



## AGENDA SPECIAL COUNCIL MEETING

Monday, September 16, 2019, 2:30 P.M. - 3:30 P.M.  
SHAW AUDITORIUM, VANCOUVER ISLAND CONFERENCE CENTRE  
80 COMMERCIAL STREET, NANAIMO, BC

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Pages

1. CALL TO ORDER:

2. INTRODUCTION OF LATE ITEMS

3. APPROVAL OF THE AGENDA:

4. REPORTS:

a. Appeal of Denial of Chauffeur Permit - Vidit Nayyar

3 - 10

To be introduced by Sheila Gurrie, Director, Legislative Services.

*Purpose: The City has received an appeal of the refusal by the Officer in Charge, Nanaimo RCMP, to issue a chauffeur's permit to Mr. Nayyar. This report outlines the process for Council to follow to ensure that administrative fairness is properly followed when Council considers whether to uphold or overturn the Officer in Charge's decision.*

Recommendation: That Council determine whether the refusal by the Officer in Charge, RCMP Nanaimo Detachment, to issue a Chauffeur's Permit to the applicant, Mr. Nayyar, should be upheld or overturned.

5. PROCEDURAL MOTION:

That the meeting be closed to the public in order to deal with agenda items under the *Community Charter*:

Section 90(1) A part of the Council meeting may be closed to the public if the subject matter being considered relates to or is one or more of the following:

(i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose; and,

(n) the consideration of whether a Council meeting should be closed under a provision of this subsection or subsection (2).

6. QUESTION PERIOD:

7. ADJOURNMENT:

## Staff Report for Decision

DATE OF MEETING    SEPTEMBER 16, 2019

AUTHORED BY        SKY SNELGROVE, STENO COORDINATOR & DEPUTY  
CORPORATE OFFICER

SUBJECT              **APPEAL OF DENIAL OF CHAUFFEUR PERMIT – VIDIT NAYYAR**

### **OVERVIEW**

#### **Purpose of Report**

The City has received an appeal of the refusal by the Officer in Charge, Nanaimo RCMP, to issue a chauffeur's permit to Mr. Nayyar. This report outlines the process for Council to follow to ensure that administrative fairness is properly followed when Council considers whether to uphold or overturn the Officer in Charge's decision.

#### **Recommendation**

That Council determine whether the refusal by the Officer in Charge, RCMP Nanaimo Detachment, to issue a Chauffeur's Permit to the applicant, Mr. Nayyar, should be upheld or overturned.

### **BACKGROUND**

Chauffeur Permits are issued under the *Motor Vehicle Act* (Act) and the City of Nanaimo Chauffeurs Regulation Bylaw 1972 No. 1508 (attached) by the municipal police chief or RCMP equivalent (Officer in Charge) to individuals wishing to drive a vehicle-for-hire.

Section 36(11) of the *Motor Vehicle Act* grants the City the authority to "provide by bylaw for the regulation, of chauffeurs in the municipality, and for the issue of permits to chauffeurs by the Officer in Charge. The City's Bylaw states the following regarding the issuance of chauffeur permits:

"Applications for a chauffer's permit shall be made to the Chief of Police and the applicant shall furnish the Chief of Police with such information and particulars as the chief may require to satisfy himself as to the fitness of the applicant to act as a chauffeur."

This gives Officer in Charge (OIC) the discretion to refuse to issue a Chauffeur's Permit if the OIC believes that the applicant is unfit to act as a chauffeur. Sections 36 (6) and (7) of the Act further provide that written notice stating the grounds for refusal must be provided to the applicant, and that the applicant has a right to appeal the OIC's decision to Council. On hearing an appeal by an applicant from the OIC's refusal to issue a Chauffeur's Permit (Permit), the rules of natural justice apply as outlined below. After hearing the appeal, Council may uphold or overturn the OIC's refusal to issue a Permit. In determining whether or not a refusal is appropriate, Council should consider whether the OIC correctly interpreted and applied the legislation in the particular set of circumstances.

Council is entitled to hear from the Officer in Charge, any other witnesses called to support the refusal; and must hear from the applicant and any witnesses called by the applicant. The following key rules form the basis of the process to be followed by Council in hearing an appeal:

**1. Individuals have a right to know the case and respond accordingly**

Individuals who are affected by an administrative decision have the right to know the case being made against them and are required to have the opportunity to respond to the decision.

Individuals are to receive an explanation of the procedure to be followed and must be treated with courtesy and respect.

