industry in 2014 has caused a rapid shift in the economics of that industry – and this kind of disruptive shift in any industry can lead to both tension and innovation. The following excerpt from the December 31, 2015, KPMG report, “City of Ottawa Taxi and Limousine Regulation and Service Review,” provides a useful snapshot of the issues:

Uber and its drivers have been providing vehicle-for-hire services (specifically the widely used UberX service and the UberXL service which uses larger vehicles) in Ottawa for over a year. Certain Uber drivers have been charged and convicted of violating the Taxi By-law. However, Uber continues to offer these services to willing customers.

The taxi industry believes that the Uber driver screening process is inadequate and also believes that the UberX and UberXL business model has benefited from certain economic advantages (including no license fees, no commercial

¹¹ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 1.

insurance, different requirements to remit HST on fares received, no requirement to purchase an in-car camera, and no requirement to lease taxi plates from plate owners or to purchase a plate, usually with some associated financing costs). However, the UberX and UberXL drivers do pay a significant fee for the use of the Uber technology based on their rides and revenue generated. Uber has indicated that it has some level of insurance, but evidence of this has not been provided to the City.

The Uber app (UberX and UberXL) allows customers to rate drivers and see the ratings of previous customers. The transparency and near real-time feedback was noted by many individuals in the consultation process as contributing to what they described as excellent customer service. Uber dispatches the closest available car and uses “surge” pricing to bring out more drivers when demand is highest, which generally results in quicker response to customer calls than taxis provide, and the app shows the vehicle as it approaches, giving customers a much better idea of when their ride will arrive and provides information about the identity of the driver. The app takes payment directly from the customer’s credit card or PayPal account when the ride is over and issues a detailed receipt electronically.

The taxi industry indicated it has felt the effects of the increased competition with the arrival of UberX and UberXL, with drivers and brokers reporting lower income and plate owners expressing concern for plate value. Although the City issues taxi plates for a nominal fee, it does not regulate values associated with the subsequent private sales of those plates, which have occurred in return for substantial consideration.

The taxi industry in Ottawa has recognized the emerging business models and has already implemented some changes, introducing its own apps and improving dispatch algorithms. Some sectors of the taxi industry have stated that they desire amendments to the regulatory environment to facilitate some further changes, such as competitive fare rates, and recognize it will take time to change the business model and the industry culture.¹²

Ottawa’s ride service app users – both riders and drivers –have been operating within an unregulated, unlicensed system. While the consumer inherently understands the ‘buyer beware’ risk they are assuming when they use an app to book a ride from

¹² Ibid., p.1-2.

another resident who has a car, there is a strong desire among Ottawa residents for some baseline consumer protection and public safety standards to be established, particularly in the area of driver insurance¹³ and to make using these apps ‘legal’. In other words, municipal governments (and the provincial governments that provide municipalities with their authority) are now faced with the same kinds of requests for regulation that led to the licensing and control of taxis and limousines.

The City of Ottawa, as the regulator, is solely charged with putting rules in place that meet the public’s reasonable expectations of consumer protection and public safety and other public policy considerations. As the regulator, the City is unable to consider or address the disruptive influences that may be affecting a private industry it regulates, or secondary markets that may exist under a current regulatory framework. However, the City can review how its current regulatory framework might hinder an industry’s ability to compete effectively when a disruption occurs, and can change and reduce its regulations in a way that allows the industry to innovate and, potentially, thrive.

These three vehicle-for-hire streams offer similar services, but respond to very different consumer demands: in general, ride service app users enjoy the convenience of an app, knowing both the price of the trip and the wait time in advance, the ability to see the driver and vehicle ratings and make a selection from there, and the absence of a cash transaction. Taxi users value the safety and security of the ride, the ability to use cash, the confidence of having a professional driver who knows the best route, the ability to street hail and use taxi stands, protection from surge pricing, and the benefit from a formal complaint process. Limousine users have the ability to receive a tailored, specialized experience from a professional driver, pre-booked, with the price negotiated and understood in advance.

In recognition of the fact that a regulated taxi industry serves as an important adjunct to the municipal public transportation systems, provincial government legislation, including the Ontario *Municipal Act, 2001* provides both specific and general authorities with respect to the taxi and limousine industries.

Given how recently the ride service app industry came to be a major player in the vehicle-for-hire field, there is currently no specific provincial legislation that establishes consistency with respect to how municipalities should be using their legislative authority to address the companies that provide that service. Each municipality, therefore, is able

¹³ “Customer Experience”, Core Strategies, City of Ottawa Taxi and Limousine Regulation and Service Review, October 14, 2015, p. 7.

to establish a regulatory framework under its general authority to ensure public safety and protect the consumer in a manner that reflects the community they serve.

The recommendations in this report, if approved, will see the City of Ottawa establish a “lighter” regulatory regime, consistent with the Competition Bureau’s recommended approach, that incorporates common public safety and consumer protection measures across the three vehicle-for-hire classes, with specific measures that recognize the different consumer expectations and requirements for each, designed to ensure that the regulations will give consumers a greater choice, and allow current industry participants the freedom they need to be able to innovate.

Finally, there is no common legislative terminology for the ride service app companies. The Alberta municipalities refer to them as Private Transportation Providers (PTPs) and Transportation Network Companies (TNCs), and the KPMG reports and the Competition Bureau refers to them as Transportation Network Companies (TNCs). For the purposes of the proposed by-law and related documents, City of Ottawa staff has selected the term ‘Private Transportation Companies’, or PTCs, recognizing the ‘private’ nature of these service providers, in contrast to the taxi industry’s role as part of the public transportation network.

Common Regulations in All Three Vehicle-For-Hire Classes

As noted by the Competition Bureau and referenced earlier in this report, “[m]any regulators have expressed concern that [PTC] drivers do not undergo sufficiently robust criminal background checks and/or that they do not carry adequate insurance coverage.”¹⁴ The Competition Bureau also suggests that, “if a vehicle inspection regime is set up to ensure that the vehicles used by taxi drivers are safe and in good working condition, similar requirements should be considered for the private vehicles operated by [PTC] drivers.”¹⁵ It also notes that, “[m]unicipalities are responsible for the provision of rules that protect the safety of passengers, drivers, and third parties, particularly because passengers are not well-placed to judge the mechanical safety of a vehicle or rate the quality of insurance. Where such rules are determined to be necessary for taxis, they should apply to TNCs and their drivers as well.”¹⁶

To this end, staff is recommending that the following elements apply across three vehicle-for-hire classes:

¹⁴ “Modernizing Regulation in The Canadian Taxi Industry”, Competition Bureau, November 26, 2015, Section 4.

¹⁵ Ibid., Section 5.

¹⁶ Ibid.

Driver screening:

All vehicle-for-hire drivers will require an annual Police Records Check for Service with the Vulnerable Sector and an annual Statement of Driving Record, using criteria established by the Chief License Inspector, with the proviso that PTC and limousine operators will be required to have a Police Records Check for their drivers completed on an annual basis, while taxicab drivers must complete one every three years.

Vehicle Safety Age:

The maximum age limit for all vehicles-for-hire will be set at 10 years (except classic, vintage and specialty limousines).

Vehicle Safety Inspection:

An annual Ontario Ministry of Transportation Safety Standards Certificate (inspection) will be required for all vehicles-for-hire. A biannual inspection is required for all vehicles over five years of age.

Insurance:

Staff, on the advice of the City of Ottawa's insurance broker and an external senior insurance consultant, is recommending that a minimum of \$5 million commercial general liability insurance coverage be required across all categories of vehicles-for-hire, in addition to motor vehicle liability, as applicable..

These individual elements are discussed further in each section.

Other Common Considerations***Accessibility***

As indicated earlier in this report, there are currently four tiers of public transportation in Ottawa for people with accessibility issues, as outlined in the KPMG discussion paper titled, "Accessibility." These include:

- Accessible buses – All OC Transpo buses can now load and accommodate persons in wheelchairs.
- Para Transpo – OC Transpo operates the Para Transpo service dedicated to serving registered users that have limited mobility. Generally intended to be the equivalent of the public transit (bus) system for persons who cannot use the buses, the service provides door-to-door service at the same price as transit fares, but generally

requires advance booking of the trip. Service is provided using a combination of accessible vehicles and contracted taxis (both regular sedan and accessible taxis). For contracted services, the taxi companies are paid the metered taxi fare plus a 15% overhead surcharge by ParaTranspo, which in total represents an annual cost to the City – and benefit to the taxi industry – of approximately \$9 million.

- Accessible taxicabs – 187 accessible taxicab plate holder licenses have been issued on the condition that the plates be used only for vehicles that can accommodate a passenger in a wheelchair, including a motorized wheelchair. Persons with limited mobility but not requiring a wheelchair can also be accommodated in standard taxis. As of 2006, all licensed taxi drivers are required to take the City’s Accessible Driver Training Education Program regardless of whether they are driving an accessible vehicle or a standard vehicle. This provides the same level of service available to able-bodied people with the same fare levels and roughly equivalent wait times.
- Para Transpo also provides subsidized taxi coupons for registered users, improving access to taxi services.

With respect to the existing taxi industry, the KPMG final report notes that the City of Ottawa “has enjoyed a strong accessible component of its taxi industry which has provided direct, on-demand services to customers in Ottawa who require a wheelchair accessible vehicle, or a vehicle that can easily accommodate large storage space requirements (e.g. for luggage, stroller access, etc.). The taxi industry has been able to provide contract services to support Para Transpo services at a cost Para Transpo indicates is below the cost of in-house services.”¹⁷

Ottawa currently has 187 accessible taxicabs in service, which represents 15.7% of the total amount of the 1,188 licensed taxis, and any new taxi plates issued must be for accessible vehicles. As set out in the Accessibility discussion paper, Ottawa has a relatively high proportion of accessible plate holder licenses as compared to other municipalities, and it was one of the first to establish a separate category of accessible vehicles for use in general taxi service.

Both the taxi industry and the City benefit from the thoughtful and progressive use of the accessible taxi fleet as an adjunct to the public transportation system. City Council has directed that enhancing accessibility continue to be a guiding principle in the vehicle-for-hire regulatory regime, and staff is making recommendations consistent with that

¹⁷ KPMG. “City of Ottawa Taxi and Limousine Regulation and Service Review”, December 31, 2015, p. 17.

mandate. As there are no currently mandated guidelines for accessible in Private Transportation Company vehicles, staff, as described further below, is recommending that a surcharge for accessible transportation be implemented, similar to those proposed in Edmonton and Calgary.

On March 23, 2016, Uber announced that its accessibility service called “uberASSIST” would be launching in Ottawa that same day. The company described uberASSIST as “an option designed for riders who may have a disability, older adults, and those who may just feel more comfortable with an extra hand when getting from place to place,” and stated that drivers “will provide door-to-door service, helping riders to enter and exit the vehicle.” According to Uber, its uberASSIST drivers have completed a hands-on in-person educational session led by an accessibility consultant and developed with an advisory board of non-profit organizations.

As stated throughout this report, the City has specific standards with respect to matters including accessible vehicle specifications, accessible service availability, a rigorous driver training course and consumer protection-related stipulations such as those required of accessible taxicab drivers under the Taxi By-law.

Uber has not provided the City with any detailed information or guarantees regarding the standards and services that are incorporated into the uberASSIST option, in terms of driver training standards, vehicle features and availability, and any other stipulations related to accessible service and consumer protection. As noted elsewhere within this report, the PTC model is based on the presumption of ‘buyer beware’ risk assignment between passenger and driver, and as with all PTC-related complaints, any complaints related to accessibility services provided through a PTC would be handled by the company rather than through the City’s complaint process.

As the uberASSIST option is not required to meet the City’s accessibility standards for vehicles-for-hire, staff does not consider this option to be an accessibility service within the proposed new regulatory framework for vehicles-for-hire.

Enforcement

Compliance and enforcement activity is important because it ensures that public policy goals set out through the by-law are being adhered to and met. The KPMG final report confirms staff’s observations with respect to enforcement under a new regulatory regime that includes PTCs. Namely, licensing PTCs is expected to reduce activity by unlicensed taxis, also known as “bandit cabs.” While bandit cabs have been an historic problem in most jurisdictions, the entry of Uber into the Ottawa market in October 2014

has been much of the recent focus of enforcement activity related to the Taxi By-law. With the recommended introduction of PTC vehicle-for-hire licensing, the regulatory burden for the inspection and enforcement of vehicles-for-hire services is proposed to be shared appropriately across the three categories within the industry.

In addition, staff is of the opinion that an increased range of enforcement tools would be most effective in ensuring the new by-law regime is adhered to. Specifically, staff is recommending that the City ask the Province to provide Ottawa with a range of tools that it believes will provide a sufficient deterrent for future unlicensed vehicle-for-hire activity, including by the PTCs, including the ability to issue higher fines, apply demerit points, impose administrative license suspensions and tie outstanding violations to license plate denial.

Ensuring Public Safety, Protecting the Consumer and Fostering Innovation and Competition in Each Vehicle-For-Hire Class

The sections below outline staff's recommended regulatory proposals for each of PTCs, Taxis and Limousines. The recommended regime for PTCs is minimal, consistent with the Competition Bureau's advice and also with the presumption of 'buyer beware' risk assignment between passenger and driver on which the entire business model is based. The proposed changes to taxi licensing are significant and, again, consistent with the Competition Bureau's advice to reduce regulations that may impede the taxi industry's ability to compete in a changing environment. Staff believes the proposed changes will provide the industry with the necessary flexibility to compete, but is also proposing that the recommendations for de-regulation only be enacted if there is competition, i.e. only if Council approves the regulations for the Private Transportation Companies, should the proposed changes to the taxi and limousine regulations also be approved. Finally, the recommendations for the limousine industry largely modernize the current regulations, and provide consistency with the overall framework.

Recommendation 2 – Private Transportation Company (PTC) regulations

"The recommendation ... [is] that a third category of vehicle-for-hire be created to recognize [Private Transportation Companies (PTCs)], which provide a service that is similar to taxis in some ways and similar to limousines in other ways, but that has some significant distinctions, which need to be addressed differently in the regulations.

While the [PTC] is identified as a single category, there may be a range of different service offerings provided by one or more [PTCs]. Ottawa is most

familiar with the UberX service, but UberXL is also offered with larger vehicles and a range of other variations are provided in other cities, by Uber, Lyft or other [PTCs]. The [PTC] license would not be limited to an UberX-like service. A wide range of service types would be permitted, driven by the ability of [PTCs] to conceive of them and of the market to support them.

The rationale for proposing this third category is to respond to the need for improved customer service. Customer Experience research, the public consultation and other research indicated that Uber provides faster service, at lower cost (most of the time), with better customer service, both in terms of the relationship with the driver and with the [PTC], than the taxi industry. The Uber app provides reliable information on when a vehicle will arrive, who the driver is, and how the driver has served previous customers. It advises what the price will be and allows convenient payment. It has applied mobile technologies in innovative ways to respond to customer needs. The reported growth in Uber's volumes over the last year is a clear indication that customers have valued this product."

"City of Ottawa Taxi and Limousine Regulation and Service Review",
KPMG, December 31, 2015, p. 8-9.

"Regulatory frameworks for [PTCs] have been adopted by a number of U.S. regulators, but are still in their relative infancy. These regulatory frameworks generally treat [PTCs] as a separate class of service provider in vehicle-for-hire legislation. They appear to be intended to ensure that [PTCs] and their drivers are subject to safety and consumer protection rules similar to those that apply to taxis, particularly with respect to minimum insurance requirements, criminal and driving background checks on drivers, and vehicle inspections. Most of these proposed regulatory frameworks propose fewer regulatory restrictions on [PTCs] compared to traditional taxis, including those dealing with vehicle size and age restrictions, accessibility requirements, and a lack of limits on the number of vehicles that are allowed to operate within a city. However, [PTCs] also enjoy fewer privileges, as they are not allowed to accept street hails or use taxi stands located on streets."

Modernizing Regulation in the Canadian Taxi Industry, Competition
Bureau, November 26, 2015, Section 3.

Staff is recommending that the City of Ottawa establish a Private Transportation Company licensing regime that is in keeping with both the KPMG recommendations to license and regulate this class and the Competition Bureau advice to limit regulations to those that are related to public policy objectives. The primary goals of the proposed regulations for PTCs are consistent with Council direction, focused on public safety and consumer protection. As described throughout the report, increasing accessibility is an overarching goal for all three vehicle-for-hire classes, but there are legislative restrictions for Ontario municipalities that do not allow Ottawa to adopt the accessibility surcharge model used by Edmonton and Calgary (and New York) that staff would recommend. As described below, staff is seeking authority for an alternative way to achieve that objective.

In addition, staff is recommending some specific conditions on PTCs to ensure that the ability for taxis to compete in the new regulatory regime is protected. The recommended by-law provisions can be found in Document 2, with the major elements summarized below.

- **Establish a PTC license fee that is equivalent to the taxi broker fee, based on fleet size, to be supplemented by a per-ride charge of \$.105**
- **That staff report back after one year of implementation if the PTC license fee does not offset the cost of administration and enforcement of the related regulations or if otherwise required**

“The City does not have the authority to use license fees as a form of taxation, therefore the fees collected from the vehicle-for-hire industry should be relatively consistent with the costs of managing the licensing and enforcement process.”

