



CHAUFFEUR'S PERMIT APPEAL HEARING MINUTES

MAY 21, 2013

Three Chauffeur's Permit Appeal Hearings of the Council of the City of Vancouver were held on Tuesday, May 21, 2013, at 9:30 am, in the Council Chamber, Third Floor, City Hall.

PRESENT: Councillor Andrea Reimer, Chair
Councillor George Affleck
Councillor Adriane Carr

CITY CLERK'S OFFICE: Nicole Ludwig, Meeting Coordinator

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VARY AGENDA

MOVED by Councillor Carr
SECONDED by Councillor Affleck

THAT the Chauffeur's Permit Appeal Panel vary the order of the agenda to deal with item 3 first.

**CARRIED UNANIMOUSLY AND
BY THE REQUIRED MAJORITY**

Note from Meeting Coordinator: for clarity, the minutes are recorded in chronological order.

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3. Johen Iqbal

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>
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| 1. | Notice of Hearing |
| 2. | Letter from Johen Iqbal dated March 12, 2013;
Letter from City of Vancouver to Johen Iqbal dated March 13, 2013 |

3. Memo from Constable Kevin Barker of the Vancouver Police to Chief Constable Jim Chu dated February 27, 2013;
Letter from Chief Constable to Johen Iqbal dated February 27, 2013;
Transcript of Constable Barker's February 26, 2013 Interview with Johen Iqbal
4. Letter from Limojet Gold Limousine Service regarding police records check for Johen Iqbal;
VPD Request and Consent for Record Check and Disclosure;
ICBC Driving Record Search of Johen Iqbal
5. Copy of Chauffeur's Permit issued to Johen Iqbal
Chauffeur and Vehicle for Hire Permit Application of Johen Iqbal
6. Vancouver Police Department Ticket Offence Hardcopy VA 36245688P
Vancouver Police Department Ticket Offence Hardcopy VA 43051367P
Vancouver Police Department Ticket Offence Hardcopy VA 52571075P
Vancouver Police Department Ticket Offence Hardcopy VA 36094829P
Vancouver Police Department Ticket Offence Hardcopy VA 56783832P
Vancouver Police Department Ticket Offence Hardcopy VA 64560727P
7. Copy of Violation Ticket AH64560727
Violation Ticket Notice of Dispute
Vancouver Police Department Ticket Offence Hardcopy WV AH71650321VT
8. Copy of Violation Ticket AH64623872
Violation Ticket Notice of Dispute
9. Copy of Violation Ticket AH68304650
Violation Ticket Notice of Dispute

Iain Dixon, Assistant Director of Legal Services - Enforcement and Prosecution, was present on behalf of the City of Vancouver. Derek Birch represented the Applicant.

Following a brief introduction by Mr. Birch of himself and Mr. Iqbal, Mr. Dixon reviewed the principles of natural justice and explained that this was an appeal by Mr. Iqbal, pursuant to section 36(7) of the *Motor Vehicle Act*, from the refusal by the Chief Constable to issue a Chauffeur's Permit under section 36(5) of the *Motor Vehicle Act*. 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 Applicant has, within the preceding five years, been convicted of the following offences under the *Motor Vehicle Act*, as documented in a revised Notice of Hearing dated May 15, 2013, that was sent to the Applicant's legal Counsel by e-mail:

- September 14, 2008, Sec 161A Disobey Traffic Signal or Sign;
- January 12, 2010, Sec 186 Disobey Stop Sign;
- January 17, 2010, Sec 161A Disobey Traffic Signal or Sign;
- November 19, 2010, Sec 214.2.1 Use an Electronic Device While Driving;
- July 22, 2011, Sec 146.1 Speed in/outside Municipality, and
- August 12, 2012, Sec 2014.2.1 Use an Electronic Device while Driving.

Mr. Dixon noted the Chief Constable was of the belief that the nature of the offenses 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. Dixon noted that after hearing the appeal, Council may uphold or overturn the Chief Constable's refusal to issue a Chauffeur's Permit to Johen Iqbal. 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. Dixon 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. Dixon called Kevin Barker, Taxi Unit, Vancouver Police Department, in support of the allegations.

The Panel also asked questions of the witness.

