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CITY OF MILWAUKEE

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UTILITIES & LICENSES COMMITTEE

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In the Matter of:

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A substitute ordinance relating to the body color
of taxicabs operated by Yellow Cab of Milwaukee

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File No. 030214

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COMMITTEE MEMBERS

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ALD. JAMES BOHL - Chairman

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ALD. JOE DAVIS, SR., - Vice Chairman

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ALD. FREDERICK GORDON

ALD. JOSEPH A. DUDZIK

13

ALD. TERRY L. WITKOWSKI

14

LICENSING DIVISION by JAMES COPELAND

15

OFFICE OF THE CITY ATTORNEY by ATTORNEY BRUCE SCHRIMPF

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Item presented in the above-entitled
matter, before the UTILITIES & LICENSES COMMITTEE
OF THE CITY OF MILWAUKEE, on the 11th day of
November, 2003.

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P R O C E E D I N G S

CHAIRMAN BOHL: File number two before us, or item number two is file number 030214, substitute ordinance relating to the body color of taxicabs operated by Yellow Cab of Milwaukee.

Mr. Whitcomb, this is - - this is your request.

MR. WHITCOMB: That is correct, Mr. Chairman. Historically, oh, I think it was back in May of this year, my client requested the use of the color white - - Excuse me - - the use of the color white, for the cab. That was held over because of a company who had been - - who had been granted the use of that color but - - but which was not in business for a long period of time. A city attorney's opinion was requested. The city attorney opined that as long as another company who may come back into existence had the use of the color white, or was designated it, it would be best not to grant the color to my particular client. The city attorney also at that time was asked regarding the use of the name, Yellow, and at least back then the city attorney said that this committee in considering designation of colors for cabs need - - need not

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1 get embroiled in a dispute over the use of
2 particular name of a cab company.
3 Thereafter, in light of the city
4 attorney's opinion my client requested the use of
5 - - or requested that the committee provide it
6 with a designation of the color purple. That had
7 not been designated for any particular cab
8 company existing in the ordinance. They withdrew
9 the request for the use of the color white, and
10 that has been pending before this committee since
11 July, and we request again, reiterate that
12 designation. If you recall, this is a new
13 company. The purpose for this new company is to
14 provide handicapped equipped vans for private
15 hire. If you recall that the Federal regulations
16 concerning business cab or livery services, cab
17 services who provide such a service must have a
18 third of its fleet so equipped. The existing
19 company, Mr. San Felippo and his family, had
20 hundreds of cabs and it will be cost prohibitive
21 to provide this service by attempting to have
22 one-third of 200 - 250 cabs handicapped equipped,
23 van wheelchair equipped. Therefore, the new
24 company was formed. The initial thought was to
25 have 12 vehicles, a third of which would be brand

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1 new handicapped equipped rear van accessible cabs
2 for the business, one-third of which would be the
3 three or four. And with this new company Mr. San
4 Felippo would determine under Yellow Cab of
5 Milwaukee, Inc. whether the marketplace could
6 support such a cab or taxi enterprise, providing
7 handicapped accessible private vehicle service.
8 That was his sole intent. That is the reason he
9 started this new company. And he hasn't been
10 able to get it off the ground, because no one
11 will give him a color for his new - - or the city
12 won't give him a color for his new business. He
13 now asks once again that this committee provide
14 him with a designation of the color purple for
15 his disabled handicapped van - - or handicapped
16 taxi business, so that he may get the cabs and
17 vans properly painted, designated and equipped,
18 and open for business.

19 CHAIRMAN BOHL: Thank you, Mr.
20 Whitcomb. Are there questions by committee of -
21 -

22 MR. SCHRIMPF: Mr. Chairman.

23 CHAIRMAN BOHL: Mr. Schrimpf.

24 MR. SCHRIMPF: Just some corrections,
25 so that the record in this case is clear. The

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1 city attorney opinion with respect to the request
2 of Yellow Cab of Milwaukee Inc. to operate under
3 the color white, in point of fact, the city
4 attorney opinion says that: "We are given to
5 understand that the firm is still operating and
6 still is, in fact, using the color white. We
7 were able to determine that from records and
8 files in the office of the city clerk." And I
9 might note, anecdotally, a few weeks after that
10 opinion was issued, and I was the - - the lead
11 drafter of that opinion, I happened to see an
12 independent taxicab operating under the color
13 white, making a drop-off at the Hyatt Regency
14 Hotel.

