



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: BL2022-1089, **Version:** 1

An Ordinance amending Chapter 6.77 and Chapter 7.24 of the Metropolitan Code pertaining to the operation and regulation of Entertainment Transportation Vehicles.

WHEREAS, on October 19, 2021 the Metro Council passed BL2021-911 to enact a comprehensive regulatory scheme for entertainment transportation vehicles for the protection, health, safety, and welfare of visitors and residents; and

WHEREAS, some portions of the legislation took effect on December 1, 2021, with the regulatory scheme for entertainment transportation vehicles to take effect in April 2022 and more comprehensive rules and regulations be developed and enacted in 2022; and

WHEREAS, some revisions to certain provisions in the legislation are desirable to be enacted earlier in the new framework.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Section 6.77.010 of the Metropolitan Code of Laws is hereby amended by deleting the definitions of "Enclosed vehicle" and "Passenger" and replacing them with the following definitions, and adding a definition for "Open container" and "Change in Control" as follows:

"Enclosed Vehicle" means any motor vehicle that is fully enclosed by metal, plexiglass, professionally installed operable vinyl windows, or glass on all sides and on the top/roof. Any vehicle not meeting this definition would constitute an "unenclosed vehicle." A vehicle is unenclosed if any portion of it lacks solid sides and a roof, including all appurtenances attached thereto, including, but not limited to, a pickup truck or a wagon or trailer pulled by a tractor, within which passengers are capable of standing and circulating while the vehicle is in motion. For purposes of this section, a vehicle "side" must be a full side enclosure of the vehicle and cannot consist of solely a guard rail or railing. It may contain windows capable of being opened, excluding the driver compartment if separate from the passenger area, but all windows shall be fully raised while the vehicle is in operation with customers aboard and any passenger is in possession of an open container. Enclosed vehicles shall maintain any required emergency access or exits but the emergency access or exits may not be used to avoid the safety goals intended by the enclosure.

"Passenger" means any person on an entertainment transportation vehicle other than the driver and staff.

"Open container" means any container containing alcoholic beverages or beer, the contents of which are immediately capable of being consumed or the seal of which has been broken.

"Change in Control" shall mean either:

- i. a change in ownership such that 50% or more of the direct or indirect voting or economic interests in such Permittee is transferred to a Transferee; or
- ii. a change in the power to direct or cause the direction of management and policy of the Permittee is transferred to a Transferee

- iii. For the purposes of this definition, "Permittee" means the holder of a certificate or permit issued pursuant to this Chapter and "Transferee" means a person, entity, or group of people or entities acting in concert.

Section 2. That Section 6.77.020 of the Metropolitan Code of Laws, Subsection C, is hereby amended by deleting the subsection in its entirety and replacing it with the following:

C. No certificate issued pursuant to this Chapter may be assigned, transferred, sold, or given from one person or entity to another without the express written approval of the MTLC upon the filing of an application for such a transfer. For the purposes of this Chapter, a transfer includes a Change in Control of the certificate holder.

Section 3. That Section 6.77.040 of the Metropolitan Code of Laws is hereby amended by deleting the Section in its entirety and replacing it with the following:

6.77.040 Application-Information and fees required.

- A. An application for a certificate of public convenience and necessity shall be filed with the MTLC for each classification of service to be provided. Forms will be provided by the MTLC and payment of a nonrefundable fee will be charged. The amount of the application fee shall be established by the MTLC based upon the cost of processing the application.
- B. The application shall require the following information:
 - 1. Name and address of applicant;
 - a. Sole-proprietor-Name and address of the owner.
 - b. Partnership-Names and addresses of all partners.
 - c. Corporation or association-Names and addresses of all the officers, directors, and members.
 - 2. Business name (d/b/a), business address and telephone number if different from above;
 - 3. A background check of each person;
 - 4. Names and addresses of two references as to the applicant's financial responsibility;
 - 5. Prior experience of applicant in transport of passengers;
 - 6. Number of vehicle permits requested, and copy of proof of ownership or other evidence of lawful control for each vehicle to be operated under the certificate;
 - 7. Procedures for training drivers;
 - 8. Rules and regulations governing driver appearance and conduct;
 - 9. Disclosure of prior state law or Metropolitan Code violations pertaining to noise from motor vehicles, lewd conduct as part of a commercial business, or alcoholic beverage open container laws;
 - 10. A copy of the driver's official motor vehicle report or equivalent form showing applicant's driving history for the past three years from all states within which the applicant has resided in the past three years.
 - 11. Any additional information the applicant desires to include to aid in the determination of whether the requested certificate should be issued; and