“City of Ottawa Taxi and Limousine Regulation and Service Review”,
KPMG, December 31, 2015, p. 32

The *Municipal Act, 2001* permits municipalities to collect by-law fees and charges for services provided. As outlined in the Current Regulatory Regime discussion paper, courts have found that municipalities have a limited ability to tax except where specifically empowered by legislation. Therefore, to ensure that a license fee is not seen to be a tax, the fee must bear “a reasonable relation to” the cost of providing the service for which the fee is charged. In 2001, the Court of Appeal for Ontario determined that

fees are not unauthorized taxes when their purpose is to defray a municipality's costs of delivering the service, rather than raising revenue.¹⁸

Compliance and enforcement measures are important ways by which the City can ensure that Council's public policy goals are being met – and that there is fairness across the three classes. With the proposed introduction of PTC vehicle-for-hire licensing, the regulatory burden for the administration, inspection and enforcement of vehicles-for-hire service will need to be shared equally across the industry. Staff expects that the overall effort to administer and enforce the new PTC category will be intensive for the first several years, to ensure appropriate compliance with the regulations. The proposed regulation to license the PTC would make it the company's responsibility to maintain an up-to-date register of affiliated drivers and the vehicles used to provide the service, as well as proof of drivers' driving records, police record checks and insurance. Staff will review compliance by way of spot audits, cross-checks with the licensed company and field inspections to enforce activities such as the prohibition on street hailing and use of taxi stands for PTC vehicles.

Much of the enforcement activity in recent months with respect to the Taxi By-law has involved PTCs operating outside of the current regulatory framework. This enforcement has been resource and labour intensive. The Current Regulatory Regime discussion paper notes that "identifying, ticketing, and prosecuting individual drivers is time consuming and expensive in terms of staff time."¹⁹ In the time between the entry of Uber into the Ottawa market in October 2014 and March 18, 2016, 174 charges were issued against unlicensed drivers believed to be working with Uber, resulting in 154 convictions.

Staff anticipates that under the recommended regulatory regime, the costs of enforcement related to unlicensed taxicabs will decrease and shift to the new PTC category. Staff is therefore basing the suggested annual license fees for PTCs on the anticipated enforcement costs of the proposed new regulations to ensure public safety and consumer protection.

As outlined in Appendix B of KPMG's final report, it is estimated that the average cost of licensing per taxi ride is about \$.105 (10.5 cents), which is based on the City's current licensing fees and an estimated 12 million taxicab rides per year. To share the regulatory burden and recover the anticipated costs of administration, inspection and

¹⁸ Hara Associates. "Current Regulatory Regime," City of Ottawa Taxi and Limousine Regulation and Service Review (October 9, 2015), p. 3.

¹⁹ Ibid., p. 18.

enforcement, staff has proposed charging PTCs a fixed license fee that is the same as the current taxi broker fee (based on fleet size), to be supplemented by a per-ride charge of \$.105, as recommended by KPMG. In addition, to recover license issuance administration costs, there would be a \$55 processing fee for the application of the license and renewal, the same as the taxi and limousine licensing fees.

The proposed fee also reflects the relative size of the PTC, based on the number of vehicles it oversees and the number of rides administered by the company. The recommended license fee regime is set out in more detail in the following table and in Document 6:

Annual license fee based on the number of vehicles affiliated with a particular PTC plus a per-trip charge of \$.105 to reflect the size of the company and to cover the costs of enforcement	
Category	Annual Fee (\$)
Private Transportation Company - 1 to 24 affiliated vehicles	\$807 + \$.105/trip
Private Transportation Company - 25 to 99 affiliated vehicles	\$2,469 + \$.105/trip
Private Transportation Company - 100 or more affiliated vehicles	\$7,253 + \$.105/trip

Staff recommends reporting back one year after implementation of the proposed regulations only if it is determined that the PTC license fee is not offsetting the cost of administering and enforcing the related regulations, or if there are any other implementation or enforcement-related issues,

In recognition of the regulatory shift and the increase in license fees that would be expected through the new PTC license category, staff is also recommending a corresponding reduction in the standard taxicab driver license fee and waiver of the accessible taxicab driver license fee, as outlined in Recommendation 3 of this report.

Overall, license fees for vehicles-for-hire would continue to bear a reasonable relation to the costs of administering and enforcing the regulation of this industry in order to ensure requirements related to public safety and consumer protection are met.

- **That each PTC be required to obtain minimum insurance levels of \$5 million in Commercial Liability and \$5 million in Non-Owned Automobile Insurance for**

itself, and require that each PTC driver obtain Automobile Insurance suitable for part-time drivers providing transportation services for compensation.

Focus group discussion regarding the customer experience with vehicles-for-hire suggested that vehicle insurance is a significant concern that customers have with respect to Uber, which is the only PTC operating in Ottawa at this time. The Core Strategies discussion paper titled, “Customer Experience,” noted that, “customers expect Uber vehicles to be properly insured ... and look for regulatory reviews and governments to ensure that effective policies guidelines are in place.”²⁰

The KPMG final report indicates that while Uber has declined to provide KPMG or the City evidence of insurance coverage, “the company reports that it carries a \$5 million insurance policy with AIG that applies when the drivers’ insurance company declines coverage. Uber indicates this policy is not primary coverage - it only protects third parties (passengers, pedestrians, other cars and their occupants) and does not provide any protection for the Uber driver or his/her car.

“However, public safety and a level playing field make it essential that a [PTC] service cannot be licensed without clear proof that suitable insurance, (approved by FSCO [the Financial Services Commission of Ontario] as being appropriate for the provision of vehicle-for-hire services) is in place.”²¹

The KPMG report recommends the City should consider requiring a minimum of \$2 million of liability coverage for all providers of vehicles-for-hire transportation, including taxis, limousines and PTCs.

The City’s insurance broker and external senior insurance consultant have recommended that insurance limits for both types of insurance requirements be increased to \$5 million to ensure adequate protection in the event of claims, as claim amounts are generally increasing as is the cost of defending them.

Therefore, staff is recommending an insurance requirement for each PTC of \$5 million in Commercial Liability and \$5 million in Non-Owned Automobile Insurance for itself. In the case of PTCs, such limits are deemed to be reasonable to cover the exposure of the PTC which has responsibilities for facilitating and arranging the transportation service, arranging for payment of the fares, and for aspects of the regulation of the PTC drivers

²⁰ “Customer Experience,” Core Strategies, City of Ottawa Taxi and Limousine Regulation and Service Review, October 14, 2015, p. 7

²¹ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 12.

and vehicles such as vetting the drivers and ensuring that the vehicles meet the required safety standards.

In addition, staff recommends that each PTC be required to ensure that PTC drivers obtain and maintain automobile insurance coverage suitable for driving passengers for compensation on a part-time basis, as further described in the Legal Implications Section. Such part-time insurance coverage for eligible PTC drivers using their personal vehicles for compensation has recently been approved in Ontario, and takes the form of an endorsement to the driver's personal automobile liability policy. Estimates obtained for premiums for this endorsement for PTC drivers show that purchasing limits of \$5 million is not that much more expensive in certain circumstances than purchasing a \$2-million limit, as described further in this report.

- **That PTC drivers provide to the company a mandatory Police Records Check for Service with the Vulnerable Sector, Statement of Driving Record and an MTO safety standards certificate for vehicles, all annually**

Safety and security was behind only cost in a rating of service attributes of the vehicles-for-hire industry that customers viewed as most important.²² Although PTC fares are pre-arranged electronically with customer consent, there is still an expectation that the vehicles and drivers will be subject to basic screening in support of the safety and security expectations of customers as cited during consultations.

As noted in the KPMG final report, "all vehicle-for-hire operators are potentially alone with vulnerable members of the population in their cars. Even those that are part of a driver rating system (for example current Uber operations) take initial trips without any previous history. The same standards should apply to all, and they should exclude any individuals with a record of sexual or violent offences in order to protect public safety."²³

Currently, a "Police Records Check for Service with the Vulnerable Sector" (also known as a "Police Records Check" or "PRC") is required for taxicab drivers and taxi plate holders. This check is required on initial application for a license and every three years after that, with a declaration to be signed in the years between.

A PRC is provided by a police authority for applicants who are seeking employment and/or volunteer work with vulnerable people. The term "vulnerable" refers to "a class of persons who, because of their age, a disability or other circumstances, whether

²² "Customer Experience" Core Strategies, City of Ottawa Taxi and Limousine Regulation and Service Review, October 14, 2015, p. 9.

²³ "City of Ottawa Taxi and Limousine Regulation and Service Review", KPMG, December 31, 2015, p. 12-13.

temporary or permanent are in a position of dependence on others or are otherwise at a greater risk than the general population of being harmed by persons in a position of authority or trust relative to them (e.g. children, disabled or elderly),”²⁴ according to a description on the Ottawa Police Service website. The Police Records Check includes national and local police databases, and “the possible existence of criminal convictions and outstanding charges, as well as incidents of all notable police contacts for at least the previous five years will be considered for release,”²⁵ the website states.

Staff recommends the same PRC screening as taxi drivers be required for PTC drivers, but on an annual basis given the more transient nature of drivers affiliated with PTC services. In addition, it is recommended that PTC drivers must submit acceptable Statement of Driving Records every year, the same as taxi drivers are required to do. These recommendations support the guiding principle of public safety.

The KPMG final report also suggests that the records-check process “should not prevent anyone with any criminal record from becoming a vehicle-for-hire driver,” and suggests the Chief License Inspector develop guidelines “that take into account at least the nature of the offense and the elapsed time since it occurred.”²⁶ The Chief License Inspector will continue existing practices of reviewing taxi driver records and will formalize and review criteria applicable to all for-hire vehicle drivers as required.

- **That the maximum vehicle age for PTCs be established at 10 years with biannual inspections for all vehicles over five years of age**

The KPMG final report recommends establishing a maximum vehicle age of 10 years for all vehicles-for-hire (apart from specialty or classic limousines), with biannual inspections for vehicles over five years of age to help maintain the safety of older vehicles. Staff agrees with these recommendations.

The PTC-type service currently operating in Ottawa currently applies a 10-year age limit on the vehicles used by its drivers.

- **That PTCs be permitted to accept only pre-arranged fares through an app and not be identifiable as vehicles-for-hire**

²⁴ “Request a Background Check (Records Check)”, Ottawa Police Services Website, <http://www.ottawapolice.ca/en/contact-us/Request-a-Background-Check-or-Police-Report.asp>, accessed March 17, 2016.

²⁵ Ibid.

²⁶ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 13.

The taxi industry plays an integral role in the public transportation system, providing 24/7 service in a regulated environment where taxicabs are required, among other things, to be identified by roof sign and vehicle number and to have in-vehicle cameras. As such, taxicabs are permitted to pick up passengers through street hails and at taxi stands, as well as to access lanes set aside for their exclusive use that facilitate expeditious travel through the city.

The PTC business model does not involve street hails or the use of taxi stands, and staff recommends that PTCs be permitted to only accept fares that are coordinated rides on a pre-arranged basis via apps or other platforms used by the company. Furthermore, no cash payments would be permitted. Street hailing, use of taxi stands, and cash payments should remain in the exclusive domain of the more highly regulated taxi industry where safeguards, such as in-vehicle cameras, are required for the safety of both the passenger and the taxi driver. As stated in the KPMG final report, public safety will be enhanced by ensuring customers only street hail vehicles regulated for this purpose.

In addition, staff proposes that the application or platform used by the company be required to contain several consumer protection features as a condition of licensing, including:

- Providing the customer with the first name and photograph of the PTC driver who will be providing the service, as well as a full description of the vehicle that will be used;
- Informing the customer of the rate to be charged for the trip, including any applicable surge pricing, and providing an estimate of the total cost if requested by the customer;
- Requiring the customer to accept the service being offered prior to the commencement of the trip;
- Providing the customer with a full receipt for the trip; and,
- Allowing the customer to rate the driver and vehicle providing the transportation service.

In addition, the PTC licensee will be required to make available in its website, platform or by other accessible means, information to the public detailing the services it offers, the pricing structures it will charge, the applicable driver and vehicle screening requirements, and the fact that PTC drivers are prohibited from accepting any fares that

are not pre-arranged – for example, that they are not authorized to street hail or accept fares at taxi stands.

The PTC licensees will also be required to obtain and maintain all records required by the proposed by-law regulations for their drivers and vehicles, such as records of driver checks, vehicle safety certificates and proof of insurance and make those available to the Chief License Inspector if required for the purpose of investigating compliance with the by-law. Similarly, PTCs will be required to keep records on each trip taken, including information on the driver and vehicle used, the date and time of the trip and related information, and also provides these to the Chief License Inspector upon request. Finally, the City will require each PTC to maintain aggregate (non-personal) information about trips provided, such as pick-up and drop-off location, route taken and duration of the trip, and provide this information to the City for purposes of transportation and public transit planning.

Given that staff recommends that PTC vehicles be hired by pre-arrangement only, and that their use of street hailing and taxi stands be prohibited, it is further proposed that PTC vehicles not be permitted to be identifiable as vehicles-for-hire. Instead, prospective passengers will continue to receive vehicle details such as a vehicle description and license plate number via the app, as is the practice under the current business model.

The KPMG final report contemplates the matter of vehicle identification in relation to public safety as follows:

“Vehicle identifications allow customers to identify a vehicle as a vehicle-for hire, such as a taxicab when hailing or using a taxi stand. [PTCs] and limousines will not be permitted to have vehicle identification, as these business models do not involve the use of taxi stands or street hails, and the public safety model does not allow for hails outside the apps.”²⁷

While staff believes that the continued ability for licensed taxicabs to have exclusive rights to street hailing, use of stands and designated lanes city-wide primarily supports the City’s guiding principle of public safety, the KPMG final report also notes that the lack of identifiable markings on PTC vehicles will benefit the taxi industry “by reducing

²⁷ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 15.

the potential for drivers operating through a [PTC] or limousine to accept street hails, as the vehicles will not be distinguishable from regular private-passenger vehicles.”²⁸

- **Delegating the authority to the General Manager, Emergency and Protective Services, in consultation with the City Clerk and Solicitor, to negotiate, finalize and execute the establishment of voluntary, per-trip surcharge for accessibility, with any funds received from this surcharge to be directed to a dedicated accessibility reserve fund;**
- **That City Council ask the Province of Ontario to provide enabling legislation to authorize the City of Ottawa to implement an accessibility levy or surcharge as a mandatory requirement in a vehicle-for-hire by-law, such that the funds from this surcharge could be used for a municipal purpose related to improving accessible transportation;**
- **Direct that the General Manager, Emergency and Protective Services work with the City’s Accessibility Unit, the Accessibility Advisory Committee, Para Transpo and other internal and external stakeholders to develop a strategy with respect to how new fees generated through an accessibility levy could be used to offset costs for a number of programs supporting accessible transportation, including but not limited to enhancing the taxi coupon program, and report back with a recommended approach.**

The KPMG Accessibility paper makes the following observations with respect to Uber, as the PTC currently operating in Ottawa, and accessibility:

“For the vision impaired the Uber app is VoiceOver iOS compatible. This service is available on iPhones. The VoiceOver functionality can be used in connection with a wireless braille display or it can be used to help the user navigate the app by reading a description of the button aloud when the user touches it. The pickup and destination locations can be entered into the app by dictating it through iPhone’s microphone. The estimated fare is then read aloud through the iPhone. Once the trip is confirmed the user can hear the driver name, rating and vehicle information. A notification is read aloud upon arrival of the driver as well.

Several accessibility options exist for the hard of hearing who are using the Uber app with an iPhone. Visible and vibrating alerts can be enabled so that the user receives the alert whenever a new Uber notification has been sent, for example

²⁸ Ibid.

when a driver has been assigned, the driver has arrived or when a ride is canceled. The visible alert causes the iPhone's LED light to flash."²⁹

The report further recognizes that, as PTCs, by definition, primarily involve the use of a private vehicle to give rides, the "model inherently does not lend itself to accessible-friendly service as the majority of private vehicles are not equipped with the required equipment for the transportation of mobility impaired persons."³⁰

Staff recognizes that PTCs provide some challenges with respect to providing accessible services for those with mobility issues, as there is no ability to accurately monitor requirements with respect to accessible service hours given the numbers of affiliated vehicles and the ebb and flow of part-time vehicles active at any given time. Further, given the cost of acquiring and maintaining an accessible vehicle, it is unlikely that most PTC drivers would have one as a private vehicle.

There is also no standard approach to the provision of accessible vehicles for those with mobility impairments in municipal regulatory regimes. The KPMG final report recommends that all vehicles-for-hire services with more than 25 affiliated vehicles be required to provide 15% or more of the hours of service provided by affiliated vehicles in accessible vehicles. In addition, the report recommends that vehicle-for-hire providers be required to contribute a surcharge (their recommendation is \$.30 per trip) to fund an Accessible Services Support Fund as an alternative to the requirement that 15% of the service be accessible.

While staff supports the notion of implementing a surcharge, other than the City of Toronto, municipalities in Ontario currently do not have the authority to charge such an accessibility levy as a mandatory requirement. Although staff is seeking Council's approval to petition the Province for enabling legislation to authorize the City of Ottawa to charge such a levy (and use the revenues for enhancing the City's ability to deliver accessible transportation services), discussed later in this report, staff recognizes that this approach will take time.

