

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE**

BAREFOOT ENTERTAINMENT, LLC,)	
d/b/a NASHVILLE PARTY BARGE, LLC)	
)	
Petitioner,)	
)	
v.)	Case No. _____
)	
METROPOLITAN GOVERNMENT OF)	
NASHVILLE AND DAVIDSON COUNTY,)	
by and through the Metropolitan)	
Transportation Licensing Commission,)	
)	
Respondent.)	

PETITION FOR WRIT OF CERTIORARI

Comes now, Petitioner Barefoot Entertainment LLC, d/b/a Nashville Party Barge, LLC's ("Nashville Party Barge"), by and through its counsel, and files this Verified Petition for Writ of Certiorari. As grounds for this Petition, Nashville Party Barge states as follows:

I. INTRODUCTION

Nashville Party Barge is one of the oldest providers of Sightseeing Tours and operators of ETVs in Nashville. This action arises out of the Metropolitan Transportation Licensing Commission's ("MTLC") arbitrary and capricious denial of Nashville Party Barge's application for four (4) permits.

MTLC regulates sightseeing vehicle tours ("Sightseeing Tours") and entertainment transportation vehicles ("ETVs") within Nashville, Davidson County, Tennessee. On Wednesday, April 6, 2022, Nashville Party Barge timely submitted its Entertainment Transportation Application (the "Application," a copy of which is attached hereto as

Exhibit A) in support of a Certificate of Public Convenience and Necessity (the “Certificate”) and request for the issuance of eight (8) vehicle permits. At that time, MTLC had not formally adopted rules governing the industry. Thereafter, on or about June 23, 2022, MTLC adopted Entertainment Transportation Company Rules (the “Rules,” of copy of which is attached hereto as **Exhibit B**).¹

On or about June 29, 2022, MTLC held a specially called meeting where it determined that there is a need for the issuance of Certificates for both Sightseeing Tours and ETVs in Davidson County. During the meeting, MTLC considered various applicants for permits. Subsequently, at the same meeting, MTLC approved Nashville Party Barge’s application and awarded it its Certificate; however, MTLC proceeded to deny Nashville Party Barge four (4) of its requested eight (8) vehicle permits.

On July 28, 2022 Nashville Party Barge submitted a Notice of Administrative Appeal of Denial of Requested Vehicle Permits and Request for Reconsideration to Mr. Billy Fields, Director of the MTLC (the “Notice of Appeal,” a copy of which is attached hereto as **Exhibit C**). However, MTLC did not entertain Nashville Party Barge’s appeal.

MTLC’s denial of Nashville Property Barge’s properly supported Application has damaged Nashville Party Barge, and will cause it significant financial hardship. MTLC’s denial was arbitrary and capricious for the reasons set forth herein, and Nashville Party Barge respectfully requests that this honorable Court reverse MTLC’s denial and award Nashville Party Barge all relief to which it is entitled.

¹ See https://www.nashville.gov/sites/default/files/2022-07/TLC_ET_Final_Rules_6-23-2022.pdf?ct=1657550789

II. THE PARTIES

1. Petitioner Nashville Party Barge is an active Tennessee limited liability company with a control number of 001045697 and a principal address of 400 Davidson Street, Building B, Nashville, Davidson County, Tennessee 37213-1436.

2. The Metropolitan Government of Nashville and Davidson County (“Metro”) is a political subdivision of the state of Tennessee. Metro is incorporated pursuant to the Metropolitan Charter Act, Tenn. Code Ann. §§ 7-1-101, *et seq.* Metro may be served with process on its Law Director, Wallace Dietz, at the Historic Metro Courthouse, 1 Public Square, Suite 108, Department of law, Nashville, Tennessee 37201.

3. MTLC is an administrative agency that oversees and administers the laws and ordinances as they pertain to the licensing and regulation of vehicles for hire and booting services within Davidson County, Tennessee.

III. JURISDICTION AND VENUE

4. This honorable Court has jurisdiction and authority pursuant to Tenn. Code Ann. § 27-8-104 and Tenn. Code Ann. § 27-9-101 *et seq.* to grant a Writ of Certiorari reversing and vacating the arbitrary and capricious actions of MTLC.

5. Venue is proper in this judicial district pursuant to Tenn. Code Ann. § 20-4-101(a) and Tenn. Code Ann. § 27-9-102.

6. Pursuant to Code Ann. § 27-9-102, this is Nashville Party Barge’s first application for a Writ of Certiorari and is filed within sixty (60) days from the entry of the applicable minutes.

