

CITY OF MILWAUKEE

Form CA-43

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June 28, 2005

Honorable Common Council
City Hall, Room 205

Re: Common Council File No. 050292
Ordinance Prohibiting Public Passenger Vehicle Driver's Licensees from Using Translators in Taking Tests to Determine Eligibility for a Public Passenger Vehicle Driver's License, and Requiring the City Clerk to Test for Language Proficiency, and Requiring Public Passenger Vehicle Drivers Present a Clean Well-Groomed Appearance and Specifying Certain Types of Clothing and Prohibiting Other Types of Clothing from Being Worn While Functioning as a Taxicab Driver

Dear Council Members:

This file is returned to you for the following reasons.

Wisconsin Stat. § 349.24 provides:

349.24 Authority to license taxicab operators and taxicabs. (1) The council of any city and every village or town board may:

- (a) Regulate and license chauffeurs and operators of taxicabs used for hire;
- (b) Regulate and license the taxicab business by licensing each taxicab used for hire;
- (c) Prohibit any person from operating any motor vehicle for taxicab purposes upon the highways of the city, village or town unless the person is licensed as a chauffeur and operator and unless the taxicab business is licensed by the licensing of each taxicab;
- (d) Revoke any license mentioned in this section when in its judgment the public safety so requires.

(2) Any person licensed by any city, village or town as a chauffeur and operator shall not be required to procure either a chauffeur's and operator's

license or a taxicab license in any other municipality for the purpose of carrying taxicab passengers for hire from one municipality to another, but this exception does not permit the chauffeur or operator to operate a taxicab wholly within the limits of any municipality in which the chauffeur or operator is not licensed.

(3) Any person licensed under this section is required to comply with the licensing requirements of ch. 343.

Using that authority, the City of Kenosha attempted to impose grooming and clothing standards upon taxicab drivers in its jurisdiction. The Wisconsin Supreme Court struck down that effort as being violative of the requirement that there be a substantial relationship between the efforts at legislation, and the intended measure enacted by a common council. In rejecting a very similar piece of legislation in the City of Kenosha, the Wisconsin Supreme Court stated:

The asserted governmental interest in creating the Kenosha ordinance is to further the “cleaning up of the image of the city.” While the city of Kenosha is to be commended for its desire to improve the image, if needed, of the areas and people within its governmental and geographic limits, the code was adopted only on the basis of the subjective complaints of members of the police department and its officials. There were no studies conducted which showed the cab drivers were responsible for any tarnished image of the city. No data were presented indicating that visitors to the city felt they would enjoy their time in Kenosha more if cab drivers wore uniforms or were differently dressed. **Without extrinsic evidence showing a negative affect of the cab driver’s appearance on the visitor’s opinions of the quality of life in Kenosha the code lacks substantial justification for regulating driver appearance.**

(Emphasis added).

Peppies Courtesy Cab Company v. City of Kenosha, 165 Wis. 2d 397, 404, 475 N.W.2d 156, 159 (1991).

We have checked the minutes and with the personnel of the TITF and have discovered evidence as that envisioned in *Peppies Courtesy Cab, supra.*, was not introduced.

Because of *Peppies Courtesy Cab, supra.*, we conclude that the grooming standards contained in this file are not sufficiently related to operation of taxicab as to fit the exception of *Peppies Courtesy Cab.*

We now turn to the English-speaking requirements for cab drivers.

We are familiar with the anecdotal evidence provided to the TITF this requirement and have discovered that the licensing office incurred cases where cab drivers claimed an inability to speak English during the application process. However, no evidence was advanced regarding the degree to which visitors to the City of Milwaukee or users of the taxicab system have been delivered to the wrong addresses, or have been completely unable to communicate with their drivers.

We remind you that as a licensing agency, the City of Milwaukee is covered by the Fair Employment Practice provisions of both Title VII of the 1964 Civil Rights Act, 42 USC § 2000e *et seq.*, as well as the Wisconsin Fair Employment Act, Wis. Stat. § 111.31, *et seq.*

We have found one case where an English-only speaking requirement was held to be valid. The court in *Atonio v. Wards Cove Packing Company* (1983, WD Washington) 34 CCH EPD. ¶ 34437, vacated on other grounds (CA 9 Washington) 827 F.2d 439, 44 CCH EPD. ¶37367, cert denied (U.S.) 99 L.Ed.2d 503, 108 S.Ct. 1293, 46 CCH EPD. ¶ 37879, held that the English-speaking requirement was permissible under Title VII of the 1964 Civil Rights Act (42 USC § 2000e, *et seq.*). The court noted that although the requirement on its face had a disparate impact on minority workers, the court also found that the defendant employer had met its burden of proof in showing a business necessity for it. Errors due to lack of communication between (in this case cannery workers), could result in botulism contamination while fishermen unable to readily communicate with each other could be in great danger on an ocean-going boat in stormy weather.

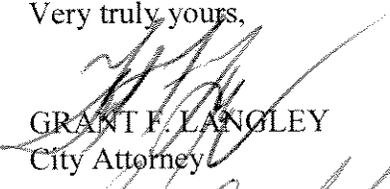
A business necessity is a term of art in fair employment practice law. It is more than an inconvenience or a frustration. It is an actual inability to conduct a business absent what is arguably a discriminatory practice. In this case, we have not seen the evidence that supports the argument that cab service cannot be effectively delivered absent the rather severe requirement of testing for English-language proficiency. We also caution that any test the City Clerk would devise under this scheme would have to be validated under guidelines issued by the United States Equal Employment Opportunity Commission; a very expensive and time-consuming process.

We believe that such evidence and validation would be necessary in order to justify the English-speaking requirements contained in this ordinance. We have reviewed the minutes of the TITF, and do not, in that review, see the evidence necessary to establish a business necessity defense to this proposal.

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For the foregoing reasons we conclude that the record is insufficient to justify the requirements imposed in File No. 050292.

Very truly yours,



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