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CITY OF MILWAUKEE

UTILITIES & LICENSES COMMITTEE

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In the Matter of:

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

File No. 030214

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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.

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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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get embroiled in a dispute over the use of particular name of a cab company.

Thereafter, in light of the city attorney's opinion my client requested the use of - - or requested that the committee provide it with a designation of the color purple. That had not been designated for any particular cab company existing in the ordinance. They withdrew the request for the use of the color white, and that has been pending before this committee since July, and we request again, reiterate that designation. If you recall, this is a new company. The purpose for this new company is to provide handicapped equipped vans for private hire. If you recall that the Federal regulations concerning business cab or livery services, cab services who provide such a service must have a third of its fleet so equipped. The existing company, Mr. San Felippo and his family, had hundreds of cabs and it will be cost prohibitive to provide this service by attempting to have one-third of 200 - 250 cabs handicapped equipped, van wheelchair equipped. Therefore, the new company was formed. The initial thought was to have 12 vehicles, a third of which would be brand

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

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

MR. SCHRIMPF: Mr. Chairman.

CHAIRMAN BOHL: Mr. Schrimpf.

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

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

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

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

CHAIRMAN BOHL: And, Mr. San Felippo?

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

MR. SCHRIMPF: I believe it was Independent.

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

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

MR. SAN FELIPPO: MITCA.

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

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

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

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

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

CHAIRMAN BOHL: And, gentlemen.

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

MR. COPELAND: Mr. Chairman, just - -

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

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

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CHAIRMAN BOHL: And I - -

MR. SAN FELIPPO: But aren't they supposed to say MITCA on the side?

CHAIRMAN BOHL: Mr. San Felippo. Mr. San Felippo. I don't know that white is before us. So I - - I think we're going to delve out of the white. White is not the issue. You're requesting purple, and so, I don't want to try to fight an argument that's already - - that's already not before us. Are there any individuals here who - - who wish to come forward and speak on this matter? I will just - - Come up forward, please. If you could identify your - - your name. And, please pull the microphone up.

MR. MCDONALD: My name is Shannon McDonald. I'm an attorney with Klaus law firm. I'm here on behalf of Yellow Cab, Cooperative. And what we would like to say today is that permitting Yellow Cab of Milwaukee, Inc. to use the color purple, would undermine the very purpose of the - - of the Milwaukee Code of Ordinances in that it would be creating a mass amount of confusion for the city - - City of Milwaukee taxicab consumer.

CHAIRMAN BOHL: Thank you. Questions,

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

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

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

MR. KHALSA: Justice.

MR. SCHRIMPF: Spell your name.

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

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

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

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is supposed to have a name outside - -

CHAIRMAN BOHL: Mr. Khalsa, and - -

MR. KHALSA: Yes. I'm just trying to - -

CHAIRMAN BOHL: I'm sure.

MR. KHALSA: - - give you some details here.

CHAIRMAN BOHL: Right. And I - -

MR. KHALSA: Give you a clear picture to the council here.

CHAIRMAN BOHL: And I understand. And I understand that. And I think that we've gotten into the - - some of the briefs.

MR. KHALSA: Okay. Let's cut that short then.

CHAIRMAN BOHL: What - - What we - - What we want to do is get to the request here.

MR. KHALSA: Okay. We are trying to do is if you give him any colors, he's going to try and take over a business, which is disabling us. If he wanted to use any vans, he would have used it in the last five years. He could afford it. The vans are not restricted to put it in the cab business. He could use American United, All-City Veteran, WVTC. He could have another company

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

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

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

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

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

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

MS. MILLS: General manager.

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

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

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

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

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

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

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

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

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

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

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

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

ALDERMAN WITKOWSKI: Mr. Chairman.

CHAIRMAN BOHL: Alderman Witkowski.

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

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

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

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

MR. SCHRIMPF: Right.

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

MR. SCHRIMPF: Right.

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

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

ALDERMAN WITKOWSKI: Mr. Chairman.

CHAIRMAN BOHL: Go ahead, Alderman Witkowski.

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

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

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

VICE-CHAIRMAN DAVIS: Alderman Bohl.

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

ALDERMAN WITKOWSKI: Wasielewski.

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

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

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

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

ALDERMAN GORDON: Mr. Chairman.

VICE-CHAIRMAN DAVIS: Alderman Gordon.

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

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

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

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

CHAIRMAN BOHL: Thank you, Alderman. We thank you all for - - who have come in here

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

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

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

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

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

MR. WHITCOMB: Thank you.

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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 Utilties and Licenses Committee Hearing held on November 11, 2003.

JEAN M. BARINA - COURT REPORTER

Dated this day of December, 2003.