IV. FACTS

7. Nashville Party Barge owns and operates eight (8) nautical themed vehicles that provide locals and tourists alike with a fun, safe, and clean way to experience Nashville and Middle Tennessee and all of the sites that it has to offer.

8. Nashville Party Barge's sole member, Susan R. Pizzitola ("Ms. Pizzitola"), has been in the entertainment transportation industry since 2015. In 2019, Ms. Pizzitola took over Nashville Party Barge; however, Nashville Party Barge has been in business since March 28, 2015.

9. Since being in business, Nashville Party Barge has provided a fun and unique way to experience "Music City" by providing rides to approximately 500,000 customers. More so, Nashville Party Barge has provided these tours and experiences **without any accidents or citations.**

10. All of Nashville Party Barge's vehicles are properly insured, maintained and routinely serviced to ensure the safety of its passengers, pedestrians and the citizens of Nashville. In addition, all of Nashville Party Barge's vehicles are driven and are not pulled or towed, allowing them to keep with the flow of traffic and adhere to all traffic rules.

11. Nashville Party Barge requires its drivers to undergo rigorous training whereby each driver receives forty (40) hours of training. Currently, fifty-percent (50%) of Nashville Party Barge's drivers have obtained their CDL class A/B license with the "P" endorsement, with the remaining drivers working to obtain the same.

12. Prior to submitting its Application, in an effort to accommodate the increasing demand for her customers, Ms. Pizzitola purchased three (3) vehicles (to bring her total fleet of vehicles to eight (8)) for the total sum of One Hundred Five Thousand and 00/100 Dollars (\$105,000). Ms. Pizzitola purchased those three (3) vehicles on the

following dates: December 8, 2021, March 16, 2022, and April 1, 2022. True and accurate copies of those Bills of Sale are attached hereto as **Collective Exhibit D**.

13. Nashville Party Barge has also expended approximately Sixty-Seven Thousand and 00/100 Dollars (\$67,000) in adding and/or upgrading the tops and sides of its vehicles and installing air conditioning units for its guests' safety and comfort.

14. In short, Nashville Party Barge is a full-time, seven (7) days a week, woman and veteran-owned business that is family managed. Nashville Party Barge employs approximately twenty-three (23) employees, including, but not limited to, Ms. Pizzitola's two (2) daughters and son-in-law. This is an established, professional business with an impeccable track record.

The Rules and the June 29, 2022 Specially Called Meeting

15. The Rules formally adopted on June 23, 2022, establish the minimum criteria that the MTLC is to consider when making the finding for the award for a Certificate. Those Rules are as follows:

- c) In making the finding for the award of a Certificate of Public Convenience and Necessity, the MTLC shall, at a minimum, take into consideration:
 - 1) The number of ETV already in operation.
 - 2) Adequacy of existing service to meet the public need.
 - 3) The applicant's experience in the operation of an ETC and its vehicles.
 - 4) The applicant's history of violations and/or citations of alcohol laws, noise violations, HUB Nashville complaints, and other non-compliant behavior.
 - 5) The ability of the applicant to comply with the laws and regulations, including the equipment and service proposed to be furnished.
 - 6) The applicant's financial responsibility and condition.
 - 7) Safety of the public in the operational area.
 - 8) The probable effect of increased service on local traffic conditions.
 - 9) Traffic flow.
 - 10) Compliance with existing noise ordinances.

16. On June 29, 2022, MTLC held a specially called meeting (the "June 29th Meeting") whereby it considered every applicant that submitted its application for a

Certificate and request for vehicle permits. In the June 29th Meeting, MTLC first considered vehicle permits for Sightseeing Tours, and then, for ETVs.

17. MTLC admitted in that specially called meeting that it was more favorable to the issuance of Sightseeing Tours permits as opposed to ETV permits. In addition, MTLC provided that the holder of an ETV permit could offer both ETV and Sightseeing Tours; however, a Sightseeing Tour permit holder was strictly limited to offering seated sightseeing tours with no alcoholic beverages being provided.

18. At the June 29th Meeting, MTLC awarded a total of fifty (50) Sightseeing Tours permits and thirty-nine (39) ETV permits.

19. Nashville Party Barge, as a provider of both sightseeing tours and entertainment transportation services that would require an ETV permit, appropriately requested eight (8) ETV permits for its fleet.