In the interim, staff is proposing that the City work with the PTCs it is licensing to attempt to put in place a voluntary per-ride surcharge that would, as a good faith gesture, see PTCs partnering with the City to ensure that vehicle-for-hire service supports the guiding principle of accessibility.

²⁹ "Accessibility", KPMG, City of Ottawa Taxi and Limousine Regulation and Service Review, October 22, 2015, p. 10.

³⁰ Ibid.

Staff is further proposing that any funds from either a voluntary or mandatory surcharge be placed in a dedicated reserve for improving accessible transportation, until such time as City Council considers and approves a strategy for the use of these funds.

To prepare for this, staff is recommending that the General Manager of Emergency and Protective Services work with the City Manager's Outreach and Access Branch to coordinate and consult with the Corporate Accessibility Unit, the Accessibility Advisory Committee, Para Transpo and other stakeholders as deemed appropriate to develop a strategy and report back on the delivery of accessible transportation services and how new fees generated through an accessibility levy could be used to offset costs for a number of programs supporting accessibility, including but not limited to enhancing the taxi coupon program.

- **That PTCs be required to comply with other administration- and enforcement-related requirements with respect to the by-law, as outlined in this report**

Current Authority to Suspend or Revoke a License

As authorized by Subsections 151(1) to (4) of the *Municipal Act, 2001*, the Taxi By-law and the Licensing By-law (in respect of licensed Limousine Service providers) both currently provide clear processes for the suspension or revocation of a license, and staff recommend that these processes be applicable to future PTC licensees as well. At present, taxi licensees (including taxi brokers, taxi plate holders and taxi drivers) as well as license Limousine Service provider licensees are subject to the following processes:

- A status review before the City's Property Standards and License Appeals Committee
- For breaches of the by-law or of a license, which may result in the imposition of conditions on a license, or its suspension or revocation by the Committee. The Property Standards and License Appeals Committee may also re-instate a license that has been suspended by the Chief License Inspector.
- The Property Standards and License Appeals Committee may revoke a license for reasons of breaches of the by-law, or where it makes a finding that the conduct of the business may be in any way adverse to the public interest or that the licensee will not carry on or engage in the business in accordance with the law or with honesty or integrity.
- Similarly, the Property Standards and License Appeals Committee may suspend a license for any of the above reasons.

- Licensees are provided with notice of a hearing and the reason for the hearing, and have the opportunity to provide the Property Standards and License Appeals Committee with representations on the matter before it and the license in question.

In addition, the by-laws provide that a license *cannot be* either issued or renewed by the Chief License Inspector unless all of the requirements in the respective by-law for the particular licensee have been met. In this regard, the Chief License Inspector is authorized to make inquiries and conduct inspections necessary to ensure that the requirements of the by-law have been met by a licensee. A refusal to issue or renew a license is appealable by the licensee to the Property Standards and License Appeals Committee.

The Chief License Inspector may temporarily suspend a license on an emergency basis for a maximum period of up to 14 days where the licensee has breached the by-law or conducted the business in a manner that may be contrary to the public interest, such as a motor vehicle being used for the licensed business being deemed to be mechanically unsafe, or where information has been received that the insurance that the licensee is required to obtain and maintain has expired. In all cases, a licensee is prohibited from carrying on the business while the license is temporarily suspended. The temporary suspension of a license may be appealed by the licensee to the License and Property Standards Committee as noted above.

Enforcement Provisions

Section 425 of the *Municipal Act, 2001* authorizes a municipality to specify in a by-law that a contravention of a by-law is an offence. Both the Taxi By-law and the Licensing By-law (in respect of limousine service providers) create offences for breaches of the requirements of the by-law. Staff recommends that a similar approach be taken with the respect to the proposed licensing regime for PTCs. By-law offences are addressed by the issuance of a provincial offence notice (PON) provided under the *Provincial Offences Act* which sets out the processes for the processing and related proceedings in respect of PONs. The accused has the option of paying the set fine specified on the PON, or plead not guilty and proceed to a trial before the Provincial Offences Court. Under this option, fines are currently limited to no more than \$1,000.

It should be noted that Section 429 of the *Municipal Act, 2001* also authorizes a municipality to establish a municipal system of fines for offences under a by-law. Under a municipal system of fines, the municipality may establish a minimum fine for an offence of not more than \$500 and a maximum fine not to exceed \$100,000, as has

been the case in the Taxi By-law. Offences under a municipal system of fines are processed by way of laying an information before a Justice of the Peace and fines can be imposed up to the applicable statutory maximum. It is recommended that the municipal system of fines established under the Taxi By-law also be applicable to limousine service providers and to PTCs.

As described in this report, staff expects that the overall effort to administer and enforce the new PTC category will be intensive to ensure appropriate compliance with the regulations. The proposed regulation to license the PTC would make it the company's responsibility to maintain an up-to-date register of affiliated drivers as well as proof of drivers' driving records, police records checks and insurance. Staff would review compliance by way of spot audits, cross-checks with the licensed company and field inspections to enforce activities such as street hailing which is prohibited.

In order to facilitate administrative and enforcement activities, staff recommends that PTCs be required to maintain detailed data on rides so that the City can verify that per-ride proceeds with respect to license fees and a potential Accessibility Contribution are being credited appropriately, as well as to cross-reference information against driver records to ensure that all driver safety information is being maintained as required.

In addition, the by-law would provide that all required records must be available to the City, and that the PTC maintain a place of business in Ontario to facilitate communications with the City.

These recommendations would ensure that the by-law is administered and enforced appropriately in order to provide for public safety and consumer protection.

Recommendation 3 – Amendments to the Taxi By-law

“Uber, or other [PTC] operations, cannot meet the needs of all vehicle-for-hire customers, which is the rationale for maintaining the existing two categories while adding a new [PTC] category. Consultations conducted indicated that some people prefer to use telephone dispatch, to use taxi stands or hail taxis on the street, or want to pay in cash or with employer-provided taxi chits and thus would be less likely to use a [PTC] service. Further, Uber does not provide accessible service whereas the taxi industry does.

It is important as well to reform the existing regulatory regime applicable to the taxi industry. Feedback received throughout the review from users of taxi and other vehicle-for-hire services, as well as other members of the public, indicated that the

current taxi regime is not keeping pace with public expectations. Recognizing this, the taxi industry has already responded with taxi companies improving their services by introducing their own apps, and through other initiatives such as dispatch through texting. However the industry may be limited both by its long history and traditions, the institutions it has built, and by the existing regulatory environment that the Taxi By-Law currently provides.”

“City of Ottawa Taxi and Limousine Regulation and Service Review”,
KPMG, December 31, 2015, p. 9.

“Some regulators have begun to re-imagine regulation in the Canadian taxi industry. In doing so, allowing sufficient scope for the forces of competition to operate to the largest extent possible should be a primary focus.”

[Modernizing Regulation in the Canadian Taxi Industry](#), Competition Bureau, November 26, 2015, Section 6.

As indicated throughout this report, the taxi industry is already heavily regulated to provide a professional, safe, accessible and reliable service to residents and visitors alike. If City Council agrees to regulate the PTCs as recommended, taxi industry’s regulatory burden will need to be reduced and modernized if the industry is to be given the opportunity to innovate, survive and thrive.

The challenge for the City of Ottawa, as the regulator, is to change the framework in a way that provides the industry with as much flexibility as possible so that they are able to innovate and compete without being unnecessarily restricted, while still maintaining the public policy goals established by City Council – keeping in mind that the City has no role to play in any secondary markets that exist outside of the City’s mandate or control.

Staff believes that the proposed changes to the current Taxi By-law, as specified in Document 3, meet that challenge. The major amendments being recommended are summarized below.

- **Reduce the individual standard taxicab driver license fee from \$170 to \$96, and waive the accessible taxicab driver license fee**

As described in detail elsewhere in this report, all fees charged by the City must bear a direct relationship with the cost of the services being provided.

With the proposed introduction of PTC vehicle-for-hire licensing, the regulatory burden for the enforcement of vehicles-for-hire service will be distributed across the industry and, as indicated, it is anticipated that costs of enforcing provisions related to unlicensed taxicabs will decrease and enforcing the new PTC category regulations will increase.

Currently, all taxicab drivers in Ottawa – standard and accessible – pay an annual license fee of \$170, which goes toward costs associated with enforcement and inspection provisions set out in the City’s Taxi By-law. Administration of license applications and renewals is covered by a \$55 processing fee, which applies to all license categories.

As a reflection of the regulatory shift in enforcement to the new PTC category, staff is recommending that the taxicab driver license fees be reduced from \$170 (the 2016 rate) to \$96, effective January 1, 2017, which is the commencement of the 2017 license renewal period, as outlined in Document 6. This represents a reduction of 44% to the base rate. The processing fee would remain at the current rate. The reduction in fees to reflect the shift in the regulatory regime will help ensure public safety through enforcement and administration of by-law provisions across all categories of vehicles-for-hire. The 44% decrease in annual license fees would also provide taxicab drivers with a measure of regulatory relief, thereby helping the industry in their ability to compete with PTCs.

As described throughout this report, accessible taxicab service is a pillar of the City’s commitment to accessible transportation. Currently, there are 187 accessible taxi licenses in the City, which represents 15.7% of the total amount of the 1,188 licensed taxis.

As identified in the KPMG Accessibility discussion paper, “fares for both sedan taxicabs and accessible taxicabs are the same, however operation of accessible taxicabs is more expensive, based on data provided by Coventry Connections.”³¹ According to the data provided, average daily operating costs for a sedan taxicab and an accessible taxicab are \$123 and \$197 respectively. Further, a three-year-old sedan taxicab, at time of purchase, has an initial cost of \$15,000. A three-year-old accessible taxicab, at time of purchase, has an initial cost of \$40,000.

³¹ “Accessibility”, KPMG, City of Ottawa Taxi and Limousine Regulation and Service Review, October, 22, 2015, p. 3.

Currently, accessible taxicab drivers in Ottawa pay an annual license fee of \$170, which goes toward costs associated with enforcement and inspection provisions set out in the City's Taxi By-law.

In recognition of the importance of accessible taxicab service to residents, and given that cost of enforcement will be distributed out among all vehicle classes, staff is recommending that licenses fees for accessible taxicab drivers be reduced from \$170 annually to \$0. The \$55.00 processing fee would continue to apply to cover the costs of administration.

At the same time, the overall license fees for vehicles-for-hire would continue to bear a reasonable relation to the costs of administering and enforcing the regulation of this industry in order to ensure requirements related to public safety, consumer protection and accessibility are met.

- **Eliminate the taxicab driver education program (other than for Accessibility), the refresher course, and the uniform and street guide requirements**

In order to be issued a taxicab driver's license, the current by-law provides that all applicants since 2006 must have completed both the Taxicab Driver Education Program and the Accessible Taxicab Training Course within the last two years. In addition, the Chief License Inspector may deem it necessary, for the purposes of ensuring satisfactory customer service, for a licensed taxicab driver to successfully complete a Refresher Training Course with enhanced customer-related training as a condition of his or her license.

The Taxicab Driver Education Program was put in place several years ago with the intent of producing better trained drivers in customer service and knowledge of the Ottawa area. A large component of the course focuses on traditional way-finding methods, such as reading maps and familiarity with the City, while the Accessible Taxicab Training Course focuses on providing service appropriate to persons with disabilities and/or using mobility devices. The courses are offered through Algonquin College, and are three weeks and one week in duration, respectively. The cost of the courses, \$820 for the Taxicab Driver Education Program and \$370 for the Accessible Taxicab Training Course, is typically borne by the driver. A cost for the Refresher Course was never established, as the Chief License Inspector did not encounter taxi service-related issues that warranted exercising the authority to impose the course as a condition on any drivers' license.

The KPMG final report recommends eliminating the Taxicab Driver Education Program in favour of taxicab broker-provided training, but maintaining the requirement for drivers to complete the Accessible Taxicab Training Course. The report states:

“Customer service concerns have been raised by users of the traditional taxi service, while customer service provided by Uber drivers has been reported as generally being very good. This raises a question as to the effectiveness of the course currently required, relative to other mechanisms, such as driver rating. Drivers no longer need to rely on the use of a map as they can now input an address into a GPS to receive directions, raising questions about the need for way-finding training.

In a new competitive vehicle-for-hire environment requiring providers to compete on quality and price, with driver rating apps allowing customers to apply effective “discipline” on particular drivers, it is suggested that vehicle-for-hire operators innovate in their delivery of training to maximize the level of business they attract. This will also create a level playing field between various service providers.

Drivers will of course require some training. They will need training on using GPS systems more than on the location of particular streets or destinations, and on the particular business models and rules of the services with which they are affiliated. The importance of customer service should be emphasized, and key legal and human rights issues covered. But these requirements are continually changing, and are different with different service providers. It is suggested that all taxi brokers, [PTCs] and limousine operators establish and facilitate training for all of their drivers, but consistent with the principle of modernizing and simplifying regulation, the training content and format does not need to be included in the by-law.

An in-person training course is still a requirement for drivers of accessible vehicles, where there is likely to be less competition, and where there are requirements for service to persons with particular circumstances and technical issues, such as properly securing a wheelchair, that need to be considered. With the elimination of the taxi drivers’ course at Algonquin College, working with Para Transpo, which has similar requirements for its drivers, will likely improve the economics of course delivery, and may provide more consistency in the delivery of Para Transpo services.”³²

³² “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 33.

Staff largely agrees with the KPMG recommendations, in particular regarding the elimination of training with the exception of the practical training with respect to accessibility. As noted above, wayfinding training has traditionally constituted a large piece of driver training. With the advent of GPS, drivers no longer need to rely on classroom training and the use of printed maps to facilitate the efficient transport of passengers.

It is understood that taxicab, PTC and limousine drivers will still require some basic training on the use of GPS systems as well as the fundamentals of their particular business models and rules of the services with which they are affiliated, as well as the importance of customer service including key legal and human rights issues, but staff agrees that this training can be provided outside of the scope of the by-law. Staff suggests that taxicab brokers may wish to provide training to their drivers with respect to these matters.

The requirement for drivers to complete the Accessible Taxicab Training Course remains warranted, however, in order to meet the needs of customers who require accessible transportation service. This supports the City's guiding principle with respect to accessibility, and staff is reviewing the delivery model for this training, particularly regarding KPMG's above-noted recommendation that the City consider merging the course with Para Transpo driver training.

In addition to training course requirements, the by-law requires that licensed taxicab drivers "wear uniform clothing that clearly identifies them as standard taxicab drivers or accessible taxicab drivers, as the case may be," while also requiring drivers to "have a current street guide of the City of Ottawa and the City of Gatineau available in the taxicab at all times."

Staff recommends that these provisions relating to uniform and street guide requirements be eliminated. With respect to uniforms, other provisions in the by-law set out general standards for driver appearance. Regarding the requirement for street guides, the availability of GPS set out above has eliminated the need for drivers to carry printed street guides.

Taken together, these recommendations will ensure that accessibility remains a priority, while updating some parts of the by-law to acknowledge the widespread availability of new technology and eliminate regulations that are no longer required in order to assist the industry in becoming more competitive.

- **Allow variable rates up to the maximum fare as prescribed in the by-law on taxicab rides pre-arranged through an app**

The City has the authority to regulate the fares of taxicabs, but not of PTCs. Fares have traditionally been fixed through a metered rate, and a recent comparison with other municipalities indicates that Ottawa currently has the highest fares when a credit/debit card surcharge is applied. This comparison is outlined in Document 7, which also sets out the history of Ottawa taxicab fares from 2005 to the present.

As the City does not have the authority to regulate the fares of PTCs, fares are one of the advantages for these companies. The Core Strategies discussion paper titled, “Customer Experience” states that, “while customers list many factors attributable to Uber’s overall higher customer ratings, the two primary factors are lower cost and the convenience and perceived superiority of the Uber app over the various Taxi Apps.”³³

The Competition Bureau’s White Paper also noted the difficulty that the taxi industry may face in light of regulated fares:

“Unlike [PTCs], taxis must charge regulated rates for their services, which, in some circumstances, may prevent drivers from lowering their prices to stay competitive with [PTC] drivers. These concerns have been raised by taxi drivers in the context of municipal consultations undertaken during the course of cities’ reviews of their regulatory frameworks for urban transportation services. Regulators should allow all industry participants to set their fares independently in a more flexible manner.”³⁴

Although customers may be drawn to the lower fares provided by PTCs, the use of “surge” pricing in times of high demand is something that customers would prefer to avoid. The KPMG final report notes:

“Customers who attended the workshops and provided comments through the dedicated email and taxi hotline phone number reported that they like the lower prices and generally accept Uber’s surge pricing concept. Although customers advised they would prefer not to be caught by surge pricing, their behavior would likely change to adjust trips, when possible, to avoid periods where they anticipate

³³ “Customer Experience”, Core Strategies, City of Ottawa Taxi and Limousine Regulation and Service Review, October 14, 2015, p. 5.

