



CHAUFFEUR'S PERMIT APPEAL HEARING MINUTES

JANUARY 18, 2012

A Chauffeur's Permit Appeal Hearing of the Council of the City of Vancouver was held on Wednesday, January 18, 2012, at 7:30 pm, in the Council Chamber, Third Floor, City Hall, to determine whether or not the refusal of the Chief Constable to issue a Chauffeur's Permit to the applicant Rajinder Singh Kainth (the "Appellant") should be upheld or overturned.

PRESENT: Councillor George Affleck, Chair
Councillor Kerry Jang
Councillor Heather Deal

CITY CLERK'S OFFICE: Nicole Ludwig, Meeting Coordinator

1. Rajinder Singh Kainth

The Chauffeur's Permit Appeal Hearing Panel had before it for consideration an Evidence Brief, prepared by the City of Vancouver's Legal Department, which contained the following material (*on file in the City Clerk's Office*) and the evidence of witnesses:

<u>Tab</u>	<u>Description</u>
1.	Notice of Hearing dated January 3, 2012
2.	Vancouver Police Department Request for Refusal of Taxi Chauffeur's Permit dated November 23, 2011, letter from Chief Constable Jim Chu to Mr. Rajinder Singh Kainth dated November 29, 2011 and excerpts from the <i>Motor Vehicle Act</i> , R.S.B.C. 1996, c. 318, s. 36 and City of Vancouver By-law No. 6066, s. 6
3.	Letter from Rajinder Singh Kainth to Mayor and Council of the City of Vancouver dated December 8, 2011 and letter from Yellow Cab Company Ltd. "To Whom it May Concern" dated December 1, 2011
4.	Application of Yellow Cab Company Ltd. for Rajinder Singh Kainth dated October 4, 2011, Vancouver Police Department Chauffeur and Vehicle for Hire Permit Application dated October 4, 2011 and Vancouver Police Department Request and Consent for Police Record Check and Disclosure dated October 4, 2011
5.	I.C.B.C. Driving Record Search for Rajinder Singh Kainth
6.	R.C.M.P. and Vancouver Police Department Criminal Conviction Search Results for Rajinder Singh Kainth

7. Taxi Registration System Printout regarding Driver Details and History for Rajinder Kainth
8. Vancouver Police Department General Occurrence Hardcopy Report No. 2009-46540
9. Provincial Court Information and Record of Proceedings and Endorsement of Information

Robert Penkala, Solicitor, Legal Services, was present on behalf of the City of Vancouver. Rajinder Singh Kainth represented himself.

Mr. Penkala reviewed the principles of natural justice and explained that this was an appeal by Mr. Kainth, pursuant to section 36(7) of the *Motor Vehicle Act*, from the refusal by the Chief Constable to issue a Chauffeur's Permit. The Chief Constable refused to issue the Permit pursuant to section 6(2A)(a) of the *Vehicles for Hire By-law*, on the basis that the Appellant has, within the preceding five years, been convicted of an offence, namely, Driving While Impaired, in contravention of section 253(a) of the *Criminal Code of Canada*, and the Chief Constable was of the belief that the nature of the offense relates to the business, trade, profession, or other occupation for which the application for the Permit has been made.

He advised the City has the power to issue chauffeurs permits pursuant to section 6 of the *Vehicles For Hire By-law* and the Chief Constable's authority to refuse to issue a Chauffeur's Permit derives from section 36 of *Motor Vehicle Act*.

Mr. Penkala noted that after hearing the appeal, Council may uphold or overturn the Chief Constable's refusal to issue a Chauffeur's Permit to Rajinder Singh Kainth. He noted the Panel should have due regard for the statutory context of the Chief Constable's powers, however if the Panel finds the Chief Constable was in error or the refusal was unreasonable, it must overturn the refusal and require the Chief Constable to issue the Permit.

Mr. Penkala referred the Panel to the evidence before it as set out in the documents which were considered by the Chief Constable in refusing to issue the Permit.

Mr. Penkala called the following witness in support of the allegations:

1. Constable Kevin Barker #1118 - Taxi Detail, VPD

The Panel also asked questions of the witness.

In his opening comments, Mr. Kainth agreed the Chief Constable was doing his job in refusing to issue a Chauffeur's Permit and noted that in Court, he had pled guilty to the charges of being impaired driving and to having an alcohol concentration exceeding of 80 milligrams of alcohol in 100 millilitres of blood, contrary to S. 253(1)(b) of the Criminal Code. Mr. Kainth noted he received counseling for alcohol abuse and spoke of financial duress due to his inability to drive taxi.

Mr. Kainth submitted the following as evidence:

- Letter from John Palis, Managing Administrator, Yellow Cab Company Ltd. dated April 1, 2009
- Letter from Geoff Ayi-Bonte, Registered Clinical Counsellor dated January 8, 2012

Mr. Kainth called the following witnesses:

1. Kulwant Sahota, President, Yellow Cab
2. Carolyn Bauer, General Manager, Yellow Cab

The two witnesses spoke in support of Mr. Kainth and requested the Panel direct the Chief Constable to issue a Chauffeur's Permit to allow Mr. Kainth to drive a taxi until his retirement. They noted he is an excellent driver with no previous complaints, and believe he has learned his lesson.

The Panel also asked questions of the witnesses and the Appellant.

Mr. Penkala also asked questions of the Appellant.

In closing, Mr. Penkala noted the proper focus for Council's decision is that there is no guidance in any applicable legislation for exemptions from permit suspensions. He particularly noted that section 151 of the *Vancouver Charter* prohibits the amendment of any By-law by resolution. Granting a one-time exemption for this case would be similar to acting as an amendment and therefore would violate the aforementioned section of the *Vancouver Charter*. Mr. Penkala noted that an alcohol-related driving conviction is relevant to the occupation of driving a taxi, and as such, the Chief Constable acted correctly in refusing to issue the permit. Therefore the appeal should be dismissed.

In closing, Mr. Kainth reiterated his remorse and again claimed responsibility for his mistake of drinking and driving. He also explained the effects of his financial duress on other aspects of his life and noted that issuing a chauffeur's permit to him would allow him to enjoy his lifestyle.

PANEL MEMBERS DISCUSSION

In discussion, the Panel noted it was distressing the Appellant had ended therapy of his own accord rather than ending therapy upon the suggestion of a qualified counsellor. The Panel further noted the financial hardship argument is not necessarily consistent as Mr. Kainth is able to sell his share of the interest in his taxi for a reasonably large sum of money.

MOVED by Councillor Jang
SECONDED by Councillor Deal

THAT the refusal of the Chief Constable to issue a Chauffeur's Permit to Rajinder Singh Kainth be upheld because of the original reasons stated by the Chief Constable as stated in the letter dated November 29, 2011, specifically, that Mr. Kainth was convicted on May 20, 2009 for operating a motor vehicle while having an alcohol concentration exceeding 80 milligrams of alcohol per 100 millilitres of blood, contrary

to S. 253(1)(b) of the *Criminal Code*, and that the nature of this offense relates to the business of driving a taxi.

CARRIED UNANIMOUSLY

Adjournment

MOVED by Councillor Deal
SECONDED by Councillor Jang

THAT the Chauffeur's Permit Appeal Hearing be adjourned.

CARRIED UNANIMOUSLY

The Chauffeur's Permit Appeal Hearing Panel adjourned at 9:01 pm.

* * * * *