Mr. Birch also asked questions of the witness, and explained there was a revised Notice of Hearing that had been sent to him with different allegations than what was contained in the Evidence Brief. Mr. Dixon explained that the revised Notice of Hearing had been sent to Mr. Birch but not circulated to the Panel. At this point, the Panel agreed to recess in order to receive copies of the revised notice of hearing.

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The Panel recessed at 9:55 am and reconvened at 10:06 am with the same members present. During the recess, the Panel received copies of the revised notice of hearing dated May 15, 2013.

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Mr. Birch reviewed the charges listed in the above-noted revised notice of hearing with Constable Barker.

In his opening remarks, Mr. Birch introduced Mr. Iqbal, and noted that refusal of the permit has put him in financial difficulties. He questioned whether refusal to issue a Chauffeur's Permit to Mr. Iqbal was based primarily on the July 22, 2011, speeding charge which is currently under dispute and whether the other charges listed in the revised notice of hearing are sufficient to refuse to issue a Chauffeur's Permit, since that refusal denies him the ability to work in his chosen livelihood.

Mr. Birch submitted a Notice of Hearing for Provincial Court (*distributed - on file*) regarding the July 22, 2011, charge of speeding in/outside Municipality in violation of section 145.1 of

the *Motor Vehicle Act*. He submitted that this charge should not be included in the Panel's decision because the charge is being appealed. Mr. Dixon agreed with this assessment.

Mr. Dixon and the Panel also asked questions of Mr. Birch related to his comments on behalf of Mr. Iqbal. During questioning, Mr. Birch noted the first indication Mr. Iqbal had to renew his permit was in January 2013 during his interview with Constable Barker, despite the fact that many of the charges occurred over the previous five years.

In closing, Mr. Dixon submitted that the five charges listed in the revised Notice of Hearing, excluding the July 22, 2011, speeding charge, are adequate to refuse the Permit. He also noted the *Vehicles for Hire By-law* is clear that the Chief Constable must refuse to issue a Chauffeur's permit if he is of the belief that the nature of motor vehicle offences relate to the business, trade, profession or other occupation for which the application has been made, and there is no question of adequacy or sufficiency of the various charges when making this decision.

In closing, Mr. Birch requested the Panel to keep in mind that the purpose of the appeal is to introduce a level of oversight with regard to reasonableness, and submitted that the remaining convictions are not serious enough to deny Mr. Iqbal's ability to continue in the profession of Chauffeur.

The Panel asked clarifying questions of Mr. Dixon.

PANEL MEMBERS' DISCUSSION

In discussion, the Panel noted that the nature of the offences listed in the revised notice of hearing relates to the occupation of being a Chauffeur, that the matter of the seriousness of the offences is irrelevant because Council is bound by existing by-laws, and that the offences which caused the Chief Constable to refuse to issue a Chauffeur's Permit, show inconsistency with respect to the laws of the profession of being a Chauffeur.

MOVED by Councillor Carr

SECONDED by Councillor Affleck

THAT the Chauffeur's Permit Appeal Panel uphold the Chief Constable's decision to refuse to issue a Chauffeur's Permit to the Applicant, John Iqbal, based on evidence of persistent infringements of the *Motor Vehicle Act* over the last five years that indicate he is unfit to act as a Chauffeur.

CARRIED UNANIMOUSLY

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VARY AGENDA

*MOVED by Councillor Affleck
SECONDED by Councillor Carr*

THAT the Chauffeur's Permit Appeal Hearing Panel vary the order of the agenda in order to deal with item 2 prior to item 1.

**CARRIED UNANIMOUSLY AND
BY THE REQUIRED MAJORITY**

Note from Meeting Coordinator: For clarity, the minutes are recorded in chronological order.

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2. Devinder Dhillon

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:

Tab Description

1. Notice of Hearing
2. Letter from Devinder Dhillon dated April 12, 2013;
Letter from City of Vancouver to Devinder Dhillon dated April 16, 2013
3. Memo from Constable Kevin Barker of the Vancouver Police to Chief Constable Jim Chu dated April 4, 2013;
Letter from Chief Constable to Devinder Dhillon dated April 10, 2013;
Transcript of Constable Barker's March 31, 2013 Interview with Devinder Dhillon
4. Letter from Yellow Cab Company Ltd. to Taxi Unit regarding police records check for Devinder Dhillon;
VPD Request and Consent for Record Check and Disclosure;
ICBC Driving Record Search of Devinder Dhillon
5. Copy of Chauffeur's Permit issued to Devinder Dhillon;
Chauffeur and Vehicle for Hire Permit Application of Devinder Dhillon
6. Vancouver Police Department Ticket Offence Hardcopies:
 - a. TK# VA 26919037P
 - b. TK# VA 46707892P
 - c. TK# VA 46435609P
 - d. TK# VA 42872996P

- e. TK# VA 52889725P
 - f. TK# VA 56504379P
- Copy of Violation Ticket AH78025311

Iain Dixon, Assistant Director of Legal Services - Enforcement and Prosecution, was present on behalf of the City of Vancouver. Devinder Dhillon represented himself.