³⁴ “Modernizing Regulation in the Canadian Taxi Industry” Section 5 , Competition Bureau, November 2015

surge pricing will be in effect, smoothing demand, exactly as intended. Some did report taking additional vehicle-for-hire trips as a result of the lower price.”³⁵

KPMG recommends that the City continue to have a taxi fare specified in the by-law, and that the City permit variable pricing under the maximum fare be used by taxis affiliated with a taxi broker provided that the Chief License Inspector has been notified of the pricing approach, determined that the meter and related systems can reliably implement the variable pricing approach, and approved the approach to customer notification and acceptance of the fare to be paid. Furthermore, KPMG recommends that the rate specified in the by-law apply for all fares initiated by taxis at taxi stands or hailed on the street.

In light of the need to ensure consumer protection while recognizing that providing fare flexibility for taxis would foster competition, staff recommends that for rides that are pre-arranged through an app, taxi brokers may reduce the fare below the maximum fare prescribed in the by-law, providing the industry with a direct tool to compete with the app-based market. It is further recommended that the app have similar features as the app for PTCs, as outlined earlier in this report. However, the maximum fare as specified in the by-law would continue to apply to these pre-arranged rides in order to protect the consumer from “surge” rates in times of high demand.

Fares for telephone dispatches, street hails and taxi stands would remain at the rate specified in the by-law as these scenarios are less controlled than rides arranged through an app (customers generally have to take the first car in line at a taxi stand etc.). Maintaining the regulated rate for these instances would provide consumer protection.

For the purposes of enforcement, staff proposes that only fare-related complaints related to the maximum fare (or in excess of it) be subject to the City’s complaint process. Under general provisions within the City’s Licensing By-law, non-compliance may result in staff issuing warnings, charges, and/or imposing conditions on a license. If warranted, staff may refer the matter to the City’s Property Standards and License Appeals Committee, which has the authority to impose conditions, suspend and/or revoke a license.

- **Eliminate the \$1.50 processing fee on debit and credit card transactions**

Currently, customers who wish to use a debit or credit card to pay their taxicab fare are charged an additional processing fee of \$1.50 per transaction. This charge was

³⁵ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p.23.

approved by Council in 2007 at the same time as requirements for plate holders to install debit/credit payment readers in taxicabs and for drivers to accept those methods of payment. The new requirements recognized debit cards as an additional method of payment to improve service to the public and safety for the driver to reduce the carrying of cash in the vehicle and offset their additional costs.

The KPMG final report recommends that the City eliminate the debit and credit card processing fee, noting that “during the consultation process, customers expressed concern regarding this fee as payment by credit card is a common occurrence and the surcharge adds to the cost of the fare. In the research conducted when writing the Case Studies discussion paper, the six other jurisdictions reviewed had no similar fee. Drivers however, did raise concerns that they will lose revenue as a result of this fee being eliminated. However, there were also suggestions to reduce fares as Toronto has done, to make taxis more competitive with the [PTCs]. This approach has much the same effect for many customers and reduces the fare component that is most unusual.”³⁶

Staff agrees with the KPMG recommendation and rationale, and that eliminating this fee provides some measure of consumer protection against unnecessary surcharges.

Although it is noted that drivers expressed concern about the loss of revenue if this fee were to be eliminated, drivers also suggested reducing fares to make taxis more competitive. The elimination of credit- and debit-card fees has the effect of cutting fares, and a further reduction is possible through the variable fare structure for pre-arranged rides that is proposed in this report.

Should the recommendation to eliminate the debit and credit card processing fee be approved, it would drop Ottawa from first to third in the fare comparison with other municipalities that is provided in Document 7. This would provide the taxi industry with flexibility and foster competition among vehicles-for-hire.

- **Eliminate taxicab vehicle standards with respect to interior and trunk size, seating capacity and window tinting**

The by-law currently specifies in some detail the standards for taxi vehicle seating capacity as well as size-related matters such as front and rear interior requirements and trunk space.

³⁶ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 29.

The KPMG final report suggests the City consider amending the vehicle requirements so that size standards shall be set by the taxi brokers, taking into account the market segments they target. The report notes that while there has been concern about taxis at the airport not having capacity for luggage, “the general availability of accessible taxis as part of the fleet does provide an option for passengers with considerable luggage.”³⁷ In addition, “the ability to use smaller vehicles than what is currently required may result in more fuel-efficient and less costly vehicles being used which could lower the overall costs for vehicle-for-hire drivers and operators.”³⁸

Furthermore, it should be noted that PTCs currently offer the ability for a customer to select the size of the vehicle-for-hire, and that staff do not propose implementing requirements with respect to vehicle size for the PTC category.

Therefore, staff recommends that requirements pertaining to taxicab vehicle size be eliminated and that brokers be able to determine their own standards with respect to such matters, keeping in mind the needs of their customers and the services provided by their competitors. Customers with accessibility issues who require larger vehicles will continue to have access to accessible taxicabs, meeting the City’s guiding principle with respect to accessibility. As noted above, the general availability of accessible vehicles, with Ottawa having the greatest percentage of any taxicab fleet in Canada, will also ensure that the needs of taxi users who require a large amount of space for luggage or other requirements are also met, should brokers fail on their own to provide enough large regular taxicabs to fulfill market demands.

In addition to setting out size and seating capacity, the by-law also prescribes a window tinting provision. As the *Highway Traffic Act* also contains provisions with respect to window tinting, it is proposed that requirements related to window tinting be removed from the by-law.

- **Increase the maximum vehicle age for taxis from eight years to 10 years, with authority delegated to the Chief License Inspector to disqualify a vehicle in the interest of public safety**

Currently, standard and accessible taxicabs must be less than eight model years old. For taxicabs exceeding five years of age, there is a requirement for an MTO safety standards certificate from a licensed vehicle inspection centre to be provided to the

³⁷ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 24.

³⁸ Ibid.

Chief License Inspector twice per year. For all other taxicabs, a safety standards certificate is required on an annual basis.

The PTC-type service currently operating in Ottawa applies a 10-year limit on the vehicles used by its drivers.

The KPMG final report suggests that a limit of 10 years for both types of vehicles would respond to requests from taxi drivers to be able to purchase low-mileage used vehicles for taxi service. The report further suggests that the biannual inspections for older vehicles “will help protect the safety of older vehicles that are used full-time as vehicles-for-hire.”³⁹

Continuation of the current inspection regulations would serve to protect public safety by ensuring that only vehicles deemed fit by a licensed inspections station are permitted to serve customers. Allowing for slightly older vehicles to be used as taxis would provide increased flexibility for the taxi industry.

- **That the by-law specify minimum standards for in-vehicle cameras, rather than specific camera makes and models, in order to provide flexibility for the licensee responsible for purchase**

Staff recommend that in-vehicle cameras continue to be a requirement for taxicabs, which are able to accept street hails and use taxi stands, in order to enhance public safety (that of both the passenger and the driver) in these circumstances where the driver and passenger are not known to one another. In addition, there is an increased risk for taxis associated with carrying cash. Cameras are not proposed for PTCs as it would be the choice of the drivers of these private vehicles and furthermore, drivers of private vehicles would need to consider the privacy implications of having cameras in their vehicles during the provision of the transportation service including the application of federal privacy legislation. In addition, a pre-arranged ride where information of both parties is shared between parties adds a level of security that does not exist otherwise, and it is recommended that PTCs be prohibited from accepting cash payments.

The staff recommendation to maintain the requirement for in-vehicle taxicab cameras is in keeping with the final KPMG report, which states that, “cameras continue to be a requirement for taxis, for protection of both drivers and passengers. Taxis pick-up

³⁹ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 14.

unknown persons on the street by accepting street hails and at taxi stands. Cameras add a measure of protection where other such protections do not exist.”⁴⁰

While the camera requirement is maintained, it is noted that the KPMG final report recommends the Chief License Inspector update the specifications of in-vehicle cameras to incorporate current technologies. Specifically, the report states as follows:

“Minimum camera specifications as opposed to a camera make and model should be regulated to provide the purchaser choice when purchasing the camera, which may reduce cost, or may allow for a better camera to be purchased. Minimum standards establish a standard of quality to be achieved to provide for public protection.”⁴¹

As public safety would be maintained by ensuring minimum standards, staff is in agreement that minimum specifications should be regulated, rather than camera makes and models. This change, which came as a suggestion from members of the existing taxi industry, would provide the licensee responsible for making the purchase with flexibility when buying a camera.

- **That the regulated area be expanded to include the entire City of Ottawa**

The former townships of Goulbourn, Osgoode, Rideau and West Carleton did not regulate taxis and were therefore excluded from the regulated area for taxicab service when the taxi by-laws were harmonized after amalgamation.

The KPMG final report notes as follows:

“The urban area of the city of Ottawa has expanded and some of these areas are now more densely populated, but remain unregulated. Accessible taxis currently provide service in the rural areas of the city, outside of the regulated area, as do some sedan taxis. It is believed that there are no unregulated taxis operating in the rural areas that would be impacted by the proposal to expand the regulated area.

The limousine licensing regulations currently apply to the entire city of Ottawa.”⁴²

Staff agrees with the KPMG recommendation and rationale. Expanding the regulated area for taxicabs and the associated application of licensing requirement to all vehicles-for-hire across the City of Ottawa would apply provisions with respect to public safety, accessibility and consumer protection to all vehicle-for-hire services.

⁴⁰ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 16.

⁴¹ Ibid.

⁴² Ibid., p. 30.

- **Amend the ratio of plates-to-population be increased from 1:784 to 1:806**

Under the current by-law formula for the issuance of additional plates, there is a maximum of one taxi plate holder license for every 784 Ottawa residents within the regulated area. There are currently 1,188 taxi plates issued. Of these, 187 are accessible taxi plates, as additional accessible plates were issued to ensure there are enough accessible taxis to provide a level of service that is reasonably comparable to that available to standard taxi users.

As set out above, KPMG and staff recommend expanding the regulated area to include the City of Ottawa in its entirety. The City's 2015 population estimate is 960,756, which means there should be 1,192 taxi plates according to the proposed formula should Council approve the recommendation to expand the regulated area.

It should be noted that the KPMG final report suggests that, "expanding the service area to the entire City will not increase the demand for taxi services proportional to the increase in population as taxis are a less attractive model for long distance rural transportation and car ownership rates are high. Further, the creation of the [PTC] category will have some impact on demand for taxi services. The one taxi plate-per-806 residents' formula would match the current supply to the population of the City. It would not require issuance of additional plates at this time, but would facilitate issuing more plates to cover future growth."⁴³

Staff therefore recommends amending the ratio of plates-to-population from 1:784 to 1:806. The new formula would come close to matching the current supply to the population of the City, with the Chief License Inspector being in a position to put four additional accessible taxicabs into circulation for service. Under the Taxi By-law, individuals on the waiting list for taxi plates have up to one year to qualify for the plate, which includes completion of accessible training and purchase of the vehicle.

- **That the insurance requirement be increased from \$2 million Commercial General Liability to \$5 million Motor Vehicle Liability for Taxi plate holders (covering all drivers who drive a taxicab), and introducing similar requirements for Taxi Brokers**

The KPMG final report recommends the City should consider requiring a minimum of \$2 million of liability coverage for all providers of vehicles-for-hire transportation, including taxicabs, limousines and PTCs. Current insurance requirements in the Taxi By-law

⁴³ "City of Ottawa Taxi and Limousine Regulation and Service Review", KPMG, December 31, 2015, p. 31.

provide that taxi plate holders must maintain \$2 million in Commercial General Liability insurance and Motor Vehicle Liability insurance and to include each taxicab driver who operates the taxicab. These requirements are in place in order to protect the taxi plate holder as owner of the vehicle, the taxicab driver, passengers in the taxi and any third-parties who may be involved in a collision with the taxicab, as further discussed in the Legal Implications comments of this report.

Following consultations with the City's insurance broker and an external insurance consultant, staff has determined that plate holder insurance should be increased to \$5 million in order to ensure adequate coverage and due to an increase in claim amounts experienced generally together with the increased costs of defending claims. In addition, taxi plate holders will continue to be required to ensure that all of the taxicab drivers who are assigned and authorized to drive the licensed taxicab obtain and maintain automobile liability insurance for owned/leased licensed vehicles with limits of not less than \$5 million.

It has been further recommended that taxi brokers, which dispatch vehicles-for-hire, book, or arrange/facilitate the transportation service between the driver and the vehicle, also maintain \$5-million Commercial General Liability insurance, as well as obtain non-owned automobile insurance to provide protection for the company and the City in relation to automobile liability exposure related to vehicles that were dispatched by the company – or that are affiliated with the company – for the purposes of providing the transportation service, but are not actually owned by the company. The Taxi By-law does not currently prescribe insurance requirements for taxi brokers.

Minor administrative and technical amendments

The drafting instructions contained in Document 3 also include minor administrative and technical amendments consistent with the above.

It is staff's recommendation that the licensing regimes for all three vehicle-for-hire categories, namely PTC, taxis (including taxi brokers, taxi plate holders and taxi drivers) and limousine service providers be combined into a single "Vehicle-for-Hire By-law" for ease of reference. Staff proposes that, upon approval of this report and the recommendations for regulations for each category of licensee, staff will make the necessary administrative changes and work to create the single by-law, as described above. This will allow staff to eliminate duplications of administrative or regulatory provisions and combine those into a single part of the by-law, while having the individual regulations set out separate parts of the by-law for clarity and ease of reference. This

work would occur after the approval of this report and would reflect Council's decisions on these matters.

Recommendation 4 – Amendments to Limousine Service Regulations

“All vehicle-for-hire operators are potentially alone with vulnerable members of the population in their cars. ... The same standards should apply to all...”

“City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 12-13.

“This approach introduces a consistent approach to insurance across the three licensing categories...”

“City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 12.

Staff proposes that several limousine regulations be updated and made consistent with other vehicle-for-hire services, which is in keeping with recommendations from the KPMG final report. Current limousine regulations have been in place since 2004 and discussions with the limousine industry to review them started in 2012. While some of the proposals outlined below were discussed at that time, they were not finalized due to other impending related reviews.

As suggested in the KPMG final report, a consistent approach should be introduced across all three categories of vehicles-for-hire with respect to matters such as insurance, driver screening requirements and vehicle age (except for vintage, classic or specialty limousines). In addition, minimum fares for limousines have not been updated for more than a decade, while the definition of “limousine” requires refinement to reflect vehicle features that are considered to be “luxury” by today's standards. These and other recommended changes would enhance public safety and consumer protection, which is consistent with the Council-approved guiding principles for the review. Further, similar to PTC vehicles, identification should be prohibited, and therefore, the requirement for the “L” sticker for each vehicle would no longer be required.

Staff is also recommending that a new class of limousine be established to recognize businesses that offer “auxiliary services” such as special senior assistance services and “responsible choice”-type services. As these businesses provide specialty services that involve driving passengers as an auxiliary service, it is proposed that they be excluded from certain requirements such as minimum fare. This would ease regulations for businesses in the proposed auxiliary service category.

That an “auxiliary service” category be established to address other service models, such as special senior assistance services and “responsible choice”-type services

Currently, service providers licensed under regulations pertaining to limousines include businesses that offer special senior assistance services and “Responsible Choice”-type services. These businesses are considered in the KPMG final report as follows:

“There are some businesses operating in Ottawa which provide auxiliary services such as senior citizen accompaniment services, pet taxis and chauffeur services that drive passengers and their vehicles home. Services such as these are often licensed as limousines as they do involve driving passengers for compensation, but only as an auxiliary service.”⁴⁴

The report suggests that these “auxiliary service” providers “could be exempt from the luxury vehicle and minimum rate requirements under the limousine regulation provided that their status as an auxiliary service provider has been approved upon the issue or renewal of their limousine license.”⁴⁵ Recommendations related to the above-noted luxury vehicle and minimum rate requirements are provided in this report and set out in greater detail in the rationales provided below.

Staff proposes that an “auxiliary service” category be established under the Limousine Service Schedule and that the related businesses be accommodated to the extent that is reasonable. The “auxiliary service” category would be subject to some inspection requirements and require the minimum level of insurance set out in the by-law in order to help to ensure that public safety is protected. However, the category would be excluded from requirements such as minimum fare.

Included in the “auxiliary service” category would be personal service related transportation, such as door-to-door support for the customer (e.g. senior citizen accompaniment) and other such special needs services. Further, this category would also include personal vehicle chauffeur services through which the customer is conveyed in his/her own vehicle (e.g. Responsible Choice). No minimum fare would be charged for these services, although Police Records Checks and insurance would be required in respect of these service providers.

⁴⁴ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 23.

⁴⁵ Ibid., p. 23.

- **That the maximum vehicle age for limousines outside of the classic, vintage or specialty categories be established at 10 years, with biannual inspections for all vehicles over five years of age**

Currently, there is no age limit on limousines and all limousines must undergo an annual inspection by a motor vehicle mechanic. The Chief License Inspector may suspend a license should a limousine be found to be in an unsafe condition at inspection.

The KPMG final report recommends establishing a maximum vehicle age of 10 years for all vehicles-for-hire (apart from specialty or classic limousines), with biannual inspections to help maintain the safety of older vehicles that are used on a full-time basis.

Additionally, KPMG recommends that limousines in the classic or vintage category meet such criteria as the Chief License Inspector may establish related to their age and condition. Therefore, the Chief License Inspector would establish criteria related to age and condition for the classic, specialty or vintage category as part of the implementation of the maximum vehicle age.

