



Office of the City Clerk
License Division

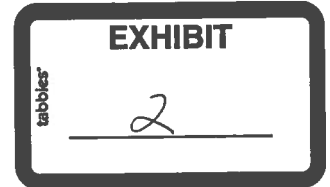
Ronald D. Leonhardt
City Clerk

Rebecca N. Grill
License Division Manager

April 13, 2009

The Honorable, The Common Council
City Hall, Room 205

Re: Proposed Substitute A related to CCFN 070478.



Dear Council Members:

The License Division respectfully requests that the attached proposed substitute ordinance be referred to the appropriate licensing committee for consideration.

By correspondence dated August 13, 2007, the City Attorney responded to certain questions posed by our office related to operating a public passenger vehicle for hire upon the streets of the City.

In relevant portion, the City Attorney opined that (a) a public passenger vehicle owner or lessee not holding a permit issued by the City is not authorized to operate for hire within the limits of the City if the fare they are carrying both originated within the City and ends within the City; and (b) if the ride originated within the City, and any portion of the ride stops in the City of Milwaukee, the individual must have a permit issued by the City.

Currently, the provisions of ss. 100-50-1-a and 100-54-1-a of the code, as enforced, provide that a person is operating a public passenger vehicle for hire upon the streets of the City and is required to hold a public passenger vehicle permit and license whenever the person is transporting a passenger for hire on a trip where the point of origin of the trip is located within the limits of the City.

This ordinance, which is based upon the City Attorney Opinion dated August 13, 2007, and is a divergence from the current enforcement of the provisions, establishes that a person is operating a public passenger vehicle for hire upon the streets of the City and is required to hold a public passenger vehicle permit and license whenever the person is transporting a passenger for hire on either:

1. A trip where both the point of origin and point of destination of the trip are located within the limits of the City, or
2. A trip where both the point of origin and point of any stop made on the trip where a passenger embarks or disembarks the public passenger vehicle are located within the limits of the City.

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Sincerely,

A handwritten signature in black ink, appearing to read "Richard G. Pfaff". The signature is written in a cursive style with a large, stylized initial "R".

Richard G. Pfaff
Assistant Manager License Division

Attachments (2):
Proposed Substitute A
City Attorney Opinion

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
LINDA ULISS BURKE
VINCENT D. MOSCHELLA
Deputy City Attorneys



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THOMAS D. MILLER
Assistant City Attorneys

August 13, 2007

Ronald D. Leonhardt, City Clerk
City Hall, Room 205

Rebecca Barron
Manager, License Division
City Hall, Room 105

Re: Questions relative to when and under what circumstances a public passenger vehicle not holding a permit issued by the City of Milwaukee is authorized to operate for hire within the limits of the City of Milwaukee

Dear Mr. Leonhardt and Ms. Barron:

In your letter of September 22, 2006, you propound the following questions:

1. Do any provisions of municipal or Milwaukee county code or state law provide in substance that a public passenger vehicle owner or lessee not holding a permit issued by the City of Milwaukee is authorized to operate for hire within the limits of the City?
2. Does the answer to Question 1 change if the public passenger vehicle owner or lessee holds a valid permit issued by another municipality?
3. Do the answers to Question 1 or 2 change if the public passenger vehicle owner or lessee operates for hire within the limits of the City for the purposes of transporting passengers to or from General Mitchell International Airport?

OFFICE OF THE CITY ATTORNEY

Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551 • Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550

4. What revisions to the code are recommended by your office relating to addressing the challenges identified by Assistant City Attorney David Stanos [sic] to municipal prosecution of violations of s. 100-50-1-a of the code for cases where vehicle owners or lessees were not the vehicle operators at the times the violations occurred?

The statutory authority for municipalities to regulate and license taxicabs and drivers of taxicabs derives from Wis. Stat. § 349.24 providing as follows:

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;

(2) An 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.

That section was interpreted in the matter of *Courtesy Cab Co. v. Johnson*, 10 Wis. 2d 426, 103 N.W.2d 17 (1960). In that case certain cabs that operated from Mitchell Field, which also happened to be within the City of Milwaukee, were not licensed by the City. In relevant portion the Supreme Court ruled that a cab from any jurisdiction could pick up a fare at General Mitchell Field, but, if that cab was

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Rebecca Barron
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also delivering the fare within the confines of the City of Milwaukee the cab would have to be licensed within the City of Milwaukee because the ride both originated and terminated within the City of Milwaukee. *Courtesy Cab Co. v. Johnson*, 10 Wis. 2d 426, 436, 103 N.W.2d 17, 23 (1960).

Eventually the County of Milwaukee also required cabs picking up a fare at the airport to have a permit to do so.

As noted by the Supreme Court in *County of Milwaukee v. Williams*, 2007 WI 69, 732 N.W.2d 770.

We also agree with the court of appeals that the purpose of section 349.24 is to allow taxis and drivers to convey passengers through cities, towns, and villages without having to obtain a license in each one. 295 Wis. 2d 389 ¶ 21 720 N.W.2d 177. In contrast, the permit requirement of ordinance 4.05(3)(b)(3) is to promote efficient and safe ground transportation at the Airport. Regulations promoting this goal are within the County's purview under section 114.14(1) and *Town of Lake*, 259 Wis. at 232, 48 N.W.2d 1. Thus we determine that section 349.24 does not conflict with ordinance 4.05.