Mr. Dixon reviewed the principles of natural justice, noting that the Panel must deal with the Applicant fairly, and explained that this was an appeal by Mr. Dhillon, 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 Applicant has, within the preceding five years, been convicted of the following offences under the *Motor Vehicle Act*:

- December 11, 2008, Sec 220(4) Fail to wear seatbelt;
- January 21, 2009, Sec 168(b)(v) Unsafe/prohibited U-turn - Business District;
- February 17, 2009, Sec. 124 Disobey Traffic Control Device;
- March 26, 2009, Sec 146(1) Speeding in/outside Municipality;
- April 5, 2009, Sec 146(1) Speeding in/outside Municipality;
- April 29, 2006, Sec 151(1)(e), Right Turn from Wrong Lane;
- September 16, 2009, Sec 145(1) Speeding in/outside municipality, and
- October 3, 2010, Sec. 129(1) Red Light at Intersection.

Mr. Dixon noted the Chief Constable was of the belief that the nature of the offences 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. Dixon noted that after hearing the appeal, Council may uphold or overturn the Chief Constable's refusal to issue a Chauffeur's Permit to Devinder Dhillon. 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. Dixon 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. Dixon called Constable Kevin Barker, Taxi Unit, Vancouver Police Department, in support of the allegations.

The Panel also asked questions of the witness.

Mr. Dhillon also asked questions of the witness, and requested to know why he was granted a Chauffeur's Permit in 2011 if the charges for refusing the Permit this year are four or five years old. Constable Barker responded that in 2011 the infractions may have been missed, and

that he had direction from the Chief Constable on how to deal with applicants who have few infractions.

In opening, Mr. Dhillon submitted that he needs this job to support his family and that he is a safe driver, exemplified in that he has not had any accidents. He also noted that he is disputing the violation ticket AH78025311 contained in Tab 6 of the Evidence Brief and therefore the Panel should not include it in making its decision.

The Panel also asked questions of the applicant.

In closing, Mr. Dixon submitted that the Mr. Dhillon's driving record is unacceptable for a Chauffeur, that every violation was acquired while driving a taxi and that there is no reason to overturn the Chief Constable's refusal to issue a Chauffeur's Permit in this case.

In closing, Mr. Dhillon reiterated he is a safe driver, that he has a family to support and that the absence of accidents on his driving record shows he is safe on Vancouver roads.

PANEL MEMBERS' DISCUSSION

In discussion, the Panel noted it is frustrating to see this type of driving pattern in a chauffeur and that they must abide by existing by-laws, and therefore uphold the refusal by the Chief Constable to issue a Chauffeur's Permit to Mr. Dhillon.

MOVED by Councillor Carr
SECONDED by Councillor Affleck

THAT the Chauffeur's Permit Appeal Panel uphold the Chief Constable's decision to refuse to issue a Chauffeur's Permit to the Applicant, Devinder Dhillon, based on evidence of persistent infringements of the *Motor Vehicle Act* over the last five years that indicate he is unfit to act as a Chauffeur.

CARRIED UNANIMOUSLY

1. Gurcharan Singh Dhaliwal

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
2.	Letters from Gurcharan Singh Dhaliwal; Letter from City of Vancouver to Gurcharan Singh Dhaliwal dated February 7, 2013
3.	Memo from Constable Kevin Barker of the Vancouver Police to Chief Constable Jim Chu dated January 15, 2013;

Letter from Chief Constable to Gurcharan Singh Dhaliwal dated January 15, 2013;
Transcript of Constable Barker's January 15, 2013 Interview with Gurcharan Singh Dhaliwal

