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CITY OF MILWAUKEE

UTILITIES & LICENSES COMMITTEE

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In the Matter of:

A substitute ordinance prohiiting taxicab companies and cooperatives from adopting certain names

File No.030792

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COMMITTEE MEMBERS

ALD. JAMES BOHL - Chairman
ALD. JOE DAVIS, SR., - Vice Chairman
ALD. FREDERICK GORDON
ALD. JOSEPH A. DUDZIK
ALD. TERRY L. WITKOWSKI

LICENSING DIVISION by JAMES COPELAND
OFFICE OF THE CITY ATTORNEY by ATTORNEY BRUCE SCHRIMPF

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

P R O C E E D I N G S

CHAIRMAN BOHL: This is Council's Utilities & Licenses Committee for Tuesday, November 11th, 2003 at approximately 8:17 a.m. I'm Committee Chairman Alderman Jim Bohl, the 5th District. I am joined this morning by Vice-Chairman of the committee, Alderman Joe Davis of the 2nd District. To my far left at the table is Alderman Joe Dudzik of the 11th District. To my immediate left is Staff Assistant Linda Elmer. We're also joined this morning by the Manager of the Licensing Division, Jim Copeland. Alderman Gordon and Witkowski will be joining us shortly. We have three legislative matters on our agenda before we take up our regularly license schedule business at approximately nine a.m.

The first item on our agenda this morning is File No. 030792, a substitute ordinance prohibiting taxicab companies and cooperatives from adopting certain names.

Joining us this morning is Jim Owczarski from the Legislative Reference Bureau. Mr. Ozarski.

MR. OWCZARSKI: Thank you, Mr. Chairman. This ordinance was drafted at the

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request of the city attorney's office and it followed on some research that we did looking around the country and trying to see what sorts of restrictions are used by other communities. And the concern particularly was in order to prevent confusion among certain individuals, particularly those who might have developmental disabilities, educational disabilities and their ability to comprehend the differences between cabs and cooperatives and the different organizations. One of the key pieces the city uses to establish that kind of clarity, is its color system. And the concern of the city attorney's office was that if there wasn't that kind of clarity that there could be that kind of confusion. And so, we created under the general requirement section as part two of the ordinance you have in front of you, an explanatory paragraph, really, that states explicitly the Common Council's intent, why it creates this sort of requirement and why we would have a prohibition of this type.

CHAIRMAN BOHL: We are also joined right now by Assistant City Attorney Bruce Schrimpf. Mr. Schrimpf, we're on item number one

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here. Is there anything that you would like to - - to address?

MR. SCHRIMPF: No, I think Mr. Owczarski covered it very well.

CHAIRMAN BOHL: Are there questions, comments by committee? Is there anyone from the general public who wishes to come forward and speak on this matter at this point?

MR. WHITCOMB: Yes, Mr. Chairman.

CHAIRMAN BOHL: Somehow I knew that was going to happen, Mr. Whitcomb. Good morning to you.

MR. WHITCOMB: Good morning, sir. Good afternoon, Mr. Chairman, members of the committee. My name is Michael Whitcomb. I'm an attorney, and I'm one of the attorneys who represents Yellow Cab of Milwaukee, Inc., which is before you on two matters this morning.

From a legal perspective and not necessarily from a policy perspective, because it's the Council that adopts policy not lawyers either for the city or on this side of the table, I would just present issues to the committee which are legal in nature which, if not resolved favorably before the Common Council, will be

addressed by a Circuit Court.

First and foremost, I respectfully submit that the Common Council of the City of Milwaukee has not been authorized by the State of Wisconsin to interfere in the use of names of any business for any purpose in the City of Milwaukee or the State of Wisconsin, and specifically has not been authorized to engage of such activity, either as a policy matter or as a legal matter on behalf of the cab companies. The authority under which the city may enact an ordinance regulating cab companies is derived from State Statute Section 349.24, which is entitled, "Licensing Powers, Authority to License Taxicab Operators and Taxicabs." You will notice that that statutory section does not authorize the City of Milwaukee to license business or regulate taxicab businesses. The authority granted by the State of Wisconsin to the City of Milwaukee specifically, and by way of limitation, only authorizes city to license cab operators, the drivers, not the business, the drivers, and also, authorizes them to license and regulate the vehicles themselves. There is no authority granted by the State of Wisconsin to the City of

Milwaukee to regulate taxicab businesses, which is the field into which the city has interjected itself apparently upon the advice of the city attorney, a non-policy making entity in the City of Milwaukee, to regulate the use of a business name by a cab company.