15 So far as the name of the cab company
16 was concerned, we in - - in that opinion, the
17 city attorney's office determined that if it was
18 the judgment of the Milwaukee Common Council that
19 it would allow Yellow Cab of Milwaukee, Inc. to
20 operate under the color yellow - - or I'm sorry,
21 under a color something other than yellow, that
22 was a decision that was well within the authority
23 of the Milwaukee Common Council. There would be
24 no legal prohibition to the Milwaukee Common
25 Council doing that. And that was the - - the

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1 nature of the two opinions. If, on the other
2 hand, the Milwaukee Common Council determines
3 that they don't want two companies operating
4 under the same or similar name, that is a
5 different situation. And that opinion, the - -
6 the opinion regarding Yellow Cab of Milwaukee,
7 Inc. operating under a color, was issued prior to
8 the time that there was any consideration at all
9 of a prohibition against that sort of activity.
10 So just want to clarify those two items.

11 CHAIRMAN BOHL: And, Mr. San Felippo?

12 MR. SAN FELIPPO: Mister - - That white
13 cab that you seen dropping off, do you recall the
14 name on the side of the car?

15 MR. SCHRIMPF: I believe it was
16 Independent.

17 MR. SAN FELIPPO: Independent. And who
18 is assigned the color white? Would you look - -

19 MR. COPELAND: Mitchell - -
20 Mitchell International Taxi Cab Association.

21 MR. SAN FELIPPO: MITCA.

22 MR. SCHRIMPF: Oh, it was Mitchell. I
23 - - I stand corrected. Yes, it was Mitchell.

24 MR. SAN FELIPPO: Okay. I totally
25 disagree with that. There is no cabs running

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1 right now. There is white ones running out on
2 the street, but there is not one car in the city
3 that says "MITCA" on the side of it right as we
4 speak here. Now, they might run out this
5 afternoon and put one on, but there is none.

6 MR. SCHRIMPF: Well, Mr. Chairman, I
7 know what I saw. It was making a drop-off. It
8 said Mitchell.

9 MR. SAN FELIPPO: It was a white cab.
10 You're right, because there are some white
11 cabs - -

12 CHAIRMAN BOHL: And, gentlemen.

13 MR. SAN FELIPPO: - - out there running
14 around, but they're independent cars. And
15 they're running on at the airport, but - -

16 MR. COPELAND: Mr. Chairman, just - -

17 CHAIRMAN BOHL: Go ahead, Mr. Schrimpf
18 - - Mr. Copeland.

19 MR. COPELAND: For the benefit of the
20 committee. An individual came in after this
21 whole subject came up, submitted a letter stating
22 there were seven people still operating under
23 MITCA, and their vehicles were white. That's
24 when we turned that letter over to the city
25 attorney and to this committee.

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1 CHAIRMAN BOHL: And I - -

2 MR. SAN FELIPPO: But aren't they

3 supposed to say MITCA on the side?

4 CHAIRMAN BOHL: Mr. San Felippo. Mr.

5 San Felippo. I don't know that white is before

6 us. So I - - I think we're going to delve out of

7 the white. White is not the issue. You're

8 requesting purple, and so, I don't want to try to

9 fight an argument that's already - - that's

10 already not before us. Are there any individuals

11 here who - - who wish to come forward and speak

12 on this matter? I will just - - Come up forward,

13 please. If you could identify your - - your

14 name. And, please pull the microphone up.