4. Letter from Boss Limousine Service Ltd. regarding police records check for Gurcharan Singh Dhaliwal;
VPD Request and Consent for Record Check and Disclosure;
ICBC Driving Record Search of Gurcharan Singh Dhaliwal
5. Chauffeur and Vehicle for Hire Permit Application of Gurcharan Singh Dhaliwal
6. Vancouver Police Department Narrative Text Hardcopy of GO 2012-9265;
Vancouver Police Department Narrative Text Hardcopy of GO 2011-3933
7. PRIME entries pertaining to Gurcharan Singh Dhaliwal;
Person Query pertaining to Gurcharan Singh Dhaliwal

Iain Dixon, Assistant Director of Legal Services - Enforcement and Prosecution, was present on behalf of the City of Vancouver. Gurcharan Singh Dhaliwal represented himself.

Mr. Dixon reviewed the principles of natural justice and explained that this was an appeal by Mr. Dhaliwal, 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 Applicant has, within the preceding five years, been convicted of the following offences under the *Motor Vehicle Act*:

- 2008.08.26, Sec 127(1)(a)(iii) Fail to yield to vehicle;
- 2008.10.17, Sec 146(1) Speed in/outside Municipality;
- 2010.02.17, Sec 144(1)(b) Drive without consideration;
- 2011.02.08, Sec 214.2(1) Use an electronic device while driving;
- 2011.07.27, Sec 214.2(1) Use an electronic device while driving, and
- 2012.10.05, Sec 128(1)(a) Yellow light at intersection-no stop before intersection,

as well as the following alcohol-related administrative driving prohibitions:

- 2010.01.17, Sec 215(2) 24 hour prohibition - Alcohol, and
- 2011.06.26, Sec 215.43(2)(a) 90 day fail immediate roadside prohibition.

Mr. Dixon noted the Chief Constable was of the belief that the nature of the offenses relates to the business, trade, profession, or other occupation for which the application for the Permit has been made.

He advised that 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. Dixon noted that after hearing the appeal, Council may uphold or overturn the Chief Constable's refusal to issue a Chauffeur's Permit to Gurcharan Singh Dhaliwal. 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. Dixon 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. Dixon called Constable Kevin Barker, Taxi Unit, Vancouver Police Department, in support of the allegations. In his testimony, Constable Barker noted the fact that Mr. Dhaliwal had been driving a limousine in Vancouver without an appropriate licence for six months is of particular concern and that he represents a risk to the public because of this.

In opening, Mr. Dhaliwal noted that in 2011 he had been in the middle of getting his Chauffeur's training, and that the police reports contained in Tab 6 of the Evidence Brief show he was only the driver and he is trying to get the suspect charge from that incident removed. Mr. Dhaliwal noted that he supports his mother who is unable to work, and that he also works in construction although work is slow because of the weather. He explained he would like to be a part-time limousine driver in order to supplement his income.

The Panel also asked questions of Mr. Dhaliwal.

In closing, Mr. Dixon submitted that Mr. Dhaliwal's driving record is not appropriate for someone who wants to be a chauffeur and that the roadside prohibitions for alcohol are particularly worrisome.

The Panel also asked questions of Mr. Dixon.

In closing, Mr. Dhaliwal submitted that when the charges listed in the Notice of Hearing occurred, he was young and not thinking about his future; since that time, he has attended alcohol rehabilitation and is taking life more seriously.

PANEL MEMBERS' DISCUSSION

In discussion, the Panel recognized Mr. Dhaliwal's attempts to turn his life around, and that the decision made today needs to abide by existing by-laws. The Panel also agreed with Mr. Dixon that Mr. Dhaliwal's driving record is not appropriate for someone who wishes to be a Chauffeur.

MOVED by Councillor Carr
SECONDED by Councillor Affleck

THAT the Chauffeur's Permit Appeal Panel uphold the Chief Constable's decision to refuse to issue a Chauffeur's Permit to the Applicant, Gurcharan Singh Dhaliwal, based on evidence of persistent infringements of the *Motor Vehicle Act* over the last five years, including alcohol-related convictions, that indicate he is unfit to act as a Chauffeur.

CARRIED UNANIMOUSLY

ADJOURNMENT

MOVED by Councillor Affleck
SECONDED by Councillor Carr

THAT the Chauffeur's Permit Appeal Hearing Panel be adjourned.

CARRIED UNANIMOUSLY

The Chauffeur's Permit Appeal Hearing Panel adjourned at 11:55 am

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