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## RECORD OF DECISION

### SASKATOON LICENSE APPEAL BOARD

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**APPEAL NO.:** 2-2019

**RESPONDENT:** City of Saskatoon, Community Services Department, Community Standards, Licensing and Permitting

In the matter of an appeal to the City of Saskatoon, License Appeal Board by:

**MR. MIZANUR MOLLAH**

respecting the denial for renewal and immediate cancellation of a taxi license.

**IN ATTENDANCE:**

**Before**

Mr. Asit Sarkar, Chair  
Mr. Cameron Choquette, Member  
Ms. Madasan Yates, Member

**Appeared for  
the Appellant**

Mr. Mizanur Mollah, Appellant  
Mr. Malik Umar Draz, President Local 2014, USW District 3  
Ms. Leslie McNabb, Staff Representative, USW District 3

**Appeared for  
the Respondent**

Mr. Mark Wilson, License and Permitting Manager,  
Community Standards, Community Services Department, City  
of Saskatoon

The appeal was heard in Committee Room "E", Ground Floor, City Hall in the City of Saskatoon on June 3, 2019.

**GROUND AND ISSUES:**

THE APPELLANT, Mr. Mizanur Mollah, launched an appeal under Section 66(1) of *The Taxi Bylaw, 2014* No. 9070 in connection with the City's letter respecting the renewal of taxi driver license denial and revocation of taxi driver license. The City's letter dated February 19, 2019 outlined the following (Exhibit "R.1"):

"I am writing with regards to your efforts to renew your taxi driver's licence. The Taxi Bylaw (No.9070) requires that an application for a Taxi Driver's License include an endorsement from the Saskatoon Police Service. The Saskatoon Police Service has informed our office that they will not be issuing an endorsement for a Taxi Driver's License.

In 2013, you have had contact with the Saskatoon Police Service while on duty as a taxi driver that resulted in charges.

The City of Saskatoon (the "City") takes the safety and security of all its citizens and visitors to the City extremely seriously. This is reflected in section 3(2)(a) of the Bylaw, which states, the purpose of the Bylaw is to "ensure that taxi services will be available, safe and economical to use for both citizens and visitors to the City." Section 35(1)(b) of the Bylaw states that "Every licensed taxi driver shall at all times when operating a taxi, conduct himself or herself in a courteous, prudent and safe manner." Therefore, if the City, in conjunction with the SPS, has serious, well-founded concerns which could affect public safety, then we have a duty to act on those concerns.

After discussing the matter of renewing your taxi driver's licence with Det. Staff Sergeant Chevli and considering the concerns he has raised, I reaffirm his decision not to renew your taxi licence. As such, your Taxi License Renewal is denied and your license will expire with immediate effect upon receipt of this letter. You have the right to appeal this denial pursuant to section 66 of the Bylaw. A notice of appeal must be filed in accordance with the Bylaw No. 9036 – The Saskatoon Licence Appeal Board Bylaw 2012."

As set out in the Notice of Appeal to the Saskatoon License Appeal Board (Exhibit "A.1"), the Appellant outlined the reasons for appealing, as follows:

"I am attaching my request letter. I will provide further details later on after consultation with union. Please allow me to drive until appeal board decision. I will provide further details within 2 weeks."; and

"Today February 19<sup>th</sup>, 2019 around 2:40 p.m., I received notice from city bylaw manager that city will be not issuing an endorsement letter to renew my taxi license.

After meeting with Wayne I was informed by city that there was complaint against me in 2013, and I have been renewing my license since 2013 from city of Saskatoon. I was also informed that I have a right to appeal.

So it is kindly requested that I should be allowed to keep driving taxi until I submit my appeal papers and decision of appeal. I need about 2 weeks to submit my papers.

As driving taxi is my total living, please let me keep driving until appeal board decision.”

It should be noted a stay of the cancellation and renewal denial was granted by the License Appeal Board on March 5, 2019, until the Board’s written decision following the original appeal hearing date scheduled for April 17, 2019.

On March 27, 2019 the Secretary of the License Appeal Board was notified by Mr. Wayne Sum, Taxi & Rideshare Manager, Community Standards that the Saskatoon Police Service had issued a certificate of approval (“endorsement”) for Mr. Mizanur Mollah and as the application requirements outlined in the bylaw were now met, Community Standards would be issuing a Taxi Driver License to the appellant immediately. Mr. Mollah was issued an identical letter.

Section 5(3) of *The Saskatoon License Appeal Board Bylaw, 2012* No. 9036 states that an appellant may withdraw his or her appeal for any reason by notifying the Secretary of the Board at least 7 days before the day on which the appeal is scheduled to be heard. Despite having been issued a taxi license, Mr. Mollah did not withdraw the appeal and the hearing was therefore re-scheduled for June 3, 2019.

