

NO: **R133**

COUNCIL DATE: **July 11, 2011**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **July 5, 2011**

FROM: **City Solicitor**

FILE: **4320-60/#3**

SUBJECT: **Appeal Process Related to the Denial of a Chauffeur Permit Application**

RECOMMENDATION

The Legal Services Division recommends that Council receive this report as information.

INTENT

The purpose of this report is to provide information to Council regarding Council's ability to delegate the hearing of appeals related to the denial of Chauffeur Permit applications to a committee of Council or any other body.

BACKGROUND

The authority for the refusal, cancellation and revocation of chauffeur permits by the Chief Constable (i.e., the chief of police) is found in the Surrey Vehicle for Hire By-law, 1999, No. 13610 (the "By-law") and the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 (the "Act").

Section 14 of the *By-law* states that:

"No person shall drive a licensed vehicle for hire other than a drive-self cab, drive-self truck, or driving test cab, who is not the holder of a valid and subsisting Chauffeur's Permit. This Permit is to be obtained from the Surrey RCMP and the City of Surrey.

- (a) Every person applying for a Chauffeur's Permit shall make application to the Chief Constable, or his designate, who may grant or refuse to grant a permit.*

- (c) In the event of a refusal to issue a Chauffeur's Permit, Section 36 of the Motor Vehicle Act applies."*

Sections 36(5) and 36(6) of the Act provide as follows:

“(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.”

Section 36(7) of the Act sets out the right of an applicant to appeal this decision as follows:

*“An appeal lies **to the council** of the municipality from a refusal, suspension or cancellation under subsection (6).”*

(emphasis added.)

Section 141 of the *Community Charter*, S.B.C. 2003, c. 26 (the “*Charter*”) permits the mayor to establish standing committees for matters the mayor considers would be better dealt with by committee.¹ However, the *Charter* goes on to set out a number of exceptions to Council’s ability to delegate its powers. Specifically, section 154(2) of the *Charter* states that

“As exceptions, a council may not delegate the following:

(d) a power or duty established by an enactment that the council hear an appeal or reconsider an action, decision or other matter.”

DISCUSSION

The effect of section 154(2) of the *Charter*, when read together with section 36(7) of the Act, is that Council is prevented from delegating to a Committee or any other entity its power to hear an appeal related to the denial of a Chauffeur Permit. This means that Council is bound to hear these appeals itself, and is precluded from delegating this responsibility to a committee of Council as described in section 141 of the *Charter*.

CONCLUSION

Based on the above information, Council cannot delegate its power to hear Chauffeur’s Permit denial appeals to a committee of Council or to any other group or entity.

CRAIG MacFARLANE
City Solicitor

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¹ Section 141 of the *Charter*.