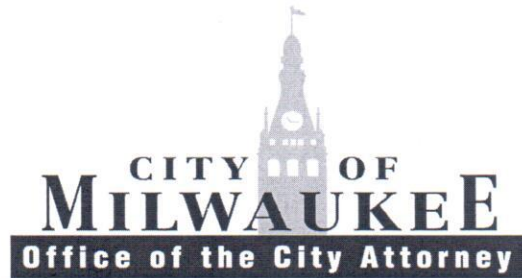


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July 23, 2014

Mr. Jim Owczarski, City Clerk  
200 East Wells Street, Rm. 205  
Milwaukee, WI 53202

Re: ADA Requirements for Taxicabs and Limousines

Dear Mr. Owczarski:

In a letter to this office dated May 2, 2014, you inquired whether the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, *et seq.* (1990), applies to taxis, limousines, and other public passenger vehicles permitted by the City, among other related questions. We address your inquiries in turn below.

**I. Does the ADA apply to City-permitted PPVs?**

Broadly speaking, yes, the ADA applies to City-permitted PPVs. However, this question requires analysis in parts, as presented below.

**A. Does the ADA require PPV owner/operators to provide wheelchair-accessible service?**

In short, no. Under Title III of the ADA, private entities are not required to purchase or drive wheelchair-accessible vehicles. *See* 42 U.S.C §§ 12181-12189; 49 CFR § 37.29(b) (1991) ("Providers of taxi service are not required to purchase or lease accessible automobiles."). Correspondingly, there is also no requirement that a taxicab or limousine company operate any particular number of wheelchair-accessible vehicles among their fleet. *Id.* The Department of Transportation's (DOT) preamble to its 1991 regulations reaffirms these rules:

[N]othing in the [ADA] requires an entity to acquire a [wheelchair-accessible] van; if a taxi company acquires only automobiles, it need never obtain an accessible vehicle. ... Given the absence of specific statutory



Mr. Jim Owczarski  
July 23, 2014

language requiring a mix of accessible vehicles in taxi fleets, we believe that to impose such a requirement ... would be inappropriate.

DOT, *Preamble – Transportation of Individuals with Disabilities* (Sept. 6, 1991) (also available at [http://www.fta.dot.gov/printer\\_friendly/12876\\_4058.html](http://www.fta.dot.gov/printer_friendly/12876_4058.html)). Therefore, the ADA does not require that taxis, limousines, and other public passenger vehicles *not* specifically permitted for disabled persons provide wheelchair-accessible service.<sup>1</sup>

#### **B. Do other aspects of the ADA apply to City-permitted PPVs?**

Yes. The ADA prohibits discrimination against individuals with disabilities by owner/operators. *See* 49 CFR §§ 37.5, 37.167(d), 37.29(c) (1991). *See also* Ord. § 100-59-15 (an owner or driver of a PPV shall not decline service to passengers who are disabled, in wheelchairs, or who have service animals). This means that owners/operators of PPVs ***cannot***:

- Deny service to individuals with disabilities who are able to use ordinarily-equipped taxi vehicles;
- Charge higher fares or fees to passengers with disabilities;
- Deny a ride to an individual using a service animal; or
- Refuse to assist with stowing wheelchairs or other mobility devices for the disabled individual.

*See* Easter Seals Project ACTION, Taxicab, Limousine & Paratransit Association, *The Americans with Disabilities Act and You: Frequently Asked Questions on Taxicab Service*, at 3 (Nov. 2005) (available at <http://www.tlpa.org/news/adanotice.pdf>); District of Columbia Taxicab Commission Disability Advisory Committee, *Comprehensive Report and Recommendations on Accessible Taxicab Service*, at 2-3 (Feb. 20, 2014), (available at <http://dctaxi.dc.gov>). Therefore, if a PPV owner/operator improperly discriminates, the disabled individual may bring civil claims against the owner/operator under both state and federal law, and may also file a complaint with the U.S. Department of Justice, Civil Rights Division, Disability Rights Section.