#### **EXHIBITS:**

- Exhibit A.1 Application to Appeal received February 19, 2019.
- Exhibit A.2 Perfected grounds of Appeal received March 6, 2019.
- Exhibit A.3 Letter dated March 25, 2019 from Leslie McNabb, USW District 3 to Saskatoon License Appeal Board.
- Exhibit A.4 City of Saskatoon Taxi Driver’s License #7204 issued March 27, 2019 to MOLLAH, Mizanur.
- Exhibit R.1 Letter dated February 19, 2019 from Wayne Sum, Taxi & Rideshare Manager, Community Standards to Mizanur Mollah.
- Exhibit B.1 Letter dated February 25, 2019 from Secretary, License Appeals Board to Mizanur Mollah requesting grounds be perfected.

Exhibit B.2 Notice of Hearing dated March 7, 2019.

**EVIDENCE AND ARGUMENT OF THE APPELLANT:**

The Appellant, Mr. Mizanur Mollah, was in attendance accompanied by USW District 3 representatives Mr. Malik Umar Draz, President Local 2014 and Ms. Leslie McNabb. The following is a summary of Mr. Mollah's evidence and argument.

Ms. McNabb led the testimonies of both Mr. Draz and Mr. Mollah, first questioning their residence, current and past occupations, and experience in the taxi industry.

Mr. Draz spoke to his position as Union President, the requirements of the yearly license renewal and all costs involved, the recent change to the body issuing permits/ID cards - from Saskatoon Police Service to the City of Saskatoon and uncertainty around the term "certificate of approval" as referred to in *The Taxi Bylaw, 2014* No. 9070. He was questioned about a few similar cases of union member suspensions, expressing to the Board that the City has a right to discipline, but the drivers have a right to a fair chance and should be allowed to work until the hearing.

Mr. Mollah explained how he applied for renewal of his taxi permit early February, and although not required for a renewal, also submitted a vulnerable sector search with his perfected grounds. In the interim, he received a call from his employer to meet with the City. Mr. Sum, at that meeting, provided a letter dated February 11, 2019 (included in Exhibit 'A.2') identical to the one dated February 19, 2019. He spoke to the time period between receiving the letters and March 5, 2019 – the date a stay was granted by the License Appeal Board and the affects the revocation had on his life financially and emotionally.

After questions of the Board, he confirmed there were no issues receiving a taxi permit prior to this year in spite of the charges noted in the City's correspondence from 2013 (that were stayed), and that to date, has not received any concrete answers from the City or Saskatoon Police Service with respect to why the certificate of approval was not issued upon application, but was issued on March 27, 2019. Mr. Mollah submitted his new Taxi Driver License #7204 and it was entered as Exhibit "A.4".

In closing, the request of the appellant and representatives was not monetary, but rather judicial. The appellant requested the City review its process and the Board grant the appeal to recognize the wrong-doing of the City in the revocation of Mr. Mollah's taxi license that was valid through end of February 2019, causing unnecessary stress, lost wages and lost respect.

**EVIDENCE AND ARGUMENT OF THE RESPONDENT:**

The City of Saskatoon, being the Respondent, was represented by Mr. Mark Wilson, Licensing and Permitting Manager, Community Standards.

Mr. Wilson provided the following report to the Board:

“In February 2019, the City of Saskatoon received an application from Mr. Mollah to renew his Taxi Driver License. Section 32(3)(g) of Bylaw No. 9070, *The Taxi Bylaw, 2014*, requires that applications for Taxi Drivers License include a certificate of approval from the Saskatoon Police Service. The Saskatoon Police Service notified the City that they will not be issuing a certificate of approval for Mr. Mollah. As Mr. Mollah’s application did not meet the requirements, his application was denied, and his existing license was revoked on February 19, 2019.

On March 27, 2019, the City was notified by the Saskatoon Police Service that they have issued a certificate of approval for Mr. Mollah.

As the application requirements outlined in the bylaw have been met, The City approved Mr. Mollah’s Taxi Driver License renewal application on March 27, 2019. While respecting the impartiality of the Appeal Board, the City wishes to draw the Board’s attention to two sections of Bylaw No. 9036, *The Saskatoon License Appeal Board Bylaw, 2012*, concerning jurisdiction and decision. Section 4 sets out the jurisdiction of the Appeal Board and states that:

‘The appeal board shall have the exclusive jurisdiction to hear an appeal from the imposition of any condition on a license, or the denial, suspension or cancellation of a business license issued by the City pursuant to any City bylaw.’

Further, Section 16 states that:

‘Subject to subsection (2), after hearing an appeal, the appeal board may, as the circumstances require and as the board considers just and expedient:

- (a) confirm, revoke or vary the City’s decision to impose conditions or to refuse, suspend or cancel a license; or
- (b) substitute its own decision for the decision appealed from.’