Individuals presenting their case are to be given advance notice of the meeting, be made aware in advance of the information that is being considered, and be allowed to present their case, including adequate opportunity to present further information and evidence to support their position.

**2. The decision maker cannot be biased**

Council should make a decision without any bias going into the hearing, and based only on the evidence presented, and the arguments raised. It also means that Council members cannot have any personal or pecuniary connection to the parties.

**3. The person or persons who hear the case must make the decision**

Council members who hear the decision and review the individual's request will be the ones to make the decision. If, after the hearing, the decision is postponed or adjourned, it must still be made by those who were in attendance for the hearing. Council members may seek legal advice after the hearing to assist them in determining what is relevant evidence, but they cannot delegate the decision making function to others after the hearing.

**4. The decision maker must give reasons**

The reason(s) for the decision should be clearly set out so that the parties can see that Council considered the submission made. A decision should clearly explain how Council determined their decision so that the parties understand and it should be consistent with other decisions that were made under similar circumstances.

## **DISCUSSION**

The applicant, Mr. Nayyar, was refused a Chauffeur Permit by the Officer in Charge (OIC), RCMP Nanaimo Detachment in a letter dated January 31, 2019. Mr. Nayyar has appealed this decision to Council. Whenever Council is put in this position of holding a quasi-judicial hearing it is imperative that Council follow established procedures. While the outcome is important, the process is also important and must be followed. The evidence provided by the RCMP and the applicant has been previously distributed to Council, ahead of the meeting.

## **OPTIONS**

1. That Council uphold the Officer in Charge's decision to refuse to issue a Chauffer's Permit to the applicant, Mr. Vidit Nayyar.
  - The applicant will not be issued a chauffeur permit and therefore will be unable to operate a vehicle for hire within the City of Nanaimo.
2. That Council overturn the denial of a chauffeur permit to Mr. Vidit Nayyar and direct the RCMP to issue the permit without conditions.
  - The RCMP would be compelled to issue the permit allowing the applicant to operate a vehicle for hire within the City of Nanaimo for two years. |

## **SUMMARY POINTS**

- The RCMP has refused to issue a chauffeur's permit to Mr. Vidit Nayyar.
- Council is requested to hear the appeal from Mr. Nayyar and uphold or overturn the RCMP's decision to deny the permit.
- Council's decision is final.

## **ATTACHMENTS:**

Attachment A: City Clerk's Notice of Hearing letter dated 2019-JUL-29

Attachment B: *Motor Vehicle Act*, Sec 36

Attachment C: "Chauffeurs Regulation Bylaw 1972 No. 1508" |

**Submitted by:** |

Sheila Gurrie  
Director, Legislative Services|

2019-JUL-29

Mr. Vidit Nayyar

Via email: [REDACTED]

Dear Mr. Nayyar:

**RE: NOTICE OF HEARING – CHAUFFEUR PERMIT**

TAKE NOTICE that an appeal will be heard before Nanaimo City Council (City Council) from the refusal by the Officer-in-Charge (OiC), Nanaimo RCMP, to issue a Chauffeur's Permit to Mr. Vidit Nayyar (the "Applicant"). This appeal is brought pursuant to section 36 (7) of the *Motor Vehicle Act*.

On hearing the appeal, City Council may uphold the permit refusal or overturn the permit refusal and direct the RCMP to issue the permit. The decision of City Council is final.

Both the Applicant and the RCMP are able to bring forward evidence that was not in front of the RCMP Inspector when the initial decision was made. They are both entitled to rely on additional documentation and witnesses that they think helps their case. These materials will be included in the agenda for the meeting at which the hearing will take place and be shared with the RCMP. In accordance with legislation, this information must be part of an open Council agenda that is available to the public.

The OiC is required to provide any information it intends to rely on at the hearing by 4:00 p.m., Thursday, August 8, 2019. After the City receives the OiC's material, it will provide this information to you via email as soon as practicable.

You are required to provide to the City Clerk by 4:00 p.m., Thursday, September 5, 2019:

1. All documents you wish Council to consider during the appeal,
2. Names of all witnesses you intend to have speak on their behalf (if applicable)

This information will be provided to the OiC in advance of the hearing. At the hearing, which is also open to the public, the OiC will be given the opportunity to present its reasons for refusing to issue the licence. Council will be given the opportunity to ask questions of the OiC regarding these reasons. You or your representative will then be given an opportunity to ask questions of the OiC. Following the OiC's presentation, you or your representative will be given the opportunity present your arguments in response to the OiC's decision. Council may ask you or your representative questions. The OiC will also be given an opportunity to ask you or your representative questions.