15 MR. MCDONALD: My name is Shannon

16 McDonald. I'm an attorney with Klaus law firm.

17 I'm here on behalf of Yellow Cab, Cooperative.

18 And what we would like to say today is that

19 permitting Yellow Cab of Milwaukee, Inc. to use

20 the color purple, would undermine the very

21 purpose of the - - of the Milwaukee Code of

22 Ordinances in that it would be creating a mass

23 amount of confusion for the city - - City of

24 Milwaukee taxicab consumer.

25 CHAIRMAN BOHL: Thank you. Questions,

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1 comments for Mr. McDonald by committee? Okay.
2 Sir, please go ahead.

3 MR. KHALSA: My name is Justice Khalsa.
4 I live at 7451 - -

5 CHAIRMAN BOHL: I'm sorry. Could you
6 say that again?

7 MR. KHALSA: Justice.

8 MR. SCHRIMPF: Spell your name.

9 MR. KHALSA: Justice, J-U-S-T-I-C-E,
10 and the last name is Khalsa, K-H-A-L-S-A.

11 CHAIRMAN BOHL: Thank you, Mr. Khalsa.
12 Go ahead.

13 MR. KHALSA: I drive a yellow cab
14 currently, and I've driven American United,
15 driven for Mike San Felippo in the past for a
16 couple of years. So I know this game pretty well
17 here. This is not a handicapped van service. We
18 all know it, but we have to prove it here. He
19 owns currently three companies. All-City
20 Veteran. There is no City Veteran Coop. It went
21 bankrupt. He took over WVTC. There's WVTC,
22 which has blue colors. He owns most of them.
23 All-City Veteran, which has blue colors. They
24 have the SAN numbers on it 220-5000, and American
25 United. And West Allis Cabs. When he says MITCA

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1 is supposed to have a name outside - -
2 CHAIRMAN BOHL: Mr. Khalsa, and - -
3 MR. KHALSA: Yes. I'm just trying
4 to - -
5 CHAIRMAN BOHL: I'm sure.
6 MR. KHALSA: - - give you some details
7 here.
8 CHAIRMAN BOHL: Right. And I - -
9 MR. KHALSA: Give you a clear picture
10 to the council here.
11 CHAIRMAN BOHL: And I understand. And I
12 understand that. And I think that we've gotten
13 into the - - some of the briefs.
14 MR. KHALSA: Okay. Let's cut that
15 short then.
16 CHAIRMAN BOHL: What - - What we - -
17 What we want to do is get to the request here.
18 MR. KHALSA: Okay. We are trying to do
19 is if you give him any colors, he's going to try
20 and take over a business, which is disabling us.
21 If he wanted to use any vans, he would have used
22 it in the last five years. He could afford it.
23 The vans are not restricted to put it in the cab
24 business. He could use American United, All-City
25 Veteran, WVTC. He could have another company

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1 named Purple, anything he wants, San Felippo
2 Company. Why Yellow Cab in Milwaukee. It's to
3 make us disabled, and monopoly, have a monopoly
4 in the City of Milwaukee. That's the goal. We
5 have to understand that. And we all drivers are
6 coming here, you know, 50 and 100s of us every
7 day. We are just, you know, some of don't have
8 any education. But they know what's the motive
9 here. I mean, we are all not stupid, why are we
10 coming, leaving our cabs and work, probably
11 losing 20 - 30 dollars every time we come here,
12 you know, probably 15 times we've been to courts
13 and city halls. This is the reason. This is to
14 handicap us and our families. This is the issue
15 here, and the consumers will have no choice. Any
16 cab company they call in the City of Milwaukee,
17 it's going to go to Mike San Felippo. Because we
18 are a small company, independent. Every driver's
19 independent. It's not owned by anybody. These
20 cabs are not owned by one person, one or two
21 people owning each cab, and they make their
22 living. They'll be off the streets if he
23 controls it, and he's challenged us. He's going
24 to do it, because everybody is with him. He's
25 challenged us openly after every city hall

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1 meeting, after the court meetings, he calls us
2 and threatens us. This has been going on for
3 five years. So we -- We request you not to give
4 him any permission with any color, so City of
5 Milwaukee having Milwaukee Cabs, Inc. can't
6 operate. Thank you.