20. However, inexplicably and without grounds, MTLC denied Nashville Party Barge four (4) of its requested ETV permits.

21. Given that Nashville Party Barge routinely offers sightseeing tours to its customers, Ms. Pizzitola inquired if she could receive any permits strictly for Sightseeing Tours. However, she was emphatically told “no sightseeing.” Yet, MTLC permitted various other applicants to “pick and choose” or change which permits they sought at the June 29th Meeting in efforts to satisfy their fleet of vehicles.

22. At the time of the June 29 Meeting, it is unclear if the MTLC had either (i) an infinite number of ETV permits that it intended to approve and issue to deserving applicants, or, if at the time of the June 29 Meeting, (ii) the MTLC intended to cap the number of ETV permits that it intended to approve and issue at thirty-nine (39) ETV permits. If the MTLC had an infinite number of ETC permits to issue, then it acted

irrationally, arbitrarily and capriciously through its denial of Nashville Party Barge's application for four (4) permits. On the other hand, if the MTLC did indeed cap the ETV permits at thirty (39), then, on information and belief, the MTLC did not provide any notice to applicants of the cap on ETV permits and did not have any rational basis or objective criteria (such as a lottery, merit-based ranking system, or "first come first served" policy), to allocate its finite number of ETV permits. Rather, MTLC awarded permits to qualified applicants seemingly at random, granting some applicants all of the permits they requested and other applicants only certain of the permits they requested, granting permits to applicants who were heard before Nashville Party Barge, and granting permits to applicants who were heard after Nashville Party Barge.

23. Nashville Party Barge, while meeting all objective criteria, was not given proper notice of the cap and was not provided access to a proper application process. Rather, Nashville Party Barge was found to be a qualified applicant and was approved for certain permits, but denied for others, all without any rational basis or objective process.

24. MTLC's denial of Nashville Party Barge's application for four (4) permits was groundless, unfounded, an abuse of its discretion, arbitrary and capricious.

25. MTLC's denial was not supported by any material or substantial evidence.

26. MTLC's denial violated Nashville Party Barge's rights pursuant to the Due Process and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article XI, Section 8 of the Tennessee Constitution.

27. If MTLC's denial stands, Nashville Party Barge will be forced to cancel and refund numerous customers who have made reservations many months in advance. Cancelling tours would not only damage Nashville Party Barge's revenue, it would lead to

upset and angry customers, negative business reviews, and irreparable harm, tarnishing Nashville Party Barge's impeccable reputation and goodwill.

V. PRAYER FOR RELIEF

WHEREFORE, Petitioner Nashville Party Barge respectfully requests that this honorable Court:

1. Grant the Writ of Certiorari and Order the MTLC, pursuant to Tenn. Code Ann. § 27-9-109(a), to cause to be made, certified and forwarded to this honorable Court a complete transcript of the proceedings in the cause, containing all proof submitted before MTLC;
2. Order that the Clerk promptly send, by registered return-receipt mail, to Respondent notice of the filing of this Petition, pursuant to Tenn. Code Ann. § 27-9-109(b);
3. Reverse and vacate MTLC's arbitrary and capricious denial, and enter a final judgment reversing the MTLC's decision to deny Nashville Party Barge's Application for all eight (8) requested ETV permits and directing the MTLC to issue Nashville Party Barge all eight (8) requested vehicle permits;
4. That Nashville Party Barge be given leave to amend this Petition as additional facts are discovered; and
5. That this honorable Court award Nashville Party Barge such other and further relief, specific or general, to which it is entitled.

Respectfully submitted,

BELCHER SYKES & HARRINGTON, PLLC

By: /s/ John O. Belcher

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THIS IS THE FIRST APPLICATION FOR THE WRIT

VERIFICATION

STATE OF FLORIDA)
)
COUNTY OF Miami-Dade)

I, **SUSAN R. PIZZITOLA**, having been first duly sworn, make oath, that I have reviewed the foregoing Verified Petition and verify that the facts set forth above are true and correct to the best of my knowledge, information, and belief.



SUSAN R. PIZZITOLA

Sworn and subscribed to me this 28 day of August, 2022.



NOTARY PUBLIC

My Commission Expires: 03/11/2025



Ramon Vargas
Notary Public
State of Florida
Comm# HH103782
Expires 3/11/2025