It is to be noted that the purported superficial transparent justification for adopting this ordinance is because it is believed that the handicapped, the disadvantaged of the city would be confused if two cab companies had similar names. Well, we note to this committee that the name at issue is Yellow Cab, and there are cities throughout the country, most particularly Los Angeles, the larger cities, which have two, three, ten, some 15 different separate legal entities operating cab businesses with the name "Yellow" as part of the name. It has not created the confusion purportedly sought to be avoided by this particular ordinance. There is no evidentiary foundation to believe that the use of two companies of the name "Yellow" in their cab business will create any confusion, whatsoever.

First and foremost, and perhaps most

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particularly, the Circuit Court of Milwaukee County in a lawsuit between two cab companies, one, who uses - - who has the name, Yellow, one who seeks to - - or has the name for corporate purposes ruled quite explicitly that there is no legal confusion in the use of the name, Yellow. Thus, the basic premise of this particular ordinance that the use of the name, Yellow, will cause confusion has been ruled by the Circuit Court of Milwaukee County that that, indeed, will not exist. And the decision of the Circuit Court of Milwaukee County was founded upon factual evidence presented to the court by way of affidavits and experts regarding the use of the name, Yellow, in other cities throughout the country.

Finally, there - - this name, Yellow Cab of Milwaukee, Inc., has been authorized by the Department of Financial Institutions of the State of Wisconsin. It is a legal entity, is operating under that name, and there's nothing that this city can do by ordinance or otherwise to prohibit that use. The city is stepping beyond its bounds in attempting to regulate a name previously granted to a company by the State

of Wisconsin. Also, the use of the business, of the operation of the business, a cab business under the name of Yellow Cab, has been sanctioned by the Secretary of State of the State of Wisconsin. It's a bit bold, presumptuous, and perhaps municipally arrogant to think that the City of Milwaukee or the recommendation of the City Attorney could interfere with designations previously approved by the State of Wisconsin because of some parochial interest concerning a competitor of one particular cab company.

I respectfully submit to this - - this committee that this matter be held for a full cycle, these issues will be briefed before the committee. It would save a great deal more time and expense to my client and also, to the City of Milwaukee, to have the legal issues resolved at this level, and I submit favorably on behalf of the position advanced by Yellow Cab of Milwaukee, rather than spending the time and expense of litigating it through the Circuit Court. At the last meeting of this honorable body in the Common Council chambers a number of weeks ago, a representative of the City Attorney's office said he would have provided within two or three day -

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- two or three days, an opinion concerning this particular ordinance and the legality of the city adopting it. To date I have not received the opinion, nor has litigation counsel for the Yellow Cab of Milwaukee, Inc. I would like the opportunity to see that opinion. I would like the opportunity, on behalf of Yellow Cab Company, to present a rebuttal or response to this particular committee, so this council does not - - this committee does not recommend to this council that - - recommend to the Common Council that the city tread in waters it was never intended - - for which it was never intended. This is particularly a matter of statewide concern, and the limited authority that this city has over cab companies relates exclusively to the licensure of drivers and the vehicles themselves. There is no authority of the City of Milwaukee to regulate businesses, for it is well understood that the regulation of businesses in this state is a matter of statewide concern and is conducted by the Department of Financial Institutions as well as the Secretary of State.

So as not to put this matter to vote today and to allow my office and the lit - -

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litigation counsel for this particular company to present further legal arguments to this committee, we would ask that this particular matter be held for one cycle. Thank you.

CHAIRMAN BOHL: Thank you, Mr. Whitcomb. Mr. Schrimpf, anything you'd like to pursue?

MR. SCHRIMPF: Well, I - - I have two observations. First of all, it's my understanding that the name of the cab company is, in fact, required to be on every cab. Is that not correct, Mr. Copeland?

MR. COPELAND: That is correct.

MR. SCHRIMPF: I think counsel even agrees that the committee can regulate cabs. The second item is, I think Mr. Whitcomb and I may have a difference of opinion regarding the recent piece of litigation to which he alluded going on between the group called Yellow Cab Coop and Yellow Cab of Milwaukee, Inc. It's my understanding that that opinion dealt strictly with the question of whether or not under purposes of the Wisconsin Business Corporation Law, there was any kind of a protectable interest in Yellow Cab Coop using the name Yellow Cab as

opposed to Yellow Cab of Milwaukee, Inc. when the group, Yellow Cab Coop, had never bothered to get that name registered. And I think that really was the issue in that other piece of litigation, so. I don't think the court opinion dealt at all with the power of the City of Milwaukee to - - to regulate the - - the names under which cabs can operate. In fact, there's a paragraph in that opinion where the court in a back-handed kind of way seems to even suggest that - - that that, in fact, should be going on, so, that's really all I have.

CHAIRMAN BOHL: Other questions, comments by committee at this point? Mr. San Felippo?