The agenda for the hearing is as follows:

1. Appeal Hearing Commences
2. The OiC will make its presentation
3. Council may ask questions of the OiC
4. You or your representative may ask questions of the OiC
5. You or your representative will make representations to Council
6. Council may ask you or your representative questions
7. Council will deliberate on the information before it. Council may wish to obtain or consider legal advice during its deliberations. If this is the case, Council may close the meeting to the public for this purpose. Council will then return to the open meeting to decide on the information presented.
8. Council will make a decision by way of a Council resolution
9. The hearing will be adjourned

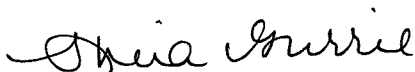
The appeal will be heard at:

Location: Shaw Auditorium, Vancouver Island Conference Centre,  
80 Commercial Street, Nanaimo, British Columbia  
Date: Monday, September 16, 2019  
Time: 2:30 p.m.

Any inquiries regarding the hearing should be directed to Sheila Gurrie, City Clerk, City of Nanaimo, telephone 250 755-4494.

Dated at Nanaimo, British Columbia, this 29th day of July, 2019.

Sincerely,



Sheila Gurrie,  
Director, Legislative Services  
City of Nanaimo

SG/ss

cc: Corporal Terry Crawford, RCMP  
CAO's Office  
Stewart McDannold Stuart

# ATTACHMENT B

## MOTOR VEHICLE ACT

### [RSBC 1996] CHAPTER 318

#### Municipal chauffeur permits

- 36 (1) In this section, "**chief of police of the municipality**", in the case of a municipality policed by the Commissioner of Provincial Police, means the senior member of the Royal Canadian Mounted Police in that municipality.
- (2) [Repealed 2008-15-22.]
- (3) A chauffeur, within a municipality that has passed a bylaw under subsection (11), must not drive, operate or be in charge of a motor vehicle carrying passengers for hire unless he or she holds a permit for that purpose issued to him or her by the chief of police of the municipality.
- (4) A chauffeur to whom a permit is issued under subsection (3) must comply with all regulations made by the municipality that are not repugnant to this Act or the regulations.
- (5) If the police chief of the municipality, on proof to his or her satisfaction, believes that a person holding a permit under subsection (3), because of his or her use of or dealing in intoxicants or narcotic drugs or any other reason, is unfit to act as a chauffeur, the police chief may suspend or cancel the permit.
- (6) If an applicant for a chauffeur's permit is refused or a chauffeur's permit is suspended or cancelled by the chief of police in a municipality, the chief of police must within 24 hours after the refusal, suspension or cancellation notify the applicant or holder in writing stating the grounds.
- (7) An appeal lies to the council of the municipality from a refusal, suspension or cancellation under subsection (6).
- (8) On an appeal under subsection (7), the decision of the council is final.
- (9) A fee must not be payable for a permit issued under subsection (3).
- (10) A chauffeur who holds a permit granted or issued under this section must
- (a) have it in his or her possession at all times while driving or operating a motor vehicle on a highway, and
  - (b) produce it for inspection at any time on the demand of a peace officer or constable.
- (11) The council of a municipality may by bylaw provide for the regulation, in accordance with this section, of chauffeurs in the municipality and for the issue of permits to chauffeurs by the chief of police.



## ATTACHMENT C

### **“CHAUFFEURS REGULATION BYLAW 1972 NO. 1508”**

*Consolidated Version*

1997-DEC-01

Includes Amendment: 5290

THE CORPORATION OF THE CITY OF NANAIMO

BYLAW NO. 1508

A BYLAW TO PROVIDE FOR THE REGULATION OF CHAUFFEURS AND THE ISSUANCE  
OF PERMITS TO CHAUFFEURS

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The Council of the Corporation of the City of Nanaimo in open meeting assembled enacts as follows:

1. This bylaw may be cited as the “Chauffeurs Regulation Bylaw 1972 No. 1508”.
2. This bylaw is enacted pursuant to the provisions of the *Motor Vehicle Act* of British Columbia. (*Bylaw No. 5290*)
3. No chauffeur shall drive, operate, or be in charge of a motor vehicle carrying passengers for hire within the limits of The Corporation of the City of Nanaimo unless he is the holder of a permit therefore issued him by the Chief of Police of the City of Nanaimo.
4. Applications for a chauffeur’s permit shall be made to the Chief of Police and the applicant shall furnish the Chief of Police with such information and particulars as the Chief may require to satisfy himself as to the fitness of the applicant to act as a chauffeur.