

Staff Report for Decision

DATE OF MEETING AUGUST 13, 2018

AUTHORED BY SHIELA GURRIE, CITY CLERK

SUBJECT APPEAL OF DENIAL OF CHAUFFEUR PERMIT – JASMINE ANDERSON

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 Ms. Jasmine Anderson. 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, Ms. Jasmine Anderson, 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, Ms. Jasmine Anderson, was refused a Chauffeur Permit by the Officer in Charge (OIC), RCMP Nanaimo Detachment in a letter dated May 1st, 2018. Ms. Jasmine Anderson 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. Council uphold the Officer in Charge's decision to refuse to issue a Chauffer's Permit to the applicant, Ms. Jasmine Anderson.
 - Legal Implication: 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. Council overturn the denial of a chauffeur permit to Ms. Jasmine Anderson and direct the RCMP to issue the permit without conditions.
 - Legal Implication: 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.

ATTACHMENTS

Attachment A City Clerk Notice of Hearing letter dated 2018-JUN-08
Attachment B *Motor Vehicle Act*, Sec 36
Attachment C "Chauffeurs Regulation Bylaw 1972 No. 1508" |

Submitted by:

Sheila Gurrie,
City Clerk