- **That the definition of limousine be refined to ensure features are considered “luxury” by current standards and are distinguishable from other vehicles for hire**

Under current regulations, service in vehicles other than classic, vintage or specialty vehicles must be provided in a limousine that has seating for no more than nine passengers, not including the driver. In addition, the limousine must have at least five of the following features⁴⁶:

- a glass partition separating the rear and front seats,
- top quality interior appointments such as leather or plush upholstery,
- power windows,
- air conditioning,
- television,

⁴⁶ “Policy Options”, KPMG, City of Ottawa Taxi and Limousine Regulation and Service Review, November 18, 2015, p. 27.

- stereo system in the passenger compartment,
- tinted windows,
- cellular telephone for passenger use,
- refrigerator,
- work desk or table; and
- deluxe wheels and wheel covers

Features such as air conditioning and power windows now come as standard equipment on most vehicles. In order to distinguish limousines as luxury vehicles, KPMG has recommended that the current requirements be changed. The KPMG final report suggests that limousines in the luxury or stretch category shall have (or shall have had) a manufacturer's suggested list price greater than \$60,000, to be adjusted with inflation. The report states:

"The current definition of a 'luxury' vehicle suitable for limousine service is met by the majority of cars sold today (power windows, air conditioning, tinted windows, cell phone, deluxe wheels or wheel covers). Updating the feature list to exclude items that have become standard would only be a short term solution. Tying the definition to a dollar value would be a longer lasting approach, as long as the dollar value is regularly updated."⁴⁷

Staff agrees in principle with this approach. However, using the manufacturer's suggested retail price tied to inflation may be difficult to establish, particularly when operators purchase a used vehicle, and does not necessarily ensure the vehicle would be considered "luxury" by the passenger as more technical vehicle features can impact the retail price. Rather, staff proposes that the definition of "limousine" be refined to ensure features are "luxury" by today's standards and are distinguishable from other vehicles-for-hire. This would ensure that consumers are protected when arranging rides with a "luxury" service provider.

Classic or vintage vehicles would be required to operate under a limousine service license, be subject to the same license fee per vehicle and be required to charge the minimum fare.

⁴⁷ "City of Ottawa Taxi and Limousine Regulation and Service Review", KPMG, December 31, 2015, p. 24-25.

- **That each limousine service provider be required to obtain minimum insurance levels of \$5 million in Commercial General Liability and Motor Vehicle Liability**

Currently, limousine providers must have a minimum of \$1 million in public liability insurance. As noted with respect to recommendations concerning insurance for PTCs and taxicabs, KPMG recommends the City consider requiring a minimum of \$2 million of liability coverage for all providers of vehicles-for-hire transportation, including taxicabs, limousines and PTCs. The KPMG final report notes that its recommendation of keeping all providers at the same level “introduces a consistent approach to insurance across the three licensing categories...”⁴⁸ As previously noted, however, consultations with the City’s insurance broker and an external senior insurance consultant have determined that insurance levels should be increased to \$5 million. This review has determined that insurance coverage for limousines should be increased to a minimum of \$5 million Commercial General Liability and for Motor Vehicle Liability in order to ensure adequate coverage and due to an increase in claim amounts experienced generally together with increased costs to defend such claims, as further described in the Legal Implications comments in this report. This amount is also in line with insurance limits recommended for other vehicle-for-hire categories, and will help to ensure that licensees, limousine drivers, and passengers are adequately protected.

Therefore, staff is recommending an insurance requirement for each limousine operator to have \$5 million in Commercial General Liability and \$5 million for Motor Vehicle Liability.

- **That limousine drivers be required to obtain an annual Police Records Check for Service with the Vulnerable Sector, to be coordinated by the limousine operator, as well as an annual acceptable Statement of Driving Record**

Currently, a “Police Records Check for Service with the Vulnerable Sector” (also known as a “Police Records Check” or “PRC”) is required only for the limousine operator. However, as stated in the KPMG final report, “all vehicle-for-hire operators are potentially alone with vulnerable members of the population in their cars. The same standards should apply to all, and they should exclude any individuals with a record of sexual or violent offences in order to protect public safety.”⁴⁹ Therefore, staff proposes that limousine drivers also be required to obtain a PRC and provide a Statement of

⁴⁸ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 12.

⁴⁹ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 12-13.

Driving Record before commencing service and annually thereafter in order to protect public safety. The limousine operator would be responsible for verifying that the conditions for the PRCs and Statement of Driving Record are met, and retaining records to demonstrate proof during audits.

These recommendations support the guiding principle of public safety. Limousine drivers would undergo the same PRC screening as taxicab drivers and PTC services. In addition, limousine drivers would be required to obtain PRCs on an annual basis, as is proposed for PTC drivers, due to the more transient nature of limousine driving.

As noted earlier, a PRC is provided by a police authority for applicants who are seeking employment and/or volunteer work with vulnerable people. The term “vulnerable” refers to “a class of persons who, because of their age, a disability or other circumstances, whether temporary or permanent are in a position of dependence on others or are otherwise at a greater risk than the general population of being harmed by persons in a position of authority or trust relative to them (e.g. children, disabled or elderly),”⁵⁰ according to a description on the Ottawa Police Service website. The Police Records Check includes national and local police databases, and “the possible existence of criminal convictions and outstanding charges, as well as incidents of all notable police contacts for at least the previous five years will be considered for release,”⁵¹ the website states.

The KPMG final report also suggests that the records-check process “should not prevent anyone with any criminal record from becoming a vehicle-for-hire driver,” and suggests the Chief License Inspector develop guidelines “that take into account at least the nature of the offense and the elapsed time since it occurred.”⁵² The Chief License Inspector will formalize and review criteria applicable to all vehicle-for-hire drivers as required.

- **That the minimum fare be increased from \$67.50 for the first 90 minutes and \$45.00 for each additional hour, to \$75.00 and \$50.00 respectively, exclusive of HST**

⁵⁰ “Request a Background Check (Records Check)”, Ottawa Police Service website, <http://www.ottawapolice.ca/en/contact-us/Request-a-Background-Check-or-Police-Report.asp>, accessed on March 17, 2016.

⁵¹ Ibid.

⁵² “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG December 31, 2015, p. 12-13.

The provision of a minimum fare for limousines was enacted in 2004 to establish a gap between limousine fares and taxi fares to ensure an appropriate distinction between premium fares charged by luxury limousines versus regular taxicabs.

The current minimum fare is \$67.50 for the first 90 minutes and \$45 for each hour thereafter. These fare levels have been in place since 2004, and as the KPMG final report points out, “this amount closely approximates the price of a long-distance taxi (i.e. from the airport to Kanata or Orleans).”⁵³ The report recommends the City consider establishing a new minimum fare for limousines, “that could restore a gap between limousine fares and taxi fares, factoring in inflation, and the physical growth of the city.”

⁵⁴

The proposed limousine fare increase to \$75 for the first 90 minutes and \$50 for each additional hour, not including HST, would restore the gap between limousine and taxi fares, taking inflation and the physical growth of the City into account.

It should be noted that this report recommends that a new class of limousine providing “auxiliary services” be established and that the minimum fare not apply to this new class. Instead, auxiliary service providers would be exempt from the minimum rate provided that their status as an auxiliary service provider has been approved through the licensing issuance or renewal process.

Minor administrative and technical amendments

The amendments set out in Document 4 also include minor administrative and technical amendments consistent with the above.

It is staff’s recommendation that the licensing regimes for all three vehicle-for-hire categories, namely PTCs, taxis (including taxi brokers, taxi plate holders and taxi drivers) and limousine service providers be combined into a single “Vehicle-for-Hire By-law” for ease of reference. Staff proposes that, upon approval of this report and the recommendations for regulations for each category of licensee, staff will make the necessary administrative changes and work to create the single by-law, as described above. This will allow staff to eliminate duplications of administrative or regulatory provisions and combine those into a single part of the by-law, while having the individual regulations set out separate parts of the by-law for clarity and ease of reference. This

⁵³ “City of Ottawa Taxi and Limousine Regulation and Service Review”, KPMG, December 31, 2015, p. 23.

⁵⁴ Ibid., p. 23.

work would occur after the approval of this report and would reflect Council's decisions on these matters.

Other Considerations

Staff has reviewed media reports from the City of Toronto as well as publicly available information regarding transportation services such as uberHOP, which appear to offer services consisting of picking up passengers in large vehicles (with more than seven occupants) along a pre-arranged route for the purposes of bringing them to a single destination. Staff has no information to suggest that this particular system is operating in Ottawa currently. However, at this time, and based upon a review of both the *City of Ottawa Act, 1999*, and the *Transit By-law*, being By-law No. 2007 – 268, it appears that such transportation services would fit within the definition of “passenger transportation system” found in Section 1 of the *City of Ottawa Act, 1999*. As a result, the prior permission of the City would be required for such services to operate in order to be in compliance the City's exclusive authority over passenger transportation systems provided in the *City of Ottawa Act, 1999*. Furthermore, such operation without prior approval would also be in contravention of Section 3 of the City's *Transit By-law*, as noted below.

1. City of Ottawa Act, 1999

The *City of Ottawa Act, 1999*, was the provincial statute enacted prior to amalgamation to provide specific enabling legislation whereby the newly amalgamated City of Ottawa could operate. In this regard, Section 12.17 of the Act provides the City with the statutory authority to “establish, operate and maintain a passenger transportation system within the city”. Further, Subsection 1(1) of the Act defines the phrase, “passenger transportation system” to mean “a system that provides, for compensation, transportation for passengers or passengers and freight in vehicles operated underground, on the ground or above the ground, but not taxicabs”.

More specifically, Section 12.18 of the *City of Ottawa Act, 1999* grants exclusive authority to the City to operate a passenger transportation system in the City and Subsection (1) expressly provides as follows:

“The City may, by by-law, provide that no person shall operate a passenger transportation system in the City, or in an area of the City designated in the by-law, unless the person is authorized to do so under this section or by the City.”

With respect to the statutory exemptions noted in Subsection 12.18(2), the *City of Ottawa Act, 1999* states that the above-noted exclusivity provision does not apply to: school buses; railways; ferries; or aviation systems.

Subsection 12.18(3) further provides that the City may authorize parties to operate passenger transportation systems and may impose conditions on that authorization.

2. Transit By-law

The City has exercised the above-noted power to prohibit passenger transportation systems in Section 3 of the *Transit By-law*, being By-law No. 2007 – 268 (as amended), which provides as follows:

“No person shall operate a passenger transportation system in the City unless the person is authorized to do so by the Director” (now the General Manager, Transit Services).

In addition, Section 5 of the By-law allows the General Manager of Transit Services to authorize certain passenger transportation systems for such matters as sightseeing, for the Airport and for the transportation of clients/employees of a particular business.

That said, there is currently no ability for the General Manager in the Transit By-law to authorize a passenger transit system of a type other than those provided above.

Therefore, authorizing a new type of passenger transportation system to operate as a passenger transportation system in the City of Ottawa would require an amendment to the Transit By-law by a recommendation from the Transit Commission to City Council.

Should a new type of passenger transportation system be introduced that uses vehicles with a maximum occupancy of seven, then those vehicles may fall within the existing parameters of the Taxi By-law or of the proposed PTC licensing regulations, and would be required to meet the requirements of those regulatory regimes. Each system would be reviewed individually based on its particular characteristics.

Recommendation 5 – Request for Provincial Enabling Legislation

The proposed regulatory regime for all three classes is permissible under the City's current authorities under the *Municipal Act, 2001* and other relevant legislation.

However, staff believes that some specific amendments to provincial legislation related to enforcement and accessibility will further enhance the City's ability to meet Council's overarching policy goals of public safety, consumer protection and enhancing accessibility.

Additional Enforcement Tools

Currently, the enforcement mechanisms for unlicensed vehicles-for-hire and other violations of municipal taxi by-laws are provided under the *Municipal Act, 2001* and the *Provincial Offences Act* (POA). These enforcement powers allow the issuance of charges under Part I of the POA (set fines) or Part III of the POA (summons to Court to obtain higher financial penalties), or the ability to restrain the violation upon the application of the municipality, or a taxpayer, under Section 440 of the *Municipal Act, 2001*.

Other provincial-level enforcement powers against unlicensed taxis may be found under the *Highway Traffic Act* (HTA), but these are enforceable only by police officers and not by Municipal By-law Officers.

Because the City is bringing forward a new regulatory regime for a currently unregulated field, and because it cannot predict the next potential entry into this industry, staff is of the opinion that an increased range of enforcement tools would be most effective in ensuring the by-laws are adhered to and Council's goals are met. Specifically, staff is hoping the Province will allow Ottawa to have a range of tools that would provide a sufficient deterrent for future unlicensed vehicle-for-hire activity, including by PTCs.

Staff is therefore recommending that the City ask the province to amend the *Highway Traffic Act* to create enhanced enforcement powers under the HTA and in relation to municipal vehicle-for-hire by-laws, for both Municipal and Provincial enforcement staff, related to unauthorized/unlicensed vehicles-for-hire, including the ability to tie/trigger outstanding violations to plate denial, which is more realistically implementable by, and less onerous for, municipalities. This would be an expansion of current license plate denial processes in place for unpaid parking fines, and would be added for unpaid POA fines for offences such as unlicensed operation of vehicles for hire, either under the HTA (s. 39.1) or a municipal by-law –Taxi By-law or other vehicle-for-hire by-laws, such as a PTC by-law.

Further, staff believes increased fines for violations under Section 39.1 of the HTA (not less than \$500 and no more than \$30,000) with three associated demerit points and the ability to impose administrative license suspensions would be beneficial to ensure compliance with the new regulatory framework.

Additional Accessibility Tools

As indicated throughout this report, staff is recommending the negotiation of a voluntary, per-trip accessibility surcharge for Private Transportation Companies (PTCs) in lieu of the City's inability under the *Municipal Act, 2001*, to establish a mandatory fee that can be used for a municipal purpose (rather than to defray costs). With this in mind, staff is also recommending that Council ask the Province for the enabling legislation to enforce a mandatory accessibility levy or surcharge on PTCs, with the funds being used to improve accessible transportation.

As demonstrated in other jurisdictions currently undertaking taxi regulation reviews, including Toronto, Calgary and Edmonton, a common method of regulating the vehicle-for-hire industry for accessibility is to establish some form of a mandatory surcharge.

Under Section 267 of the City of Toronto's enabling legislation, the *City of Toronto Act, 2006*, the City has the authority to implement an accessibility levy on its private transportation companies. Similarly, Edmonton and Calgary have statutory authority, in accordance with Alberta's *Municipal Government Act, 2000*, to establish an accessibility-related surcharge for their respective vehicle-for-hire industry.

Staff believe this recommendation is timely, as a review of *Municipal Act, 2001* is currently being undertaken by the Ministry of Municipal Affairs and Housing, and while the consultation phase has concluded, final recommendations have not been provided to the Provincial Government and legislative changes have not yet been brought to the Legislature.

Further, the Integrated Accessibility Standards under the *Accessibility for Ontarians with Disabilities Act, 2005* (AODA) outlines a number of requirements of municipalities with respect to taxicabs, accessible taxicabs and associated service. Staff is recommending that the relevant regulations under the AODA be amended to include private transportation companies and limousines in order to establish a link with the accessibility surcharge and to provide a consistent approach to accessible public transit.

Related Bills before the Legislature

The Opportunity in the Sharing Economy Act, 2015 (Bill 131) and the Protecting Passenger Safety Act, 2015 (Bill 53) were introduced in the Ontario Legislature as Private Members Bills on October 27, 2015 and December 3, 2014 respectively. Neither Bill has been scheduled for review hearings. The Police Records Check Reform Act, 2015 (Bill 113) received Royal Assent on December 3, 2015. The Act has not yet been proclaimed and is therefore not yet in force.

Staff is not making any recommendations to the Province with respect to these Bills, though staff is recommending that Vulnerable Sector Checks be required for limousine and PTC drivers on an annual basis once the provisions of the Police Records Check Reform Act, 2015 are in force, as described in this report. Until then, current police record checks for the vulnerable sector will continue to be required.

While all three Bills are discussed in the Legal Implications section of this report, the following is a high-level summary of each Bill:

The Opportunity in the Sharing Economy Act, 2015

Schedule 3 of the Bill creates the Transportation Network Vehicles Act, 2015, which establishes a licensing and regulatory regime for Transportation Network Companies (TNC) by municipalities or by the Province (if a municipality chooses not to regulate TNCs).

Operational staff does have some overarching concerns with respect to Bill 131, which may restrict municipal licensing powers and present regulatory difficulties for municipalities, specifically:

- The proposed Bill does not authorize a municipality to license drivers or owners of PTC vehicles, or to regulate fares;
- The proposed Bill provides that vehicle standards are to be “prescribed,” defined by the Bill to mean standards prescribed by any future Provincial regulations. It would therefore appear that municipalities are unable to impose their own standards for PTC vehicles; and
- Any standards or obligations regarding PTC drivers are to be set out either by the PTC itself in the operating permit it issues to its drivers, by the legislation, or by future Provincial Regulations. Municipalities would have no authority in this area.