7 CHAIRMAN BOHL: Thank you, Mr. Khalsa.
8 Questions by committee of Mr. Khalsa? Are there
9 any other individuals here who wish to testify
10 this morning?

11 Good morning, ma'am. I know we've seen
12 you before, and if you could identify yourself
13 again.

14 MS. MILES: My name is Barb Miles, M-I-
15 L-E-S.

16 CHAIRMAN BOHL: Ms. Miles, you -- you
17 are affiliated with Yellow -- Yellow Cab Coop.
18 Correct?

19 MS. MILLS: General manager.

20 CHAIRMAN BOHL: Okay. Thank you. Go
21 ahead, please.

22 MS. MILLS: I have a couple of points
23 here to deal with. The main one, I guess,
24 pertaining to you is the confusion which Yellow
25 Cab took the order, especially with a cab that

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1 could be the same color. Right now, Mr. San
2 Felippo has cab 29, 81, and 11 running out there.
3 So do we. Which is totally confusing to begin
4 with. Now, what would happen if all those cabs
5 were called Yellow Cab. We ran into an instance
6 yesterday afternoon at the Baymont Hotel on
7 Highway 100 and Silver Spring. My dispatcher
8 passed it in to me, because they said they had
9 called and gotten a rate of a dollar per mile
10 from somebody in our office. There were four
11 people there at the time. And this was a
12 citizen. I talked to all four of the people in
13 the office. None of them admitted they had done
14 it. One of the girls said she had quoted him the
15 flat rate of 130 miles - 260 dollars, which is
16 what it should be. I finally found out from the
17 woman that even though the desk called us, she
18 had pulled the number out of the phone book.
19 Now, she may have been pulling a game, because I
20 don't know of any cab that would do that for a
21 dollar a mile, but I do know that we went around
22 for a good ten minutes with this.

23 Second of all, owners have a choice
24 right now of which fleet to work with. That
25 decision involves the percentage paid on charges,

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1 the type of rides that they want to be able to
2 handle, and being able to vote on decisions
3 versus having one person make all these decisions
4 for them. They enjoy being their own boss.

5 Number three, at least having a voice
6 in the city decisions that affect cab and cab
7 drivers, such as in ordinances and rates, at
8 least we've been able to oppose, not that it has
9 gone in our favor, but we have been able to do
10 that. Customer choice will be totally
11 eliminated. I'm talking about the cash rides,
12 charge rides. There will be no choice.

13 I don't understand this handicapped
14 transportation. Right now you do licensing for
15 handicapped vans in the City of the Milwaukee.
16 You know that there are plenty of them out there.
17 When we have people who call us who need
18 wheelchair, lift, or excessive assistance, which
19 our drivers can't do, we call people. We have
20 people who own vans who work with Yellow Cab.
21 There is no problem. These people pay the flat
22 rates. I don't know what they are, but it seems
23 to work out just fine. They get their
24 transportation. They don't have to wait, and
25 there's no problem. I'm - - I'm very afraid to

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1 see a monopoly here in Milwaukee, not only for
2 the fact that we'll be out of business, but that
3 the people will suffer. They'll suffer big.

4 CHAIRMAN BOHL: Thank you, Mrs. Miles.
5 Questions by committee of Mrs. Miles? Mr.
6 Whitcomb, did you have any - - I'll give you a
7 brief closing here in terms of your request.

8 MR. WHITCOMB: It appears that the
9 genesis of the objection to the designation of
10 any color for Yellow Cab of Milwaukee, Inc. has
11 absolutely nothing to do with anything but
12 competition. That Yellow Cab Coop admittedly
13 here today cannot compete with Mr. San Felippo
14 and his business. And in order to unbalance the
15 competition in their favor they're requesting
16 this committee and the city to allow it the
17 exclusive use of the name, Yellow, because
18 without it they cannot compete. I don't believe
19 that the city should be in the regulation
20 business so as to protect any entity, any
21 business, whether it be Yellow Cab or Yellow - -
22 the Yellow Cab of Milwaukee or Yellow Cab Coop.
23 Let the marketplace dictate. I do not believe
24 that the - - the enabling authority by the State
25 of Wisconsin in authorizing municipalities to

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1 regulate cabs and their drivers was ever intended
2 to regulate competition between two private
3 businesses, providing taxicab service to the
4 municipality. Thank you.