12. Such further information as the MTLC may require.

C. An applicant will be ineligible for consideration if:

1. Any of the owners, partners, officers, directors, or members are under twenty-one years of age and/or entertainment transportation vehicle business has no separate legal existence beyond a shareholder, owner, or partner who is under the age of 21 years of age;
2. Any of the owners, partners, officers, directors, or members has been convicted of, forfeited bond, pleaded guilty or nolo contendere to, or been released from incarceration for a felony, prostitution, assignation, obscenity, or any crime of a sexual nature in any jurisdiction within ten years immediately preceding the date of application; or has been convicted of, forfeited bond, or pleaded guilty or nolo contendere to multiple felonies.
3. Any of the owners, partners, officers, directors, or members has violated any portion of this chapter of the Metropolitan Code within five years immediately preceding the date of application.
4. Any portion of the application is incomplete or contains incorrect or untruthful information.

D. An applicant will be ineligible for consideration for a one year period if any applicant, owner, partner, officer, director, or member has been found by a court of competent jurisdiction in violation of state law or Metropolitan Code provisions three or more times within the past 365 days pertaining to noise from motor vehicles, lewd conduct as part of a commercial business, and/or alcoholic beverage open containers.

Section 4. That Subsection 6.77.050.E. of the Metropolitan Code of Laws is hereby amended by deleting it in its entirety and replacing it with the following:

E. The MTLC will set a fee to be charged for the issuance of each approved entertainment transportation vehicle permit associated with the certificate. There shall be a separate fee for the company/certificate holder and additional separate permit fees required on a per vehicle basis.

Section 5. That Section 6.77.060 of the Metropolitan Code of Laws is hereby amended by deleting Subsections A and C in their entirety and replacing them with the following:

A. All certificates issued under the provisions of this chapter shall expire on April 30 of the year following the date on which the certificate was issued. All certificates may be renewed by the MTLC director for each successive year between April 1 and 30 of each year, if the applicant meets all applicable standards for renewal as established by the MTLC. A renewal fee for each approved certificate and other licensing fees shall be charged at the annual renewal of the certificate.

C. If a licensed entertainment transportation vehicle company or individual fails to renew prior to the end of the renewal period, the license shall expire and the renewal applicant shall be treated as a new applicant.

Section 6. That Section 6.77.070 of the Metropolitan Code of Laws is hereby amended by deleting Subsection B in its entirety and replacing it with the following:

B. Insurance coverage as provided in subsection (A) of this section means:

1. Holders of certificates of public convenience and necessity shall maintain commercial general (public) liability insurance, inclusive of contractual liability, in an amount of not less than one million dollars written on an occurrence basis. This insurance shall be issued by an insurance company qualified to do business in the state and naming the metropolitan government as an additional insured.

2. Such holders shall also maintain commercial automobile liability insurance that shall afford protection to any third party sustaining injury or damage as a result of the negligent operation of any entertainment transportation or other motor vehicle affiliated with the company, with the minimum amount of insurance to be three million dollars per incident, known as combined single limit insurance coverage, and uninsured/underinsured motorist insurance coverage in an amount not less than twenty-five thousand dollars (bodily injury per person)/fifty thousand dollars (per accident)/fifteen thousand dollars (for property damage). These policies shall be issued by an insurance company qualified to do business in the state and naming the metropolitan government as an additional insured.
3. Any insurance policy issued in compliance with this article shall remain in place at least through the length of the licensing, and for any entertainment transportation vehicle insured thereunder Such policies shall expressly provide that they may not be canceled, except after thirty days written notice to the commission director.

Section 7. That Section 6.77.080 of the Metropolitan Code of Laws is hereby amended by deleting it in its entirety and replacing it with the following:

6.77.080 -- Request for additional vehicle permits.

An application for additional entertainment transportation vehicle permits under the certificate issued pursuant to this Article must be filed with the MTLC director. If approved, the established permit fee will be applied.