The ability of the City of Milwaukee to regulate taxicabs and other small vehicles providing transportation for hire is further reinforced by Chapter 194 of the statutes, and specifically § 194.01(1) providing "'Common motor carrier' means any person who holds himself or herself out to the public as willing to undertake for hire to transport passengers by motor vehicle between fixed end points or over a regular route upon the public highways or property over regular or irregular routes upon the public highways. The transportation of such passengers in a taxicab service or in a commuter car pool or van pool vehicles with passenger-carrying capacity of less than 16 persons or in a school bus under s. 120.13(27) shall not be construed as being that of a common motor carrier."

Section 100-50-1-a of the Milwaukee Code of Ordinances provides:

1. PERMIT REQUIRED. a. No vehicle owner or lessee shall operate his or her vehicle, or allow his or her vehicle to be operated, as a public passenger vehicle for

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hire upon the streets of the city without the vehicle owner or lessee first obtaining for the vehicle a permit and current inspection sticker as provided in this section.

We are now in a position to be able to answer your questions. As to question 1:

1. Do any provisions of municipal or Milwaukee county code or state law provide in substance that a public passenger vehicle owner or lessee not holding a permit issued by the City of Milwaukee is authorized to operate for hire within the limits of the City?

— Yes, and a public passenger vehicle owner or lessee not holding a permit issued by the City of Milwaukee is not authorized to operate for hire within the limits of the City if the fare they are carrying both originated within the City and ends within the City.

Your second question states:

2. Does the answer to Question 1 change if the public passenger vehicle owner or lessee holds a valid permit issued by another municipality?

— The individual need not hold a permit issued by another municipality, so long as no portion of the ride commences or ends within the City of Milwaukee, and the fare is merely passing through the City.

As to the third question:

3. Do the answers to Question 1 or 2 change if the public passenger vehicle owner or lessee operates for hire within the limits of the City for the purposes of transporting passengers to or from General Mitchell International Airport?

The answer to question number 3 is this: If the ride originated within the City of Milwaukee, and any portion of the ride stops in the City of Milwaukee, the individual must have a permit issued by the City of Milwaukee.

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As to your fourth question:


4. What revisions to the code are recommended by your office relating to addressing the challenges identified by Assistant City Attorney David Stanos [sic] to municipal prosecution of violations of s. 100-50-1-a of the code for cases where vehicle owners or lessees were not the vehicle operators at the times the violations occurred?

We are given to understand that as drafted the current ordinance is difficult to prove because an owner or driver will claim that the fare was picked up in a city other than Milwaukee, and thus claim the exception as laid out in *Courtesy Cab v. Johnson, supra*. This is not a problem with the ordinance as written, it is a problem with proof. We suggest that dispatch records, or a statement by the fare as to where the fare boarded the cab may be in order. We understand that in Municipal Court it may be necessary to have the fare available for testimony, and that could be difficult if the fare came from a city other than Milwaukee and was picked up at the Mitchell Field. Perhaps records could be obtained from the hotel that the fare stayed in showing when they arrived and where they came from. However we do not believe that any changes in the ordinance are necessary, the ordinance is clear as written.

Very truly yours,



GRANT F. MANGLEY
City Attorney



BRUCE D. SCHRIMPE
Assistant City Attorney

BDS:wt:
1055-2006-2661

..Number

070478

..Version

PROPOSED SUBSTITUTE A

..Reference

..Sponsor

ALD. WITKOWSKI

..Title

A substitute ordinance clarifying regulations relating to restricting the operation of public passenger vehicles for hire.

..Sections

100-3-6.6 cr

100-50-1-c rn

100-50-1-c cr

100-54-1-c cr

..Analysis

Currently, the code provides, as enforced, that a person is operating a public passenger vehicle for hire upon the streets of the city and is required to hold a public passenger vehicle permit and driver's license whenever the person is transporting a passenger for hire on a trip where the point of origin of the trip is located within the limits of the city. This ordinance establishes the definition of "for hire," and clarifies that a person is only required to hold a public passenger vehicle permit and driver's license if the person is transporting a passenger for hire on either one of the following types of trips:

1. A trip where both the point of origin and point of destination of the trip are located within the limits of the city.
2. A trip where both the point of origin and point of any stop made on the trip where a passenger embarks or disembarks the public passenger vehicle are located within the limits of the city.

..Body

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 100-3-6.6 of the code is created to read:

100-3. Definitions.

6.6. "FOR HIRE" means for remuneration, gratuity, or compensation of any kind, paid or promised, either directly or indirectly.

Part 2. Section 100-50-1-c of the code is renumbered 100-50-1-d.

Part 3. Section 100-50-1-c of the code is created to read:

100-50. Public Passenger Vehicle Permits.

1. PERMIT REQUIRED.

c. A person is operating a public passenger vehicle for hire upon the streets of the city and is required to hold a permit and current inspection sticker as provided in this section whenever the person is transporting a passenger for hire on either one of the following types of trips:

c-1. A trip where both the point of origin and point of destination of the trip are located within the limits of the city.

c-2. A trip where both the point of origin and point of any stop made on the trip where a passenger embarks or disembarks the public passenger vehicle are located within the limits of the city.

Part 2. Section 100-54-1-c of the code is created to read:

100-54. Driver's License.

1. LICENSE REQUIRED.

c. A person is operating a public passenger vehicle for hire upon the streets of the city and is required to hold a valid license issued under this section whenever the person is transporting a passenger for hire on either one of the following types of trips:

c-1. A trip where both the point of origin and point of destination of the trip are located within the limits of the city.

c-2. A trip where both the point of origin and point of any stop made on the trip where a passenger embarks or disembarks the public passenger vehicle are located within the limits of the city.

..LRB

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

..Attorney

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

..Requestor

..Drafter

CCL040909-1

RGP

04/01/09

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RLW

04/16/2009