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<sup>1</sup> There are a variety of rationales for Congress' policy determination in this regard. First, there are high costs involved in acquiring and maintaining a vehicle that is wheelchair accessible (i.e., up front purchase costs are considerably higher than the cost of sedans, high costs to convert vans to become wheelchair-accessible, and fuel costs are typically higher). *See* Ray Mundy, et al., *Assessing the Full Cost of Implementing An Accessible Taxicab Program*, at 4-7 (2010) (available at <https://www.tlpa.org/costcalculator/report.pdf>). Second, there is a relatively low demand for these accessible vehicles (i.e., 1% of the overall U.S. population uses wheelchairs). *See id.* at 7. Related and last, the ADA provides other protections and more desirable transportation options for the disabled (i.e., ADA requires that public transit systems are wheelchair-accessible and also requires complimentary paratransit services). *See id.* at 11. *See also* 42 U.S.C. § 12143; 49 CFR § 37.3 (1991); Wis. Stat. § 85.205.



Mr. Jim Owczarski  
July 23, 2014

Moreover, taxicab and limousine companies must ensure that their “personnel are trained to proficiency . . . so that they [can] operate their vehicles . . . safely and properly [to] assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities.” *See* 49 CFR § 37.173 (1991).

Thus, although PPV owner/operators are not required to provide accessible vehicles in their fleet,<sup>2</sup> they cannot discriminate against disabled persons and personnel must be appropriately trained to assist and respectfully engage with disabled persons.

**C. Does the ADA apply to City-permitted “handicapped-elderly vehicles”?**

Notwithstanding that PPV owner/operators are not required under the ADA to provide accessible vehicles, since the City grants permits specifically for wheelchair-accessible PPVs (called “handicapped-elderly vehicles” per Ord. § 100-3-7), the ADA mandates that such vehicles meet design/accessibility specifications substantially equivalent to the corresponding ADA requirements. *See* Ord. § 100-51.5-4; 49 CFR §§ 38.21-38.39.

The vehicle specifications under City Ordinance § 100-51.5-4 are comparable to the ADA’s requirements. However, Milwaukee’s requirements are less specific than the ADA’s. First, under subsection (a) of Ordinance § 100-51.5-4, an accessible vehicle must have “[d]oorways wide enough to accommodate a wheelchair.” This specification is somewhat imprecise relative to the ADA’s comparable regulation, which requires that vehicles in excess of 22 feet in length must have “overhead clearance between the top of the door opening and the raised lift platform, or highest point of a ramp, [no less than] 68 inches.” 49 CFR § 38.25(c). If the vehicle is 22 feet in length or less, then “the overhead clearance between the top of the door opening and the raised lift platform, or highest point of a ramp, shall [no less than] 56 inches.” *Id.*

Next, subsections (b) and (c) of Ordinance § 100-51.5-4 respectively require that accessible vehicles provide “[r]amps or lifting devices for elevating wheelchairs from the curb or sidewalk into the vehicle” and “[a]dequate means of securing wheelchairs to the inside of the vehicle and safety belts for all handicapped persons.” Again, these

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<sup>2</sup> However, if a taxicab or limousine company “purchases or leases a new van with a seating capacity of fewer than eight persons including the driver,” the van must be wheelchair accessible and available to be used by individuals with disabilities, unless the company is providing “equivalent service.” *See* 49 CFR §§ 37.103(c), 37.105 (2011) (detailing the “equivalent service” standard under the ADA). It is also important to note that neither the Code of Federal Regulations nor the ADA define what classifies as a “van.”



Mr. Jim Owczarski  
July 23, 2014

specifications are less precise than the comparable ADA requirements. The ADA regulations on chair lifts are extensive and summarized below. *See* 49 CFR § 38.23.

- The lift must be able to hold “at least 600 pounds.”
- The lift must be equipped with “barriers to prevent any of the wheels of a wheelchair or mobility aid from falling off the platform.”
- The ADA provides detailed specifications regarding the chair lift controls.
- Certain platform dimensions are specified and the platform cannot have any gaps.
- The lift must have an adequate seat belt and shoulder harness to secure the passenger, along with a securing device to hold the wheelchair in place. Moreover, the “securement” aids should move no more than 2 inches in any direction during normal driving operations.

Finally, subsection (d) of Ordinance § 100-51.5-4 requires that accessible vehicles include “[a] door, in addition to those normally provided on the vehicle for ingress and egress from the vehicle, located at the rear of the vehicles to be used as a method of escape in case of an emergency.” The ADA has no precisely equivalent requirement, but instead requires that the “lift shall incorporate an emergency method of deploying.” 49 CFR § 38.23.

Given the technical disparities between the City and ADA requirements for accessible vehicles, the Council may decide to consider revisions to the City ordinances to bring them more closely in line with ADA regulations. However, in so far as “handicapped-elderly vehicles” in proper compliance with the City’s requirements under Ordinance § 100-51.5-4 also consequently meet all of the ADA requirements, such amendment may not be necessary. This is a matter for the Council’s best judgment.