The Protecting Passenger Safety Act, 2015

Section 39.1 of the *Highway Traffic Act* (HTA) currently prohibits driving an unlicensed taxicab for the purposes of picking up passengers for a fare, as well as prohibiting the use and dispatching of an unlicensed taxicab for such purposes. The Bill proposes the amendments to the HTA in relation to offences for unlicensed taxicabs:

The Police Records Check Reform Act, 2015

The Act standardizes the processes by which police forces screen individuals and requires that all police services conducting the checks proceed in the same manner and offer the same types of checks, which are Criminal Record Checks, Criminal Record and Judicial Matters Check and Vulnerable Sector Checks.

SUMMARY

The following table outlines the main common features and distinguishing features associated with the proposed changes to the City of Ottawa's vehicle for hire regulations across all three classes:

	Taxis	Limousines	PTCs
Common Features			
Driver Screening	Police Vulnerable Sector Check, Statement of Driving Record	Police Vulnerable Sector Check, Statement of Driving Record	Police Vulnerable Sector Check, Statement of Driving Record
Vehicle Safety Age	10 years (this is an increase from the current 8 years)	10 years (except vintage)	10 years
Vehicle Safety Inspection	Annual Safety Certificate (MTO); biannual for vehicles 5 years of age and older	Annual Safety Certificate (MTO); biannual for vehicles 5 years of age and older	Annual Safety Certificate (MTO); biannual for vehicles 5 years of age and older
Insurance	Increase liability insurance from \$2M to \$5M,	Increase liability insurance from \$1M to \$5M	\$5M liability insurance
Distinguishing Features			
Model	Adjunct to Public Transportation Network	Special / Auxiliary Service Category	Private Service Provider
Regulatory Approach	Administered by the City. Significant City involvement.	Administered by the City. Modest City involvement given	Self regulation with mandatory reporting requirements. Spot

	Municipally designated taxi stands. Substantial accessibility component	relatively small specialized nature of the sector	audits. Buyer Beware. Modest City involvement, except for monitoring and enforcement efforts
Arranging Pick-up	Hail, Taxi-stand, Pre-arrangement by phone, or app	Pre-arrangement by phone, website or app	Pre-arrangement by app only.
Fares	Maximum fare with ability to lower fare only for rides pre-arranged through an app	Minimum fare based on 90-minute increments	Variable (no restrictions, set by the market with consumer consent)
Accessibility	Licensed, regulated accessible on-demand	N/A	Levy to support accessible transportation services
Cameras	Mandatory for passenger and driver safety given anonymity of street hails	Not mandatory given that all rides are pre-arranged	Not mandatory given that all rides are pre-arranged
Meter Inspections	Mandatory to ensure accuracy of fare for fares that are not pre-arranged by app	N/A rides are pre-arranged	N/A rides are pre-arranged
Vehicle Identification	Numbered plate on bumper, number on side of vehicle, roof sign.	No vehicle ID	No vehicle ID
Complaint process	Administered by the City	Administered by City	Administered by PTC

License Fees	Reduced to reflect anticipated reduction in enforcement and inspection costs	No change	Established at a level to recoup anticipated costs of monitoring and enforcement
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Should Council at its meeting of April 13, 2016, approve recommendations set out in this report relating to PTCs, taxis and limousines, staff proposes that the approved by-law and regulatory provisions take effect June 30, 2016. Following enactment of the by-law, an application for set fines would be forwarded to the Ministry of Attorney General and then redirected to the local Regional Senior Justice for approval. Should approval of the set fines not be obtained by June 30, Part III summonses would be issued for any violations of the new regulations. Further, the suggested implementation date would provide enough time for staff to draft and finalize the relevant by-laws and regulations which would be subject to the formal Council approval process at subsequent meetings. In addition, the proposed effective date would ensure that staff has all related administrative and technical aspects in place for administration and enforcement of the by-laws and regulations.

Recommendation 6 – Consolidated Vehicle-for-Hire By-law

Documents 2, 3 and 4 provide the framework for the new PTC regulations and the amendments to the existing taxi and limousine regulations. This recommendation would allow staff to, should Recommendations 2, 3 and 4 all be approved, combine the three regulations into one Vehicle-for-Hire By-law. Enactment of a by-law that includes all vehicle-for-hire-type regulations would facilitate administration and enforcement by staff, and understanding by the regulated parties as well as the public. Staff will require sufficient authority to draft the by-law, in order to include Council-approved changes and the details associated with them.

RURAL IMPLICATIONS

It is being proposed that the current regulated area, which essentially excludes areas outside of the Greenbelt, be expanded to include the City of Ottawa in its entirety.

CONSULTATION

KPMG, with staff support, conducted comprehensive consultation as outlined in this report and detailed in KPMG's final report, attached as Document 1 (page 6).

ADVISORY COMMITTEE(S) COMMENTS

KPMG delivered a presentation to the Accessibility Advisory Committee which supported the approach and outcomes.

LEGAL IMPLICATIONS

For the reasons that are set out in this section, there are no legal impediments to implementing the recommendations of this report. The following information is provided to address the legal issues related to the implementation of the recommendations for the proposed new licensing regime for private transportation companies (“PTCs”), and the proposed amendments to the current licensing requirements for taxicabs (including brokers, plate holders and drivers) and limousines.

On this point, guidance can be taken from the following passage from the Superior Court of Justice in the decision of *Toronto (City) v. Uber Canada Ltd.*:

“While both sides took great pains to couch their arguments in terms of the public interest, this court is not the proper forum for that debate. Questions of what policy choices the City should make on how the regulatory environment ought to respond to mobile communications technology changes are political ones. Such questions are, of course, the stuff of democracy. While democracy can be a messy business, our system wisely recognizes that the perfect must sometimes yield to the practical at the risk of a wrong turn or two along the way. Courts determine disputes in the light of the political process, and with all of the respect for the differing opinions of the actors that our constitutional order demands.”

Mr. Justice S. F. Dunphy,
Toronto (City) v. Uber Canada Ltd
(July 3, 2015)

A. **LEGISLATIVE FRAMEWORK: *Municipal Act, 2001***

(1) Authority to License and Regulate Vehicles for Hire

The *Municipal Act, 2001*, (“*Act*”) provides municipalities in Ontario with both broad and specific powers. Subsection 8(1) of the *Act*, provides that the scope of a municipality’s powers are to be interpreted broadly, so as to confer broad authority on municipal councils to enable them to govern their affairs as they consider appropriate and to enhance the municipality’s ability to respond to municipal issues. Subsection 10(2) provides by-law making powers to a municipality in respect of 11 different broad areas

including: the economic, social and environmental well-being of the municipality (paragraph 5); the health, safety and well-being of persons (paragraph 6); the protection of persons and property, including consumer protection (paragraph 8); and business licensing (paragraph 11).

In addition to the broad by-law making authority (including business licensing) noted above, it is Part IV of the *Municipal Act, 2001*, that sets out specific rules and powers of the municipality regarding the licensing of businesses and trades. Subsection 151(1) of the *Act* provides specific authority for a municipality to create a licensing regime for a business or trade, and includes the powers to prohibit the carrying on of that business or trade without a license, to refuse to grant or renew a license, and to revoke or suspend a license.

However, Court decisions have found that the powers to license and to require a business to obtain a municipal license in order to operate does not include the power to prohibit a business outright – that is, while a municipality can require that a business obtain a business license in order to operate, and can consequently lay charges for operating without a required license, the powers to prohibit outright a business or class of businesses is not within the powers of a municipality.

Municipal business licensing powers under this Subsection also include the ability to impose conditions as a requirement of obtaining, continuing to hold, or renewing a license, and to impose special conditions on one business or a class of businesses. This provision also allows a municipality to license, regulate or govern the real and personal property used for the licensed business, and the persons carrying it on or engaged in it, such as vehicles and other property. Based on the above-noted broad and specific authorities, the City of Ottawa currently has the ability to license and regulate private transportation companies (“PTCs”) and other vehicles for hire such as taxicabs and limousines.

Furthermore Subsection 156(1) of the *Act* specifically addresses the licensing of taxicabs and taxicab owners and drivers and provides some additional specific powers where these are concerned. It authorizes a municipality to establish the rates or fares to be charged for taxicab service, as well as establish rules for the collection of these rates or fares. This Subsection also allows a municipality to limit the number of taxicabs, or any class of them. It should be noted that this specific power to regulate fares and their collection is specific to taxicabs and tow trucks (which the City does not currently license). Furthermore, the power to limit the numbers of licensees is specific to taxicabs only.

(2) Municipal Policy Decision Defence

Generally speaking, municipalities are immune from liability for policy decisions made in good faith exercise or non-exercise of a discretionary power, or the performance or non-performance of a discretionary function. This defence is set out in Section 450 of the *Municipal Act, 2001*, which is subtitled, “Policy Decisions”. Examples of good faith could include notice to stakeholders and the public of the proposed amendment(s); opportunity for stakeholders/public to make representations on the proposed amendments; overall transparency of the process; and compliance with procedural requirements.

As noted on page 8 of KPMG’s Policy Options paper, some taxicab plate owners indicated during the consultation process that, “they may seek damages from the City” should Council establish a new private transportation company category in its by-law which would “result in a significant reduction in taxi plate values.” In light of this potential litigation, a confidential 30 page legal opinion from Gowling WLG regarding the City’s potential liability was obtained and is on file in the City Clerk and Solicitor’s Office for Member’s to review.

In summarizing what has more recently been characterized as the “core policy immunity” test for governments, the external legal opinion (that remains subject to “solicitor-client” privilege) concluded as follows: “[O]ur opinion is that the City would likely not be held liable for the economic losses suffered by existing holders of regulated taxicab plates and plate holder licenses should the value of those plates decline as a consequence of regulatory changes approved by City Council and adopted through a bylaw which would affect the taxicab industry by, among others, relaxing the controlled entry into the vehicle-for-hire business in Ottawa.”

Municipal councils must exercise their powers in the public interest, even when a private party might have a particular interest in the matter to be decided on. If the broader matter affects the municipality, then Council must exercise its jurisdiction in a “responsive” manner, by: (1) looking at the relevant information and (2) reviewing the facts in a responsible manner. In 2006, the Supreme Court of Canada in *Canadian Pacific Railway v. Vancouver (City)*, while looking at the issue of procedural fairness, found that while the duty of fairness may require a municipality to take into account any legitimate expectations of a private party, it does not necessarily require a municipality to fulfill them.

In the 2005 case *Croplife Canada v. Toronto (City)*, the Ontario Court of Appeal unanimously rejected the Appellant Company’s appeal of a lower court ruling that

upheld the City of Toronto's Pesticide By-law. In doing so, the appellate court found that courts should show some deference to, and respect for, decisions of municipal councils, and that municipal powers are to be interpreted broadly and generously within their contexts and statutory limits, in order to achieve the legitimate interests of the municipality and its inhabitants. The underlying rationale for the judicial deference towards such policy decisions by governments was succinctly stated by the Supreme Court of Canada in a 2001 ruling called, *Cooper v. Hobart*, whereby the high court concluded that, "it is inappropriate for courts to second-guess elected legislators on policy matters."

In 2014, the Toronto Taxi Alliance ("Alliance") challenged amendments made to the City of Toronto's taxi licensing regulations based on allegations that Council had followed an improper process which included: not providing sufficient notice to parties affected by the by-law amendments; that Council enacted the by-law amendments in bad faith; and, that Council's own Procedure By-law had not been followed. This by-law challenge was to the Superior Court in the matter of *Toronto Taxi Alliance Inc. v. City of Toronto*. The Court released its decision in 2015.

The amendments in question were passed by Toronto City Council in February 2014 and enacted in June 2014. In summary, these changes provided, among other things, for a change from a multi-tiered model of taxi licenses (different plate owner and taxi driver, or single owner-driver or combination) to a single-tier model called a "Toronto Taxicab License" ("TTL") with the same owner-driver of a wheelchair accessible taxicab. These changes came about following a multi-year taxi review undertaken by City Staff from 2011 to 2014.

The amendments in question were considered by Toronto's Licensing and Standards Committee (a Standing Committee of Council) in January 2014 and received extensive verbal and written input by members of the public. That Committee approved a resolution at that time to send the specific issue of implementation of the new TTL back to staff for further review, but recommended other staff recommendations regarding other revisions to taxi licensing to Council. As a result, the bulk of the staff report rose to Toronto City Council immediately. Despite the Committee's resolution to further study the specific implementation issue, Toronto City Council on February 19th 2014 passed resolutions for the implementation of the TTL regime as on July 1, 2014, and for the mandatory conversion of standards taxi licenses to TTLs by June 2024.

On the issue of a breach of the Procedure By-law, and on the effect of this breach on the legality of the amendments imposing a mandatory conversion date of 2024 to the

new licensing regime, the Court concluded that the decision to enact and implement a mandatory conversion date was illegal and constituted a *substantive breach*. The Court found while that a technical breach of a requirement for giving notice (e.g. an incorrect form of notice) would “stand the test of transparency”, in contrast where a breach results in no notice actually being given of a significant legislative step, this is more than merely technical.

The Court further found that the serious impact on the taxi license holders underscored the importance of providing notice and a chance to be heard on the subject of a mandatory conversion date. The Court noted that the outcome of a debate on the issue of the mandatory conversion date would have been “far from obvious” and this weighed in favour of finding that stakeholders should have been given an opportunity to make representations on alternative dates or solutions, especially since the Alliance had been an active participant in the consultation process up until then. As a result, the Court found that the imposition of the mandatory 2024 conversion date was illegal and consequently this portion of Toronto City Council’s decision and the consequent by-law enactments were quashed.

Finally, it may be noted that the imposition of new requirements for the dispatching of taxis, such as requiring the dispatch of the vehicle nearest the client, may have consequential effects on the arrangements currently in place, in collective agreements or otherwise, as between the dispatcher/employer and individual taxi drivers. However, such effects would not give rise to any legal liability on the part of the City where they are mere by-products of the proper exercise of the City’s regulatory authority.

(3) Summary of Past Debates on Compensation for Taxi Plate Holder Licensees

While preparing the above-noted commentary, Legal Services staff heard various accounts of prior legal opinions on the above-noted subject. Therefore, in an effort to provide greater clarity to this item, the following legislative summary concerning the potential payment of compensation for taxi plate holders is set out below.

The issue of compensation for plate holders appears to have first arisen in the context of the Ottawa-Carleton Licensing Committee’s Taxi Report, presented to Regional Council on September 27, 1989. That Report was the culmination of the work initiated following a February 1987 resolution by Regional Council directing that a study be undertaken to review municipal licensing generally, and taxi and limousine licensing in particular. While industry representatives proposed compensation in the event that the outcome of the review affected the “street” value of taxi licences, the Report itself noted

that there was no legal entitlement to compensation. More specifically, the Report set out the following reasons why no compensation should be paid in the event that reforms affected the street value of licences:

- *Licence is property of municipality*
- *Purchase of licence is speculative investment*
- *Municipality under no obligation to maintain street value or compensate for cost value*
- *No compensation paid elsewhere (examples: deregulation in U.S. and U.K.; regionalization in Montreal).*

The issue of compensation for taxi plate holders did not receive any further consideration, as the recommendations made as part of the 1989 Taxi Report were not adopted. The issue remained dormant until it was revived by the Ottawa Transition Board as part of its work in anticipation of, and preparation for, the municipal amalgamation that took effect on January 1, 2001. The Report of the Transition Board's Taxi Project Team, delivered on December 5, 2000, noted on its first page that municipal amalgamation provided an opportunity "to develop a model of how the taxi industry should function". The Taxi Project Team identified the street value of taxi licences as an impediment to reform of the industry and further observed that plate holders had become "more concerned with protecting the market value of the license than in providing service to the public leading to lower standards and more consumer complaints."

On the specific issue of compensation for plate holders, the Transition Board Report reiterated that, while the 1989 Regional reforms had recommended compensation for plate holders, that recommendation was not founded in any legal obligations:

It must be noted that there was no legal requirement for the Regional Municipality to provide compensation. The report advocated the establishment of a compensation fund only because it was determined to be the most expeditious way to ensure support of the changes from the industry.

The Transition Board Report repeated several of the same arguments identified in the 1989 Report as to why compensation need not be paid:

Contrary to industry practice, taxi licenses (plates) belong to the individual municipality. Although commonly considered to have an investment value, that

value is artificial or speculative and has been created because of the finite limit on the number of plates issued. The plates do not have an 'asset' value - any person who "buys" a plate does so with considerable risk just as any business involves a degree of risk.

The holder of the taxi 'plate' has been able to convince a prospective 'buyer' that the plate is a valuable asset. The prospective 'buyer' has ignored the fact that the holder of a taxi plate is not the owner. The person leasing a plate is in the same situation vis-à-vis the holder of a taxi 'plate'. That person is paying valuable rent for a commodity not owned by the holder of that taxi plate.

Ultimately, the Transition Board Taxi Project Team did not recommend paying compensation to plate holders as a necessary part of the move to its proposed new model. The Taxi Project Team Report ultimately served to help inform the later consideration of a harmonized regulatory regime for the taxi industry when the issue came before the new Ottawa City Council on July 11, 2001.