MR. SAN FELIPPO: Good morning. My name is Michael San Felippo. I'm the President and Founder of Yellow Cab for Milwaukee, Inc. I would just like to make a statement that I've been in this cab industry since the early '70s, okay. When I started, I was very young. There was an organization called Triple AAA Veteran Cab, City Veteran Cab, Milwaukee Veteran Cab. We had multiple veteran taxicab companies that used generically the name, "Veteran." Okay. Then as

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time went on, I want to say in the early '80s, Yellow Cab had what was called, now this was under the Boynton era, Independent Yellow Cabs, because my uncle had gotten mad at the Veteran Association and moved his cab from City Veteran, which was blue, to Yellow Cab. And it was called Inde - - Independent Yellow. Okay. His car wasn't even yellow back in them days. Okay.

I find that this here is a slam personally to - - that I have asked for the color white in May. Then the city come back and said can't have the color. Never saying anything about a name, and then later on down the line, trying to, after we get the Municipal Court's decision, I thought personally that they were holding back so that they wouldn't enter into this lawsuit, that they wanted that court's opinion. Okay. Or a decision. Now we got the court's decision, we went this far, and now they want to put an ordinance ahead of my request. I would like to know what city attorney, because there's multiple of them, who did this drafting this. Also, I would like to know what - - what brought this on, because we never had any - - any legislation like this with the city until this

Yellow Cab issue.

MR. SCHRIMPF: Well, number one, the city attorney's office does not do drafting. That is always done by the Legislative Reference Bureau. So far as the - - the issue regarding how it came about, it's - - it's an option for the policy makers. If the policy makers want to adopt this as an ordinance, that's fine. If the policy makers don't want to adopt this as an ordinance, that's fine, too. It's policy decisions.

CHAIRMAN BOHL: And, Mr. San Felippo, there - - there are times when legislation is drafted at the request of aldermen. There are times when it would be forwarded by various departments as part of policy clarification and - - and whatnot. And that is the explicit purpose we have before us here.

MR. SAN FELIPPO: Well, I would - - Okay. I gave you all a copy of that Circuit decision from the judge. Alderman Bohl, you got a copy. Did you get a chance to read it?

CHAIRMAN BOHL: Absolutely.

MR. SAN FELIPPO: How did you interpret the judge's decision when he said the name,

"Yellow Cab" in that - - after reading that? How - - How would you interpret that?

CHAIRMAN BOHL: Mr. San Felippo, I think we - - we can get to that, because we have two issues before us, and two different issues are - - are how I'm going to weigh this. There is - - There is an ordinance that would prevent confusion. There is another ordinance - - or there is another request for a color.

MR. SAN FELIPPO: Um-hnh.

CHAIRMAN BOHL: And the latter of the two is a request that you've made for Yellow Cab, and I will get to that when we get to the second matter.

MR. SAN FELIPPO: Okay.

CHAIRMAN BOHL: I think that - - that varies differently. At this point I just want to see any other questions or comments by committee. Mr. Whitcomb, I apologize if - - if you have not gotten a copy of this city attorney's opinion. You should have been forwarded that. We - - We will make certain that you get one here promptly. I - - I'm going to guess that it's the will of this committee to move forward on this matter, notwithstanding that, unless there's a request to

hold.

ALDERMAN DUDZIK: I would make that request.

CHAIRMAN BOHL: To?

ALDERMAN DUDZIK: Hold to the Call of the Chair.

CHAIRMAN BOHL: Okay.

ALDERMAN DUDZIK: I think it's only fair that counsel for Mr. San Felippo be allowed to review this, even if it's held just until the end of the day. We've done that before.

CHAIRMAN BOHL: Well, I - - Alderman, I will tell you I would prefer to move forward on this matter. If you want to make a motion to hold and - - and that's the will of this committee, I mean, I will certainly be willing to abide by that.

MR. WHITCOMB: Would - -

CHAIRMAN BOHL: Go ahead, Mr. Whitcomb.

MR. WHITCOMB: Quick ques - - You know, I guess it's a reply and a question. It's a response to a comment by Assistant City Attorney Mr. Schrimpf in response to a question to the representative from the Legislative Reference Bureau. The ordinance, indeed - - The ordinance

regulating cabs and the drivers does state that every motor vehicle shall have clearly and permanently marked on the right and left sides of the vehicle, the word, "Milwaukee," as well as the permit number, the type of permit and the name of the owner of the vehicle or the trade name under which the vehicle is operated. Well, the - - the cabs that would be licensed by Yellow Cab of Milwaukee, Inc. is obligated to put on the side of its cab its trade name. How do we get around that, even if this ordinance were adopted.

CHAIRMAN BOHL: You wouldn't get around that.