## **II. How are the applicable ADA requirements enforced?**

You also posed a series of questions regarding enforcement. You inquired whether the City is obligated to enforce the applicable ADA provisions and if so, how. Lastly, you asked whether a documented failure to operate a PPV in an ADA-compliant manner would be an appropriate basis to refuse to renew, suspend, or revoke a PPV’s license.

The City is not obligated to develop a separate ADA enforcement scheme because the ADA’s requirements apply to owner/operators regardless of whether the City’s ordinances expressly incorporate the ADA’s requirements and regardless of the City’s enforcement mechanisms. As alluded to above, if an individual believes that a particular owner/operator has violated the ADA, he or she can bring a private civil lawsuit to seek damages and/or to compel compliance. Moreover, an individual may elect to file a complaint with the U.S. Department of Justice, Civil Rights Division, Disability Rights Section, which in turn may spur a DoJ investigation and potentially, an enforcement action against the violator.



Mr. Jim Owczarski  
July 23, 2014

In addition, the City Clerk's office currently receives taxicab and limousine complaints. A failure to meet ADA standards would be a valid basis for an individual to lodge a complaint with the City Clerk. By extension then, a documented failure to operate a PPV consistent with the ADA's requirements is a legitimate factor for the City's Licenses Committee to consider regarding PPV renewals, suspensions, or revocations. *See* Ord. § 100-50-16-b.

### **III. Any other applicable laws?**

There do not appear to be any other state or federal laws or regulations relevant to these wheelchair-accessible PPV issues.

### **IV. Options Employed By Other Municipalities.**

Despite the lack of any federal requirement that General PPVs provide accessible taxicabs or limousines, some municipalities nonetheless mandate that a certain percentage of a taxicab fleet is wheelchair-accessible and/or provide economic incentives for fleet owners to provide such vehicles. For example, Chicago requires that "[a]ny single licensee that owns or controls 20 or more licenses must place into service wheelchair accessible vehicles as taxicabs on 5% of its taxicab vehicle fleet." City of Chicago Municipal Code § 9-112-570. As an incentive and to partially offset the increased costs associated with meeting this requirement, the \$600 annual medallion fee is reduced by \$100 for wheelchair-accessible vehicles. City of Chicago Municipal Code § 9-112-150(a). *See also* District of Columbia Taxicab Commission Disability Advisory Committee, *Comprehensive Report and Recommendations on Accessible Taxicab Service* at 14 (2014).

Similar to Chicago, Montgomery County, Maryland and Washington, D.C. each respectively require 8% and 6%<sup>3</sup> of vehicles in a fleet of 20 or more to be wheelchair-accessible. *Id.* at i, 14, 15. Impressively, 100% of London's taxicab fleet of 22,500 is wheelchair-accessible. *Id.* at 16. *See also* *The London Taxi Experience* (2014) (available at [www.the-london-taxi.com/london\\_taxi\\_accessibility](http://www.the-london-taxi.com/london_taxi_accessibility)) ("Every licensed London taxi is wheelchair accessible and features a host of accessibility aids."). In addition, New York City's Taxi and Limousine Commission (TLC) recently announced that it intends to achieve a 50% percent accessible taxi fleet by 2020. Separately from the City's initiative, New York State currently provides state tax credits to taxicab companies that upgrade vehicles to make them wheelchair accessible, equal to as much as \$10,000 per vehicle. *See* District of Columbia Taxicab Commission Disability Advisory Committee, *supra*, at 15.

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<sup>3</sup> In Washington D.C., the 6% requirement must be met by December 31, 2014. The requirement will then bump up to a 12% requirement as of December 31, 2016 and to 20% as of December 31, 2018.

Mr. Jim Owczarski  
July 23, 2014

However, the taxicab industry generally strongly opposes such regulations on economic and fairness grounds because of the higher cost of accessible vehicles, higher gas expenses, higher insurance costs, higher maintenance costs, lower demand, and shorter on-average trips. *See id.* at 19, 20; Mundy, *supra*, at 6-9; Massachusetts Community Transportation Series, *Wheelchair-Accessible Taxicabs*, at 2 (Oct. 2013) (available at <http://www.mass.gov/eohhs/docs/hst/accessible-taxicabs.pdf>).

If you have any further questions or would like a copy of any of the materials referenced in this memo, please do not hesitate to contact our office.

Very truly yours,



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