While the staff report presented in support of the July 11, 2001, recommendations did not contain a comprehensive legal opinion, it did note the following on the issue of plate holders' compensation:

4. Compensation for changes

There has been considerable discussion on the issue of compensation. There is some debate about the legal implications of possible changes. Legal opinions obtained by the Task Force indicate that implementing the recommendations would likely not expose the city to successful claims for compensation as the plates are, have been and always will be municipal property and the municipality has the authority to change its licensing regime as required, within the legal authority, even if it results in lower plate values. However, even these opinions note the approach is not risk free, and legal counsel for plate holders have argued that the municipality would be liable for compensation, considering that various municipalities have sanctioned, acknowledged, registered and charge for plate transfers, and noting the courts have treated plates as property in proceedings such as bankruptcies and divorce proceedings [emphasis in original].

Whatever the legal situation may indeed be, there are also issues of fairness and morality to consider. Even if no compensation is required legally, it would not seem fair or reasonable to impose a regime that resulted in significant loss to a

group without strong policy arguments, without it being an essential element of achieving an important community good.

It would be possible to compensate any plate holders who suffered substantially as a result of a new licensing regime. While it would be equally unfair to charge taxpayers the cost of such compensation, it would be possible to establish an industry funded compensation plan, i.e. to establish a significant annual fee for plate renewals that could be used over time to compensate existing plate holders. However, such an approach would require special legislation, and such legislation was rejected by the province a decade ago.

The prevailing view, as reflected in the various earlier reports, is that a municipality is not under a general legal obligation to provide financial compensation for any loss in the notional or street value of a taxi licence if that value is diminished as a consequence of the municipality's exercise of its regulatory authority. The basis for this view is unchanged from that which was described in the 1989 and 2001 reports proposing reforms to the taxi industry in the City of Ottawa.

Further to this, the subject of compensation to plate holders was raised during City Council's September 28, 2005, consideration of changes to implement a single fare zone system, as compared to the multi-zone system that persisted in the years following amalgamation. At that time, some suggested that compensation should be considered for holders of taxi licences from the former City of Ottawa, as these had a street value significantly higher than similar licences issued by the former municipalities of Nepean, Gloucester, etc. The concerns expressed were that the move to a single zone, with Nepean and Gloucester plate holders now having access to the more lucrative downtown market, would result in reduced street values for the limited number of former City of Ottawa licences. Ultimately, City Council adopted a one-zone model and did not face legal actions as a result of any claimed diminution in the street value of existing licences.

(4) Authority to Charge Fees

Subsection 391(1) of the *Municipal Act, 2001*, provides the City with the ability to impose fees and charges for services or activities done or provided by it, or for the use of its property. Furthermore, Subsection 391(3) provides that the costs included in a fee or a charge imposed by a municipality may include administration or enforcement costs related to the service or activity being delivered, and that the amount of the fee or charge may also take into account the municipality's costs for the establishment, acquisition and replacement of its capital assets involved in delivery of that particular

service or activity. Licensing fees can, therefore, include the City's costs of administering a licensing regime for any class of licensee, including new categories of licenses such as Transportation Network Companies, and would include, for example, costs related to issuance and renewals of the licenses including costs of reviewing applications and supporting documentation, costs related to suspensions or revocations of licenses, as well as costs related to reviews and investigations, and enforcement efforts.

It should be noted that case law pertaining to the charging of fees draws a link between the fee imposed and the municipality's cost recovery for the delivery of a service or an activity. The imposition of a fee that goes beyond the scope of a municipality's costs for delivery of a service or activity may be determined to be an unauthorized tax. Courts have confirmed the principle based in the division of powers found in the *Constitution Act* that a municipality does not have the power to levy a tax other than that which is explicitly provided in legislation such as property taxes.

The Supreme Court of Canada in the 1998 case called *Eurig Estate*, and in other court decisions since then, examined whether a particular fee or charge imposed by a municipality will be in the nature of an unauthorized tax or a fee, and found that licensing or registration fees are proper fees, rather than taxes, if the fee in question "bears a reasonable relation to" the cost of providing the service for which the fee is charged.

In 2001, the Court of Appeal for Ontario found in *Urban Outdoor Trans Ad v. Scarborough (City)*, that in such cases, fees are not unauthorized taxes where their purpose is to defray the municipality's costs and expenses in delivering the service in question, rather than to raise revenue. For example, the imposition of a fee based on the market value of a taxi plate alone, which value is unrelated to the delivery of a municipal service of issuing taxi licenses, could be challenged as being beyond the powers of the City. From a practical perspective, it should be noted that the City's Taxi By-law does not take into consideration any market value that might exist in relation to a taxi plate, nor do any other licensing programmes at the City in respect of any other license or permit. Rather, the conditions for issuance and renewal of such taxiplates in the Taxi By-law focus on aspects of public and driver safety, public interest, and consumer protection. The *Municipal Act, 2001* does not provide authority for the City to impose a fee or a charge in its taxi licensing programme for the purpose of capturing revenues based on the market value of taxi plates.

As a result of the above noted authority to charge fees and charges for services provided by the City, the City of Ottawa may increase its fees or charges as required provided that the increase is to defray costs the specific service provided or facilities used.

Finally, it is noted that the *City of Toronto Act, 2006*, has expanded Toronto's "taxation powers" under Part X of the *Act*, permitting "direct taxation" for specified purposes. Traditional municipal taxation powers to levy taxes on land are continued under Part XI of the *City of Toronto Act, 2006*. To date, no other municipality in Ontario has been granted corresponding taxation powers by the Province.

B. Insurance Requirements

(1) Background:

Automobile insurance is required in Ontario under the provincial *Compulsory Automobile Insurance Act*, which prescribes minimum coverages. Driving without insurance may lead to penalties including fines, suspension of a driver's license, and vehicle impoundment.

Automobile insurance covers the owner of a vehicle, the driver of the vehicle, the occupants of the vehicle, and potentially any third parties who may be involved in a collision with the vehicle, depending on the circumstances. The Insurance Bureau of Canada explains that automobile insurance has four mandatory components:

- (a) **Accident Benefits ("AB") coverage**, often referred to as "no fault" benefits, are paid to an individual by his or her insurer regardless of who caused the collision. Accident benefits coverage is applied to medical treatment, income replacement and other related benefits that will cover an individual who is injured in a collision. Accident benefits coverage also applies to funeral expenses and payments to the survivors of a beneficiary who is killed in an automobile collision;
- (b) **Third party liability coverage** is applied to claims for death, bodily injuries or property damages that a driver might cause to others while driving the vehicle, up to the limits of the coverage, and will also pay for costs of settling a claim;
- (c) **Direct Compensation – Property Damage Coverage** applies to damages caused to the owner's own vehicle and its contents if another insured vehicle was at fault for the accident occurring in Ontario. Owners collect this coverage directly from their own insurer; and,

- (d) **Uninsured Automobile Coverage** applies when damages or death is caused by an unidentified driver or by an uninsured driver.

In addition to the above, drivers may also purchase optional coverages such as collision coverage, or other endorsements to their insurance policies which enhance or add to the coverage. Recently, an endorsement to the Ontario Automobile Policy has been approved to allow drivers to use their personal vehicles to drive passengers for compensation on a part-time basis when affiliated with a Private Transportation Company, as further noted below.

The Insurance Bureau of Canada's *FAQ on Transportation Network Companies* advises that if a driver provides transportation for compensation within a transportation network company (called a Private Transportation Company for the purposes of this staff report), the standard personal automobile insurance policy will not be sufficient since most standard policies exclude coverage if the vehicle is used to carry paying passengers for compensation (IBC – FAQs: *Transportation Network Companies*). A private transportation company is defined as “a company that arranges for transportation in privately-owned vehicles for financial compensation that is paid to the driver and the TNC...” In the case of an accident, such drivers may be in a situation of a shortfall of insurance coverage. In such cases, drivers held liable for damages caused to third parties may have to pay for such damages personally.

Applicants must declare the use to be made of the vehicle when applying for automobile insurance. In fact, the standard Ontario Application for Automobile Insurance (OAP-1) specifically requires the driver to declare whether the vehicle will be used to carry passengers for compensation or hire. Carrying passengers for compensation inherently creates more risk for the driver, given that these vehicles for hire will often carry more than one passenger and therefore the risk of claims is multiplied. Failure to declare that the vehicle is being used to carry passengers for compensation may be considered to be a “material misrepresentation” and may cause the insurer to refuse coverage in the event of a subsequent accident, since the policy will likely be considered invalid and non-applicable. In addition, it is also an offence under the provincial *Insurance Act* to willfully fail to inform the insurer within 14 days of a material change circumstances pertaining to the insurance coverage. A change in the nature of the use of a vehicle (e.g. from personal use to picking-up passengers for hire) is a material change. This is of concern with respect to TNCs drivers who do not declare that they are driving their personal vehicles for compensation. In that case, the following may occur:

- the injured driver may only be entitled to statutory Accident Benefits (“AB”), subject to statutory limits (\$50,000, unless excess has been obtained);
- the injured passenger of the vehicle would have to first rely on his/her own insurance coverage; if he/she has no insurance coverage, the injured passenger would likely only be entitled to AB, subject to statutory limits, or could commence a tort action for damages; and,
- the driver of a second vehicle involved in an accident with a TNC driver would first look to its own insurance for AB, and would likely need to sue the TNC driver for other damages in a tort claim.

Uber has stated in media reports that its insurance will supplement the insurance of any Uber driver in the event of a claim. However, no information regarding Uber’s insurance policies or actual insurance coverage and limits was provided to the City’s consultant, KPMG.

(2) Recommended - Insurance Requirements for Taxis, Limousines and PTCs:

The existing insurance requirements set out in the City’s by-laws for licensed taxicab brokers, taxiplate holders, taxicab drivers, and limousine providers have been reviewed, together with the required insurance coverage for PTCs, and information was sought from external legal counsel together with a senior consultant in an Ottawa-based Insurance Brokerage firm in the formulation of the recommendations for the insurance requirements for all of the above classes of licensees. These are as follows:

PTC Drivers: It is recommended that PTC drivers be required to obtain automobile liability insurance with limits of no less than five million dollars per occurrence, including the specific NPCF 6TN – *Permission to Carry Paying Passengers for a Transportation Network Company* endorsement, or an equivalent endorsement acceptable to the City Clerk and Solicitor. This insurance protects the driver and passenger of the vehicle. This specific endorsement is currently provided by Aviva Canada as an enhancement to a personal automobile insurance coverage and was approved by the Financial Services Commission of Ontario earlier this year, to be effective as of February 1, 2016. It is available to drivers of a PTC who meet certain requirements stipulated by Aviva Canada such as: being licensed in Canada for 6 years minimum; meet Aviva’s underwriting criteria; and drive a maximum of either 10 or 20 hours a week (depending on the coverage chosen) for compensation using their personal vehicles. It only applies to vehicles owned by the driver, not those that are rented or owned by third-parties such as friends or family members, and specifically excludes any other

commercial use of the vehicle. It should be noted that should a driver provide more than the maximum 20 hours of transportation services for compensation a week using a personal vehicle, then the driver would be considered a commercial driver and would no longer be eligible for this particular endorsement. At that time, the driver should obtain automobile insurance for commercial drivers, such as that required for taxicab drivers.

The five million dollars limit being proposed is recommended by the senior insurance consultant retained by the City in order to reduce the risk of exposure resulting from collisions for drivers. This limit is also recommended due to the increasing amounts being noted in individual claims and the increasing costs of defending claims, and given that drivers will often be carrying more than one passenger, each of whom may commence a claim in the event of a collision.

It should be noted that a five million dollar limit is more expensive to purchase for the PTC driver. Information obtained from the City's senior insurance consultant in relation to the TNC endorsement noted above reveals that the premium is not a flat charge and is dependent on different rating factors such as the driver record and the type of vehicle used, among other factors to be determined by the insurance company. However, the sample quotes provided for the premium for this new endorsement for TNC drivers shows that purchasing a \$5 million limit may not be much more expensive. By way of example, a quote obtained for the endorsement premiums for a TNC driver based on Ottawa with a very good driving record and a new 2016 vehicle was as follows:

- endorsement additional premium for 10 hours per week is \$513/year, and,
- endorsement additional premium for 20 hours per week is \$641/year.

By way of contrast, a quote for the premium based for a TNC driver in Ottawa with a poorer driving record would increase as follows:

- endorsement additional premium for 10 hours per week is \$1,358/year
- endorsement additional premium for 20 hours per is \$1,698/year.

The above are estimates only and subject to various factors.

It is therefore recommended that as part of the requirement of having a PTC license from the City, the PTC must ensure that its drivers obtain and maintain the above-noted insurance coverage at all times when the transportation service is being provided. The PTC would be required to maintain records of its drivers in this regard on an annual basis and to provide these to the Chief License Inspector upon request in order to

ensure compliance. Should any other insurance company develop a similar automobile insurance policy for part-time drivers for hire, the City Clerk and Solicitor would review such coverage in consultation with the Chief License Inspector and determine acceptability.

Taxicab brokers, limousine service providers, and TNCs: These licensees deliver similar services in that they dispatch vehicles for hire, book, or arrange/facilitate the transportation service between the driver and the vehicle, and in the case of limousine services and PTCs, have some obligations with respect to the hiring or “vetting” of drivers and vehicles. In the case of limousine service providers, the City’s Licensing By-law requires that they obtain insurance coverage with a limit of at least \$1 Million. This is deemed to be insufficient coverage due to the increase in amount of claims being made as a result of automobile accidents and the increasing costs of defending such claims, as well as the increased exposure due to the carrying of multiple passengers. In the case of taxi broker licenses, the Taxi By-law does not currently specify an insurance requirement. It is therefore recommended that the insurance requirements be the same for these categories, as follows:

- These licensees be required to obtain Commercial General Liability (“CGL”) insurance subject to limits of not less than five million dollars (\$5,000,000.00) inclusive per occurrence. It is expected that most commercial entities already have this type of coverage as part of their business set-up. Commercial General Liability insurance covers the operation of a business and protects against losses or claims that may arise from the operation which do not arise out of the use or operation of a the motor vehicle, such as passenger’s luggage being lost or damaged, damages occurring due to a vehicle being dispatched to the wrong location, processes related to the vetting or qualifying of the drivers or vehicles, or any other type of incident that may occur while the transportation service was being offered but that occurs away from the actual vehicle or while it is being parked.

As is the usual practice of the City, these licensees would also be required to name the City as additional insured on this coverage, so as to protect the City as regulator and license-issuer in the event of claims or losses.

- It is recommended that these classes of licensees also be required to obtain non-owned automobile insurance to provide protection for the company in relation to automobile liability exposure related to vehicles that were dispatched by the company for the purposes of providing the transportation service - or that are affiliated with the company - but are not actually owned by the company.

- The five million dollars limit of liability has been recommended by the insurance broker, and is in line with the amounts that the City has been requesting due to the increase in the amount of claims and the increased costs of defending claims.

Taxiplate holders and Taxicab drivers: As currently required by the Taxi By-law, licensed taxiplate holders will be required to obtain Commercial General Liability insurance and non-owned automobile insurance. The current required limits are \$2 Million, however for the same reasons noted above, staff recommend that a \$5 Million be obtained to provide for better protection.

In addition, taxiplate holders will be required to ensure that all of the taxicab drivers that are assigned and authorized to drive the licensed taxicab obtain and maintain automobile liability insurance for owned/leased licensed vehicles with limits of not less than \$5,000,000.00 inclusive per occurrence for bodily injury, death and damage to property. This automobile liability insurance shall be required to include the OPCF 6A – Permission to Carry Paying Passengers and OPCF 22 – Damage to Property of Passengers, as recommended by the external insurance broker. This is an increase in limit from the currently required \$2 Million but is deemed to be necessary for the purposes of protecting the owners of the vehicles, the drivers and the passengers, as well as third parties who may be involved in a collision with a taxicab. As noted above, an increase to \$5 Million was recommended by the City’s external senior insurance consultant due to the rising costs of claims resulting from automobile collisions and the rising costs of defending such claims. There is potentially greater exposure for taxicabs given that a taxicab will often be carrying more than one passenger each of whom may commence a claim in the event of an accident.

The increased costs for taxiplate holder licensees of purchasing greater insurance limits for both Commercial General Liability and Automobile Liability are difficult to calculate due to the variables in calculating insurance premiums particularly for commercial enterprises, and as a result, staff has been unable to obtain specific quotes on premium costs for taxiplate holders. Based on information obtained from the City’s insurance broker, however, it appears that Commercial General Liability insurance is commercially available for taxiplate holders to a limit of \$5 million. Furthermore, taxi plate owners may have the option of being insured under the taxi broker’s insurance or purchase their own. Taxi brokers can purchase a commercial automobile fleet insurance policy for primary limits of \$1 to \$2 Million then have an umbrella liability policy providing for higher limits. This is an arrangement to be worked out by those parties.

C. Accessibility for Ontarians with Disabilities Act, 2005 (AODA)

The *Integrated Accessibility Standards Regulation* passed under the AODA establishes accessibility standards and requirements in a variety of sectors. More specifically, Sections 79 and 80 of Part IV of the Regulation address transportation standards and impose obligations on municipalities that license taxicabs to ensure the provision of accessible taxicabs in their communities and to ensure that appropriate service for persons with disabilities are provided by standard licensed taxicabs. All municipalities were mandated to meet the accessible taxicab requirements by January 1, 2013, as was the case with the City of Ottawa. Other accessibility standards in Part IV of the Regulation apply to public transit service providers such as Transit Services.