It’s important to also consider what the bylaw does not state. The bylaw does not grant the Appeal Board the jurisdiction to adjudicate grievances regarding operational or procedural matters arising in application review, or to determine what factors the Saskatoon Police Service should consider when determining whether or not to grant a certificate of police approval.

Respectfully, as the license has been granted, the City does not believe there are any matters relating to this application that require a decision from the Appeal Board or are within the jurisdiction of the board to hear.”

Mr. Wilson confirmed for both the Appeal Board Members and the Appellant the change from revocation to issuance of the permit was the receipt of the Saskatoon Police Service certificate of approval for Mr. Mollah fulfilling the requirements set out in the bylaw, and that the Community Services Department applied the bylaw as it's written. No further comments.

### **BYLAWS:**

Section 32(3) of *The Taxi Bylaw, 2014* No. 9070 provides for the information that shall be included with an application for a taxi driver's license:

- (a) *the applicant's full name;*
- (b) *the applicant's date of birth;*
- (c) *the applicant's current address and telephone number;*
- (d) *a letter from a licensed taxi broker on company letterhead confirming its affiliation with the applicant taxi driver;*
- (e) *written proof that the applicant holds a valid and subsisting class of Saskatchewan Driver's Licence as prescribed by The Vehicles for Hire Regulations and issued by Saskatchewan Government Insurance;*
- (f) *the applicant's criminal record and vulnerable sector checks dated no earlier than 30 days prior to the licence application;*
- (g) *the applicant's certificate of approval from the Saskatoon Police Service;*
- (h) *written proof that the applicant has completed any training program approved and required by the City;*
- (i) *the issuing jurisdiction and the effective dates of any licence or permit held by the applicant to drive a taxi and whether such licence or permit has been denied, revoked or suspended, and if so, the reason or reasons therefor.*

Further, Section 65(1) of *The Taxi Bylaw, 2014* No. 9070 provides for the suspension or revocation of Licenses issued under this Bylaw for any of the following reasons:

- (a) *a licensee or an employee of a licensee has violated or failed to comply with any provision of this Bylaw;*
- (b) *a licensee or an employee of a licensee has violated or failed to comply with any condition of the licence;*
- (c) *a licensee or an employee of a licensee has refused to allow an inspection as authorized by this Bylaw;*
- (d) *a licensee has given false or misleading information in the application for the licence;*
- (e) *in the case of a driver, a licensee has been convicted of specified criminal activity or the licensee's driving privileges or Saskatchewan Driver's Licence has been suspended, cancelled or revoked. The fact that a conviction is being appealed shall have no effect on the suspension or revocation of the licence.*

In the general course of its deliberations, the Board was guided by principles expressed in *The Saskatoon License Appeal Board Bylaw, 2012*, and any amendments thereto, in its entirety.

As provided for in Sections 5(1) and 6(1) of *The Saskatoon License Appeal Board Bylaw*:

5. (1) *A license appeal may only be taken by a person who:*
  - (a) *has applied for a license and been denied, or holds a license that has been suspended or cancelled, or holds a license upon which conditions have been imposed; and*
  - (b) *believes that an error has been made by the City in the decision to deny, suspend or cancel a license, or to issue a license with conditions.*
6. (1) *A notice of appeal, together with the filing fee prescribed in section 7, must be filed with the secretary of the appeal board within 30 days after the date the appellant is served or is deemed to have been served with the decision of the City.*

As provided for in Section 16(1) and (2) of *The Saskatoon License Appeal Board Bylaw*:

16. (1) *Subject to subsection (2), after hearing an appeal, the appeal board may, as the circumstances require and as the board considers just and expedient:*
  - (a) *confirm, revoke or vary the City's decision to impose conditions or to refuse, suspend or cancel a license; or*
  - (b) *substitute its own decision for the decision appealed from.*
- (2) *In determining an appeal under subsection(1), the appeal board:*
  - (a) *is bound by the provisions of the bylaw pursuant to which a license is refused, suspended, cancelled or issued conditionally; and*
  - (b) *may confirm, revoke or vary the City's decision only if the appeal Board's decision would not:*
    - (i) *contradict the purpose and intent of the licensing bylaw;*
    - (ii) *grant the appellant a special privilege inconsistent with the restrictions on other person under the same licensing bylaw; or*
    - (iii) *amount to a relaxation of the provisions of the licensing bylaw so as to contradict the purposes and intent of the licensing bylaw.*

**APPLICATION /ANALYSIS:**

In determining the appeal, the Board was governed by Section 16 of *The Saskatoon License Appeal Board Bylaw, 2012*.