Section 8. That Section 6.77.090 of the Metropolitan Code of Laws is hereby amended by deleting Subsection A.4 in its entirety and replacing it with the following:

4. Made a misrepresentation or false statement when obtaining or renewing a certificate or additional permits, or transferring a certificate.

Section 9. That Section 6.77.110 of the Metropolitan Code of Laws is hereby amended by deleting the Section in its entirety and replacing it with the following:

6.77.110 Permit required-Violations and term.

A. No person shall drive or otherwise operate an entertainment transportation vehicle engaged in the transportation of passengers unless he or she has a driver's permit and a currently effective Tennessee commercial or other legal driver's license with a passenger (P) endorsement. To qualify for a permit, an applicant must comply with all of the requirements and stipulations of this chapter and any rules and regulations adopted by the MTLC.

B. A person commits a violation of this chapter if he or she operates an entertainment transportation vehicle in the Metro area without a driver's permit issued by the MTLC.

C. A business commits a violation of this chapter if it employs or otherwise allows a person to operate an entertainment transportation vehicle owned, controlled, or operated by the permittee unless the person has a driver's permit issued by the MTLC.

D. Each permit shall be valid for one year and shall be subject to renewal pursuant to the provisions set forth in this article.

Section 10. That Section 6.77.120 of the Metropolitan Code of Laws is hereby amended by deleting the Section in its entirety and replacing it with the following:

6.77.120 Application-Information and fees required.

A. An application for an entertainment transportation vehicle driver's permit shall be filed with the MTLC on

forms provided by the MTLC.

B. Such application shall be certified under oath and shall at a minimum contain the following information:

1. The name, residential address, telephone number and date of birth of the applicant. No applicant under eighteen years of age will be accepted.
2. The type(s) of vehicle(s) which the applicant will drive under the certificate.
3. The years of experience of the applicant in the transportation industry.
4. The educational background of the applicant.
5. A concise history of the applicant's employment.

C. The applicant shall provide copies of the following documents in order to submit his application:

1. A valid driver's license issued by one of the 50 states within the United States of America for the issuance or renewal of an entertainment transportation vehicle driver's permit corresponding with the type/classification of entertainment transportation vehicle to be operated (i.e., Commercial Driver License, For-Hire endorsement, etc.).
2. A Social Security card or birth certificate, or if a resident alien, a current work permit or other valid United States Immigration and Customs Enforcement document.
3. A copy of a currently effective Tennessee commercial or other legal driver's license with a passenger (P) endorsement.

D. Each application shall be accompanied by an official driver record obtained no longer than 30 days previous to the date of application. All applicants are required to meet the following standards:

1. No convictions in the last five years for any offenses involving bodily injury or death and no convictions in the last three years for any of the following offenses not involving injury or death:
 - a. Hit and run;
 - b. Driving under the influence of an alcoholic beverage or drug;
 - c. Reckless or careless driving.
2. For an initial permit, no more than three moving violations within the last three years and no more than two moving violations in the last year.
3. For a renewal permit, no more than four moving violations within the last three years and no more than two moving violations in the last year.

Section 11. That Section 6.77.150 of the Metropolitan Code of Laws is hereby amended by deleting Subsection A thereof and replacing it with the following:

- A. Upon approval of an application for an entertainment transportation vehicle driver's permit, the MTLC director shall issue a permit to the applicant, which shall bear the name, company affiliation and other information deemed necessary by the MTLC Director.

Section 12. That Section 6.77.190 of the Metropolitan Code of Laws is hereby amended by deleting Subsection A and replacing it with the following:

- A. Every driver shall have attended a hospitality program approved by the MTLC prior to receiving an entertainment transportation vehicle driver's permit, and shall attend an approved hospitality training

course or refresher course prior to applying for or renewal of an entertainment transportation vehicle driver's permit each year.

Section 13. That Section 6.77.200 of the Metropolitan Code of Laws is hereby amended by deleting Subsections C, D, and E and replacing them with the following:

C. If a driver is charged in any court with a misdemeanor involving moral turpitude, or with any felony, or with driving while intoxicated or under the influence of drugs, or with violations of this article, the MTLC director is hereby given authority to suspend the driver's permit pending final disposition of the charges against them, and to revoke such permit upon conviction thereof.