However, personal vehicles affiliated with PTCs do not appear to be included in the above-noted standards since they apply to accessible taxicabs and to licensed standard taxicabs.

D. Relevant Bills in Ontario Legislature

(1) *Protecting Passenger Safety Act, 2015* (Bill 53)

Bill 53, entitled "*Protecting Passenger Safety Act, 2015*" was introduced in the Provincial Legislature on December 3, 2014 by Ottawa South MPP John Fraser. On April 16, 2015, the Bill was referred to the Standing Committee on Social Policy. No hearings have been scheduled on this Bill to date.

Section 39.1 of the *Highway Traffic Act* (HTA) currently prohibits the driving of an unlicensed taxicab for the picking up of passengers for compensation, as well as prohibiting the use and dispatching of an unlicensed taxicab for such purposes. The Bill proposes the following amendments to the HTA in relation to these offences for unlicensed taxicabs:

- Increasing fines for offences relating to unlicensed taxicabs in Section 39.1 of the HTA (picking-up passenger, driving passenger or dispatching unlicensed cab); range of fines would increase to \$500 - \$30,000 from the current \$300 - \$20,000;
- Creating a 3-demerit point penalty per offence;
- Adding a 30 day license suspension for any subsequent offence within 5 years; and,
- Adding a 30 day vehicle impoundment period for subsequent offence within 5 years.

It should be noted that Staff is currently unaware of any completed enforcement or prosecutions under the existing HTA provisions relating to use of unlicensed taxicabs,

and therefore staff is not able to comment on whether the proposed legislation would sufficiently address enforcement issues relating to unlicensed taxicabs. Currently, the pertinent sections of the HTA can only be enforced by police officers, and is subject to their enforcement discretion.

(2) *Opportunity in the Sharing Economy Act, 2015* (Bill 131)

Bill 131, entitled “*Opportunity in the Sharing Economy Act, 2015*” was introduced in the Provincial Legislature on October 27, 2015, as a Private Members Bill by Niagara West-Glanbrook MPP Tim Hudak. On October 29, 2015, the Bill was referred to the Standing Committee on Finance and Economic Affairs. No hearings have been scheduled on this Bill to date.

Schedule 3 of the Bill creates the *Transportation Network Vehicles Act, 2015*, which establishes a licensing and regulatory regime for Transportation Network Companies (TNC) by municipalities or by the Province (if a municipality chooses not to regulate TNCs). The Bill does not authorize a municipality to regulate the drivers or owners of TNC vehicles, an authority that the City currently has in its business licensing powers under Part IV of the *Municipal Act, 2001*, as noted above. Similarly, the Bill does not authorize a municipal regulator to regulate fares for TNCs. Rather, TNC drivers would be subject to the requirements set out in the Bill itself, which include the requirement for a driver’s license, having valid insurance in accordance with the *Compulsory Automobile Insurance Act*, and be free of any criminal convictions.

Bill 131 also provides that vehicle standards for TNCs are to be “prescribed”, which is defined by the Bill to mean standards prescribed by any *future* Provincial regulations. Any such, standards to be applied to TNC vehicles are currently unknown. Accordingly, it would appear that if this Bill is enacted, municipalities would not be able to impose their own standards for TNC vehicles. Any standards or obligations regarding TNC drivers are to be set out either by the TNC itself in the operating permit it issues to its drivers, by the legislation, or by future Provincial Regulations. In this regard, the Bill if enacted would remove some of the regulatory authority that municipalities presently have to license and regulate a business.

Subsection 45(7) of the Bill proposes an amendment to the *Municipal Act, 2001* to authorize municipalities to levy an “accessible motor vehicles fund”. This new power would allow municipal regulators to impose a \$0.05 tax on each fare arranged by a TNC where the TNC is licensed by the municipality. The levy must be used for the purposes of establishing a fund to “ensure that there are transportation network companies, taxicabs or other transportation facilities operating in the municipality that allow persons

to arrange to receive transportation in motive vehicles... that are wheelchair accessible.” The Bill requires that the proposed tax must be established by municipal by-law that sets out, among other things, the subject of the tax to be imposed, the rate taxable, the manner of collection, as well as any applicable interest.

Currently, municipalities do not have taxation powers under the *Municipal Act, 2001*, with the exception of the City of Toronto. The *City of Toronto Act, 2006*, provides direct taxation powers in Part X of the legislation, and the requirements for such taxation powers are very similar to what is proposed in Bill 131 in relation to the proposed accessible motor vehicles fund.

Enforcement of the provisions of Bill 131 would likely be undertaken by the police or by provincially-appointed enforcement officers. The City’s by- law enforcement officers cannot enforce provincial legislation, including the standards and requirements imposed by this Bill if enacted, or any future Regulations passed under it, unless they are specifically authorized to do so by the Province.

(3) *Police Records Check Reform Act, 2015* (Bill 113)

The *Police Records Check Reform Act, 2015* (Bill 113) was introduced in the Provincial Legislature by the Minister of Community Safety and Correctional Services and received Royal Assent on December 3, 2015. The *Act* comes into force upon proclamation, which has not yet occurred and therefore, at the time of this report being written, the *Act* is not yet in force.

Currently, police records checks for vulnerable sector are required for taxi driver and taxiplate licensees, and the same screening is proposed for PTC drivers as a requirement of the new licensing regime. These checks include national and local police data base verifications and include criminal convictions and outstanding charges. Incidents of all notable police contacts occurring in the previous five years are considered by the police authority conducting the check and disclosed if required.

The *Act* standardizes the processes by which police forces screen individuals and requires that all police services conducting the checks proceed in the same manner and offer the same types of checks, which are as follows:

Criminal Record Check: include criminal convictions and findings of guilt under the *Youth Criminal Justice Act*.

Criminal Record and Judicial Matters Check: include Criminal Record Check

plus outstanding charges, arrest warrants, certain judicial orders, absolute discharges, conditional discharges, other records as authorized by the *Criminal Records Act*.

Vulnerable Sector Check: includes Criminal record and Judicial Matters Check plus findings of Not Criminally Responsible due to mental disorder, record suspensions (pardons) related to sexually-based offences, and non-conviction information related to the predation of a child or other vulnerable person (i.e., charges that were withdrawn, dismissed or stayed, or that resulted in acquittals).

Vulnerable sector checks are completed in cases where an individual is in a position of trust or authority over vulnerable persons, like children or the elderly. The Act allows for the disclosure of non-conviction information in exceptional circumstances only if a strict test has been met.

Given that PTC drivers, taxicab drivers and taxiplate holders may have contact with and provide services for those in the vulnerable sector, it is recommended that Vulnerable Sector Checks be required once the provisions of the legislation are in force. Until then, current police record checks for the vulnerable sector will continue to be required.

E. Relevant Case Law

(1) Edmonton, Alberta – Injunction Application

On April 1st, 2015, the Alberta Court of Queen's Bench (equivalent to Ontario's Superior Court) released its decision in the City of Edmonton's application for a statutory injunction against Uber Canada Inc. Edmonton sought a Court order to stop Uber from conducting business in the municipality without having a valid business license or taxi broker license. The Court dismissed Edmonton's application. The test in Alberta for a statutory injunction is a different one than for example in the Toronto Uber case in Ontario. In Alberta, the onus was on Edmonton to prove that the history of Uber's operations demonstrated a clear and continuous disregard of an imperative public statute and the usual sanctions which is unlikely to be thwarted without the intervention of the court. While the case is limited to the facts put forth by the parties, there are similarities with the Toronto decision.

The Court commenced its analysis by stating it "is trite to say that individuals worldwide rely every day on the power of the Internet and the speed with which it adapts and responds to changes in its environment. It is not surprising, therefore, that legislation drafted to accommodate a more static, paper and people driven environment,

sometimes lags behind the technological response to individual preferences and demands. The City's bylaws may be no different."

The City's application was defeated on several grounds, namely that there was insufficient evidence to demonstrate that Uber Canada was in breach of the by-law. There was no evidence that other Uber companies, e.g. Rasier B.V. or Uber B.V. (not a party to the litigation) control Uber Canada. Moreover, the Court concluded that there was no evidence that Uber Canada was conducting a business in Edmonton because Uber Canada's support, recruitment, and advertising did not meet the definition of carrying on a business within the by-law. As a result, the Court rejected the application and found that Edmonton had failed to demonstrate that Uber Canada had been in a clear and continuing breach of the by-law by virtue of its limited recruitment or marketing activities and App support.

Edmonton further argued that Uber Canada had induced drivers to operate vehicles for hire and that Uber Canada had induced drivers to drive or have care or control of a motor vehicle contrary to the by-laws. In rejecting this argument, the Court concluded that Uber Canada caused or induced the downloading by drivers of the driving App onto smartphones. While downloading the App may facilitate communication between the driver and rider, it did not cause drivers to drive or have care and control of a vehicle for hire.

The Court further rejected Edmonton's argument that Uber Canada was dispatching vehicles for hire contrary to the bylaw. The Court concluded that at best, Uber Canada facilitates transmission through the App support it provides to its affiliated companies located in the Netherlands. Once the communication occurs, the driver decides whether to go to the address indicated on the driver App. The Court further held that Edmonton did not name the other Uber related companies. The Court stated that "the City knows that Uber Canada does not own the servers that facilitate communication between rider and driver" but those companies were not named in the application.

The Court also stated that "It is also clear from the application that the City is concerned about unlicensed and underinsured drivers providing taxi services in the municipality without a license. However, the City has made minimal effort to enforce its by-laws against those who are actually providing the service, preferring to instead reach them by enjoining the Canadian company."

The City of Edmonton enacted its Vehicle for Hire By-law in February 2016, with an in force date of March 1, 2016.

(2) Toronto, Ontario – Injunction Application

On July 3, 2015, the Superior Court of Justice in the matter of *Toronto (City) v. Uber Canada Inc. et al*, dismissed the City of Toronto’s application for injunctive relief against Uber. The City of Toronto had applied for declarations that Uber was operating a taxi brokerage and a limousine service company without the proper licenses contrary to the licensing provisions of the City’s *Municipal Code*. It also sought a permanent injunction restraining Uber from operating a taxi brokerage and a limousine company in Toronto without a license, from creating accounts or to communicate for the purposes of providing or facilitating rides, from recruiting, contacting or registering drivers, and from advertising or promoting transportation arranged by Uber. In its application, the City of Toronto names 3 Uber companies, which the court collectively referred to as “Uber”. The Court concluded that the City failed to demonstrate that Uber had breached the licensing provisions of the Municipal Code by-law and dismissed the application. One of the principal issues of the case related to the construction of terms “taxicab” and “limousine” in the licensing regulations. The relevant definitions from Chapter 545 of the *Municipal Code* are set out below:

Taxicab – an ambassador taxicab, a standard taxicab, a Toronto Taxicab and an accessible taxicab...

Limousine --any automobile, other than a taxicab as defined by this chapter, used for hire for the conveyance of passengers in the City of Toronto, and formerly referred to in this chapter as a “livery cab”...”

Based on the above-noted definitions, the Court found that “taxicab” as used in the *Code* was a limited term applying only to holders of any of the four categories of licenses set out in the term. Therefore, if Uber was operating a business that requires a municipal license, “it can only be as a ‘limousine service company’ in respect of all services offerings except Uber Taxi and Uber Access both of which utilize licensed Toronto taxicabs.”

The Court examined whether Uber was operating as a “Limousine Service Company” which is defined as “*any person or entity which accepts calls in any manner for booking or providing limousine transportation.*” The Court found that the narrow definitions used by the City in its regulations for these two types of businesses were entirely focused on the acceptance of a communication from a prospective passenger. None of the aspects of the Uber business (marketing, recruiting, billing,) fit within the narrowly-defined definitions of taxi broker or limousine that were the basis of the City of Toronto’s

regulations and application. The Court found that Uber was not carrying on as a limousine service company because:

1. They are not “accepting” calls – as the only point when a request for a transportation service is accepted is when a driver consciously determines to do so;
2. There are no “calls” in the process of a passenger using the Rider app;
3. No evidence that Uber was responsible for any alleged relaying of requests.

The Court analysed that the word “accepts” in the definition of “Limousine Service Company” and concludes it requires an element of consciousness. In a nutshell, Uber’s app process is automated – mechanical - a “super-charged directory assistance service” - no human interaction or discretion involved. The Court characterizes the Uber app as the “21st Century version of what telephone exchanges were to the 20th Century.” As a result, Uber was not “accepting” calls for booking transportation.

The Court concluded that the *“only person doing the accepting is the driver. Prior to that point, nothing has been accepted and all is purely algorithm-driver data relay in which Uber has not been shown to play any actual active role.”* The Court suggested that *“Questions of what policy choices the City should make or how the regulatory environment ought to respond to mobile communications technology changes are political ones”*. The Court also used the idiom between Scylla and Charybdis to demonstrate the difficult position that the municipality finds itself in - the existing regulatory system with vested interest characterized by controlled supply and price on the one side - and the consumers/voters who have tasted competition.

(3) Calgary, Alberta – Injunction Application

On November 19, 2015, the City of Calgary obtained an interim/temporary injunction against 57 named Uber drivers. The Court granted the interim/temporary injunction against 57 Uber drivers citing that the local bylaws were being contravened. A full hearing on the permanent injunction was scheduled to take place on December 17, 2015. However, following the November 19th interim injunction, the available information indicates that Uber ceased operations in the City of Calgary. It is noted that the injunction against the 57 drivers could have resulted in potential jail time if the drivers violated the Court’s temporary order.

In December, 2015, it was reported in the media that a permanent injunction hearing was no longer required as Uber and the municipality reached an agreement and Uber

would hold off operating in that city until such time as new regulations came into place. Subsequently, Calgary City Council amended its Livery Transport By-law in February 2016, with an in force date of April 4, 2016. Among other things, the revisions expanded the definition of a “Livery Vehicle”, which was previously limited to a taxi, an accessible taxi or a limousine, to include a Private for Hire Vehicle. Further media reports have indicated that Uber has stated it has no intention of operating in the City of Calgary.

(4) Ottawa– By-law Prosecutions

Between the entry of Uber into the Ottawa market in October 2014 and March 18, 2016, 174 charges have been laid against unlicensed taxicab drivers believed to be working with Uber. To date, these charges have resulted in 154 convictions under the Taxi By-law, with fines totalling approximately \$53,000.

RISK MANAGEMENT IMPLICATIONS

Risks associated with the recommendations are largely legal in nature and have been identified in this report.

FINANCIAL IMPLICATIONS

Additional revenues generated from PTCs will offset reduced taxi driver license fees, including the waiving of accessible taxi driver license fees, resulting in no net change to overall revenue.

ACCESSIBILITY IMPACTS

Impacts on persons with disabilities and seniors have been considered during the development of this report. Accessibility was one of the three guiding principles of the Taxi and Limousine Regulation and Service Review. The current accessible taxicab service is in compliance with the legislated requirements of the *Accessibility for Ontarians with Disabilities Act, 2005*.

TECHNOLOGY IMPLICATIONS

Currently, taxi licensing-related activity is largely managed through the Taxi Information Management System (TIMS) and limousine licensing activity through the MAP database. Should the recommendations be approved by Council, adjustments to these systems will be necessary to accommodate new and amended licensing requirements.

TERM OF COUNCIL PRIORITIES

The recommendations align with Council's Strategic Priority of Healthy and Caring Communities – Strategic Objective HC5, Develop a Taxi Strategy – Strategic Initiative 46 Taxi Regulation Review.

SUPPORTING DOCUMENTATION

Immediately follows the report

- Document 1: Final KPMG Report – City of Ottawa Taxi and Limousine Regulation and Service Review
- Document 2: Draft Private Transportation Company by-law
- Document 3: Drafting Instructions – Amendments to Taxi By-law (2012-258, as amended)
- Document 4: Drafting Instructions – Amendments to Schedule 10 to the Licensing By-law (2002-189, as amended) relating to Limousine Service
- Document 5: Summary of KPMG Recommendations including Staff Disposition
- Document 6: Licensing Fee Summary – Taxi, Limousine and Private Transportation Company Licensing Fees
- Document 7: Ottawa Taxi Passenger Fares (2005-2016)
- Document 8: Ottawa Taxi Plate Summary
- Document 9: Case Studies
- Document 10: Current Regulatory Regime
- Document 11: Emerging Issues in the Taxi and Limousine Industry
- Document 12: Accessibility
- Document 13: Taxi Economics – Old and New
- Document 14: Customer Experience
- Document 15: Policy Options
- Document 16: Competition Bureau's White Paper, "Modernizing Regulation in the Canadian Taxi Industry" retrieved from the Competition Bureau's [website](#)

DISPOSITION

Emergency and Protective Services, in conjunction with any other relevant Departments, will implement Council directions emanating from this report, as appropriate.

Upon approval, staff of Emergency and Protective Services and the City Clerk and Solicitor Department will make the required amendments to the Licensing By-law (Limousine Schedule), the required amendments to and re-enactment of the Taxi By-law, will prepare the new regulations respecting Private Transportation Companies, and will consolidate all three into one Vehicle for Hire By-law for enactment by Council, with the necessary administrative modifications required for ease of reference and clarity. Staff will also apply to the Province of Ontario for the required set fines regarding new or amended offences, as required, as per the process set out by the Ministry of the Attorney General.