MR. WHITCOMB: So by choice of the - - By the choice of a corporate name the City of Milwaukee is enacting an ordinance which is prohibiting a business from engaging in a lawful activity. Is that my understanding of the - - the - -

CHAIRMAN BOHL: I assume that that's your interpretation of it, Mr. Whitcomb.

MR. WHITCOMB: So by the - - the effect of the two ordinances, the one that's proposed and the one that stands - - or existing right now, 100-51-2, the City of Milwaukee is

effectively prohibiting Yellow Cab of Milwaukee, Inc. from using its name as authorized by the State of Wisconsin, should it desire to engage in the business of operating cabs in Milwaukee.

CHAIRMAN BOHL: We haven't - - We haven't taken up the second matter yet, Mr. Whitcomb, and I don't know necessarily where that's going to go, although - -

MR. WHITCOMB: Well, if - - if this - - If the new ordinance before this committee has no effect on their request for the use of the color white, I don't know - - Then my argument is moot. Or ineffective or not ingenuous.

CHAIRMAN BOHL: Well, for - - for the color purple I would assume. You're talking about this color white.

MR. WHITCOMB: Excuse me. For the color purple. I mean, if - - if that's granted, that's fine. But it's my understanding that this ordinance, as proposed, was requested, enacted and presented to this committee solely for the purpose of keeping Yellow Cab of Milwaukee, Inc. from getting any designation of a color for the use of its cabs by the City of Milwaukee for as long as it has the name "Yellow" within its name.

If that's not the motivation behind the legislation that appears before this committee today, I have no objection to it on behalf of my client.

CHAIRMAN BOHL: Okay. Thank you, Mr. Whitcomb. We are - - We are now in committee. There is a motion before us to hold this item to the Call of the Chair. I'm going to ask the - - the staff assistant to - - to do a roll call vote on that.

ASSISTANT ELMER: Alderman Davis?

ALDERMAN DAVIS: No.

ASSISTANT ELMER: Alderman Dudzik?

ALDERMAN DUDZIK: Aye.

ASSISTANT ELMER: Alderman Witkowski?

ALDERMAN WITKOWSKI: No.

ASSISTANT ELMER: Mr. Chair.

CHAIRMAN BOHL: Does it matter, I guess? No.

ASSISTANT ELMER: Motion fails three to one.

CHAIRMAN BOHL: Three - one vote. This matter is still in committee.

ALDERMAN DAVIS: Mr. Chair?

CHAIRMAN BOHL: Alderman Davis.

ALDERMAN DAVIS: Mr. Schrimpf, in the city attorney's opinion it mentions under Wisconsin Statute 349.24 subsection D, that this council may revoke any license mentioned in this section when in its judgment the public safety so requires. Does that give us the authority if we see that - - that the public that we serve may - - may be harmed by an action by two conflicting names, whereas the public safety may be at harm, it gives us the authority to move ahead with this particular ordinance, and I think that's the intent of the ordinance that was drafted, is because of the matter of public safety.

MR. SCHRIMPF: Could I see a copy of the opinion? Thank you.

CHAIRMAN BOHL: Mr. Schrimpf, would - - would this not fall more under the guise of - - of 100-2 of the Milwaukee Code of Ordinances?

MR. SCHRIMPF: Yeah, the - - the opinion letter references both. Three - - That's correct, Mr. Chairman. 349.24 sub C says, "Prohibit any person from operating any motor vehicle for taxicab purposes upon the highway of the city unless such person is licensed." We're not at a revocation at this point. I suppose if

a cab operator did things that put the public health, safety and welfare at risk, then 349.24 sub D of the statutes comes into play. Chapter 100 is that part of the - - of the code of ordinances already existing, and item number six says, "Eliminate conflict and confusion among users between different types of services." Very, very broad language. And what the opinion says is that, well, between the grant of authority from the state under 349.24 and what already exists in Chapter 100, which, of course, the council is fully empowered to amend from time to time.

Two of the purposes are to regulate for the health, safety, welfare, convenience of the community and to eliminate confusion between different types of services.

CHAIRMAN BOHL: And what you will state here, and correct me if I'm incorrect, is that under the guise of 100-2 this is just simply redefining and making it more clear, clarifying that language.

MR. SCHRIMPF: That is correct.

CHAIRMAN BOHL: Alderman Davis?

ALDERMAN DAVIS: Move approval.

CHAIRMAN BOHL: With that, Alderman Davis would move approval of this item. Are there any objections to that? Hearing none, seeing none, so ordered.

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STATE OF WISCONSIN)
MILWAUKEE COUNTY)

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

JEAN M. BARINA - COURT REPORTER

Dated this day of December, 2003.