- 1. Does the granting of this appeal grant to the applicant a special privilege inconsistent with the restrictions on other persons under the same licensing bylaw?**
- 2. Does the granting of this appeal contradict the purpose and intent of the licensing bylaw?**
- 3. Does the granting of this appeal amount to a relaxation of the provisions of the licensing bylaw so as to contradict the purposes and intent of the licensing bylaw?**

The circumstances of this appeal are such as that three questions above cannot or need not be addressed by the Board in reaching its decision. The appeal was initiated by the Appellant because he felt that there were not sufficient grounds for the City of Saskatoon's Taxi Licensing Manager initial decision to suspend his license to drive a taxi. The decision of the Taxi Licensing Manager to suspend the Appellant's license to drive a taxi effective the date of the order of suspension (February 19, 2019, Exhibit R.1) was not supported by this Board and it restored his license to drive a taxi until the disposition of the Appeal (March 5, 2019). Subsequently, on March 27, 2019, the Appellant was informed that his license to drive taxi was renewed for another year. The City's initial order of suspension was attributed to a communication from the Saskatoon Police Service that it would not recommend a renewal of the license for 2019 (beyond the current date of expiry). The decision to reverse this decision on March 27, 2019 was attributed to a new communication from the Saskatoon Police Service that a renewal was being recommended. Thus, in view of the City of Saskatoon, the reason for appeal no longer existed as a renewal of the license had already taken place. However, the Appellant's evidence presented before the Board indicated that his license to drive a taxi between the period of February 19, 2019 and March 27, 2019 remained suspended without any lawful reason.

In its defence, the City pointed out that the Licensing Manager's decision of February 19, 2019 was a lawfully justifiable application of the Section 32 since the requirement of subsection (3)(g) was not met. The order of suspension was exercised under Section 35(1)(b). This was referenced to an incident in 2013 in which the Appellant had a "contact with the Saskatoon Police Service while on duty as a taxi driver that resulted in charges".

The evidence presented by the Appellant indicates that the said 2013 contact with the Saskatoon Police Service was subsequently withdrawn, and the license of the Appellant had been renewed every year since that time until the notification of February 19, 2019. It was also the testimony of the Appellant that he had no subsequent contact with the Saskatoon Police Service. The City provided no evidence to counter the Appellant's



contention. Therefore, the Board has not been able to verify the following key contents of Exhibit R.1 that was used as justification of an action under Section 35(1)(b) -

The City of Saskatoon (the "City") takes the safety and security of all its citizens and visitors to the City extremely seriously. This is reflected in section 3(2)(a) of the Bylaw, which states, the purpose of the Bylaw is to "ensure that taxi services will be available, safe and economical to use for both citizens and visitors to the City." Section 35(1)(b) of the Bylaw states that "Every licensed taxi driver shall at all times when operating a taxi, conduct himself or herself in a courteous, prudent and safe manner." Therefore, if the City, in conjunction with the SPS, has serious, well-founded concerns which could affect public safety, then we have a duty to act on those concerns.

After discussing the matter of renewing your taxi driver's licence with Det. Staff Sergeant Chevli and considering the concerns he has raised, I reaffirm his decision not to renew your taxi licence. As such, your Taxi License Renewal is denied and your license will expire with immediate effect upon receipt of this letter. You have the right to appeal this denial pursuant to section 66 of the Bylaw. A notice of appeal must be filed in accordance with the Bylaw No. 9036 – The Saskatoon Licence Appeal Board Bylaw 2012."

The Appellant also provided testimony indicating that he suffered loss of income during the period of suspension that, according to him, was not a lawful application of the Bylaw. The Board, mindful of its jurisdiction, takes no position on this part of the testimony.

The City in its testimony drew attention to the Board's jurisdiction as provided in Section 66(3). Given the uncountered testimony of the Appellant that there was no new information verifiable by his Criminal Record Check between the period of February 19, 2019 (when the order of suspension was issued) and March 27, 2019 (when renewal was granted based on a recommendation from the Saskatoon Police Service), the Board has to reach the conclusion that initial decision to suspend the license was a misapplication of the provisions of the Bylaw 9070. However, given the circumstances indicated at the beginning of this section, the Board has no decision to render.

### **DECISION:**

The Board has no decision to render other than to provide the conclusion on the analysis of the evidence presented above.

DATED AT SASKATOON, SASKATCHEWAN, THIS \_\_\_\_\_ DAY OF JUNE, 2019.

**CITY OF SASKATOON LICENCE APPEAL BOARD**

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**Mr. Asit Sarkar, Chair**

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**Ms. Janice Hudson, Secretary**

**TAKE NOTICE** that in accordance with Section 16(1) of *The Saskatoon License Appeal Board Bylaw, 2012*, every decision of the appeal board is final and not open to question or review in any court, and no decision of the appeal board shall be restrained by injunction, prohibition, *mandamus*, *quo warranto*, *certiorari* or other process or proceeding in any court or be removable by application for judicial review or otherwise into any court on any grounds.