5 CHAIRMAN BOHL: Thank you, Mr.
6 Whitcomb. And let the record reflect that
7 Alderman Gordon has joined the committee.
8 Committee members, this is - - this item is now
9 in committee.

10 ALDERMAN WITKOWSKI: Mr. Chairman.

11 CHAIRMAN BOHL: Alderman Witkowski.

12 ALDERMAN WITKOWSKI: Question for City
13 Attorney Schrimpf. The - - With regard to the
14 passage or our passage or recommendation for
15 passage to the Common Council of item one today,
16 how does this affect recommendation to pass this
17 particular item?

18 MR. SCHRIMPF: Well, if you - - if you
19 recommend passage of this item, then in effect,
20 you've negated or nullified your recommendation
21 with respect to the first one.

22 CHAIRMAN BOHL: One thing that is true,
23 Alderman Witkowski, is that the first item, even
24 with the passage or recommendation before this
25 committee, has not gone before the entire Common

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1 Council, has not gone before the Mayor, it is
2 not, in effect, city ordinance.

3 MR. SCHRIMPF: Right.

4 CHAIRMAN BOHL: You know, I think that
5 there certainly is the possibility there before
6 us of what you're asking that - - that one could
7 construe that that may undo - -

8 MR. SCHRIMPF: Right.

9 CHAIRMAN BOHL: - - the good in the
10 first intent. That - - That would be an opinion
11 on that matter.

12 MR. SCHRIMPF: And, Mr. Chairman, I
13 cannot emphasize strongly enough the decision
14 whether to grant or deny this request on behalf
15 of Yellow Cab of Milwaukee, Inc. is totally
16 yours. You can - - You can grant it. You can
17 recommend a denial. You can hold it. You can do
18 anything you want with it.

19 ALDERMAN WITKOWSKI: Mr. Chairman.

20 CHAIRMAN BOHL: Go ahead, Alderman
21 Witkowski.

22 ALDERMAN WITKOWSKI: I would move that
23 we hold this item to the Call of the Chair.

24 CHAIRMAN BOHL: Okay. The motion
25 before us is to hold this item to the Call of the

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1 Chair. I'm going to just pass the gavel very
2 briefly and speak on this.

3 VICE-CHAIRMAN DAVIS: Alderman Bohl.

4 ALDERMAN BOHL: Thank you, Mr.

5 Chairman. Mr. Chairman, I - - I don't have a
6 problem, and I understand if it's the will of
7 this body here to hold this item until we have
8 clarification on the first item. I did support
9 item number one. I believe that it is under the
10 purview of the City of Milwaukee to control and
11 to regulate the industry with regard to issues
12 such as name. I will tell you that what has
13 given me quite a bit of pause in this entire
14 episode is the - - the case that went before
15 Circuit Court Judge Francis Wasielewski.

16 ALDERMAN WITKOWSKI: Wasielewski.

17 CHAIRMAN BOHL: Thank you, Alderman. I
18 don't have those Polish roots, do I? But - - And
19 what I would say is that - - that when I look at
20 this issue, for me it is one where I think that
21 the city has the right and purview to regulate.
22 However, given the opinion that I read and I
23 honestly, I think, have a difference of opinion
24 with Mr. Schrimpf over what would be in - - in
25 probably page ten of the transcripts in which the

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1 - - the judge says that all that being said, the
2 plaintiff still retains the right to the yellow
3 trade dress for its taxis here. He goes on to
4 talk about how yellow is a common descriptive of
5 cab, the same way the term lite is with beer. I
6 don't think that it would be otherwise if someone
7 were to say diet for cola. My view in reading
8 this is that this is a generic term. I know that
9 we, as - - as aldermen, are asked to do two
10 things when we are sworn into this office, and
11 one is to uphold the Constitution of the State of
12 Wisconsin. One is to uphold the constitution of
13 the United States of America. And I don't, you
14 know, I - - I realize that we have policy-making
15 authority. With that said, you know, know that
16 we have the legal right to try to go above and
17 beyond what the courts have stipulated as such
18 and in response to your request earlier. My
19 reading of this is at this request, you know, is
20 one where it is very generic in nature. The - -
21 The Yellow Cab name is generic in nature, and
22 that is what I believe the judge has opined. And
23 as such I think that even though we have the
24 authority to - - to prevent confusion, I - -I
25 think that that is for a legal trade name that is

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1 registered and not necessarily for a generic
2 trade name. We can't prohibit one company from
3 using the name taxi because the other one has the
4 name taxi as well, too. And as such I honestly
5 think that despite my deep concerns that
6 everything that's being said here by Yellow Cab
7 that - - that this is an effort, you know, say
8 that what you will, to garner a greater share of
9 the - - of the market, and that it would lead to
10 confusion, I believe that - - that there's truth
11 to both of those things. I, however, think that
12 reading the - - the judge's opinion that the
13 request for the color purple is one that - - that
14 can be
15 - - be granted, my personal opinion from reading
16 this matter. Say what you will about Mr. San
17 Felippo, I think the people can say that you are
18 a very astute businessman. Some may say that - -
19 that you're very crafty. You can take both sides
20 of the coin. I think that that's taken with a
21 grain of salt. However, that being said, I think
22 that - - that this is a legal request, that the
23 courts have opined that - - that Yellow Cab of
24 - - of Milwaukee, Inc. is a viable trade name,
25 and as such, I think that this request is one

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1 that is legal and can be granted. Now that is
2 where I'm going to go here today. I will bow to
3 the wishes of members of this committee, because
4 we each have our different and own opinions to
5 that, and I know there's a motion on the floor,
6 and I think we - - we can get to that now at this
7 point.

8 ALDERMAN GORDON: Mr. Chairman.

9 VICE-CHAIRMAN DAVIS: Alderman Gordon.

10 ALDERMAN GORDON: Thank you. I wish to
11 be added to the affirmance vote on file number
12 030792, and I concur with Alderman Witkowski's
13 motion to hold to the Call of the Chair.

14 VICE-CHAIRMAN DAVIS: On item number
15 one, Alderman Gordon wishes to be added to the
16 affirmative. Are there any objection? So
17 ordered.

18 On item number two, the motion on the
19 floor is by Alderman Witkowski from the 13th.
20 Are there any objections? Hearing no objections,
21 so ordered.

22 And that motion is to hold the item to
23 the Call of the Chair.

24 CHAIRMAN BOHL: Thank you, Alderman.

25 We thank you all for - - who have come in here

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1 and it's possible this is over. I'm going to
2 guess that it is not. I just want to make one
3 clarification on the - - the first item, that the
4 motion by Alderman Davis was for passage of the
5 substitute. No - - Hearing no objections to
6 that, so ordered. So, Mr. Whitcomb, we'll - -
7 we'll live another day on this.

8 MR. WHITCOMB: Correct, Mr. Chairman.
9 Thank you. And that goes before the Council two
10 weeks from today?

11 CHAIRMAN BOHL: That is correct, and
12 that is on 11/25/03.

13 MR. WHITCOMB: And I would assume that
14 thereafter, should the Chair so desire, the
15 request for the color will be brought before the
16 committee once again.

17 CHAIRMAN BOHL: That - - That is
18 correct, and I think that I could see no reason
19 why any delay beyond next cycle is - - is
20 necessary. So.

21 MR. WHITCOMB: Thank you.
22 * * * * *

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1 STATE OF WISCONSIN)
2 MILWAUKEE COUNTY)

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5 I, JEAN M. BARINA, of Milwaukee Reporters
6 Associated, Inc., do certify that the foregoing
7 transcript was reduced to writing under my direction
8 and that it is a true and accurate transcription of
9 the Utilities and Licenses Committee Hearing held on
10 November 11, 2003.

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JEAN M. BARINA - COURT REPORTER

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Dated this day of December, 2003.

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