D. The MTLC director may suspend or revoke an entertainment transportation vehicle driver's permit if the director determines that the permittee has engaged in conduct detrimental to the public safety.

E. The MTLC director may not suspend or revoke any permit unless the driver has received notice of the charges against them and has had the opportunity to present evidence on their behalf to the MTLC.

Section 14. That Section 6.77.220 of the Metropolitan Code of Laws is hereby amended by deleting the Section in its entirety and replacing it with the following:

6.77.220 Conduct of drivers.

A driver shall at all times:

1. Act in a reasonable, prudent, safe, and courteous manner;
2. Not permit a person not possessing an entertainment transportation vehicle driver's permit to operate the entertainment transportation vehicle;
3. Not permit more passengers to be carried in an entertainment transportation vehicle than for which there is proper seating, and at no time shall the driver allow any passenger to ride in any area of the entertainment transportation vehicle not specifically designed or designated as a seat;
4. Not permit any passenger sixteen years of age or younger to ride in an entertainment transportation vehicle unaccompanied by an adult;
5. Not operate an entertainment transportation vehicle while under the influence of intoxicating beverages or drugs;
6. Not operate an entertainment transportation vehicle while possessing a lighted cigarette, cigar, or pipe at any time;
7. Observe and obey all state and local noise and traffic laws and regulations.
8. Not permit a passenger to stand or ride on any part of the entertainment transportation vehicle other than the designated seating area while the entertainment transportation vehicle is in motion and to advise the passengers that they must be seated except when loading or unloading.

Section 15. That Section 6.77.230 of the Metropolitan Code of Laws is hereby amended by deleting the Section in its entirety and replacing it with the following:

6.77.230 Driver appearance.

A. Every entertainment transportation vehicle driver, while on duty, shall be dressed in compliance with those rules adopted by the MTLC.

B. All drivers must wear uniform attire with the entertainment transportation vehicle company's name and

logo.

C. The MTLC shall have the authority to adopt rules specifically governing the type(s) of permitted and prohibited attire.

Section 16. That Section 6.77.240 of the Metropolitan Code of Laws is hereby amended by deleting Subsection B in its entirety and replacing it with the following:

B. A certificate holder or entertainment transportation vehicle driver commits a violation of this chapter if he or she provides or stocks any beer, ale, wine, or other alcoholic beverage in the entertainment transportation vehicle, except to the extent otherwise permitted by the Beer Board.

Section 17. That Section 6.77.270 of the Metropolitan Code of Laws is hereby amended by deleting the Section in its entirety and replacing it with the following:

6.77.270 Vehicle permit required.

Each entertainment transportation vehicle must have a permit issued by the MTLC. The permit will identify each entertainment transportation vehicle by a unique number in accordance with rules and procedures established by the MTLC, and will be associated with the specific classification and by certificate holder. Permits are not transferable to other entertainment transportation vehicles or other certificate holders. For the purposes of this Chapter, a transfer includes a Change in Control of the permittee or certificate holder.

Section 18. That Section 6.77.300 of the Metropolitan Code of Laws is hereby amended by deleting the Section in its entirety and replacing it with the following:

6.77.300 Vehicle requirements; Safety standards.

A. To the fullest extent permitted by Tennessee and federal law, prior to the use and operation of any vehicle under the provisions of this chapter, the vehicle shall be thoroughly examined and inspected by the certificate holder or a third party in accordance with rules and regulations prescribed by the MTLC. These rules and regulations shall be promulgated to provide safe transportation and specify such safety equipment and regulatory devices as the MTLC shall deem necessary. When a certificate holder finds that a vehicle has met all the terms established by the MTLC, the holder shall certify this under oath to the MTLC director, who shall authorize a permit to be issued.

B. To the fullest extent permitted by Tennessee and federal law, every vehicle operating under this chapter is subject to random and periodic inspections to ensure the continued maintenance of safe operating conditions. A certificate holder shall make an entertainment vehicle available for inspection upon or prior to the expiration of the notice period provided for in the rules and regulations adopted by the MTLC, when ordered to do so by MTLC staff. If, upon inspection it is determined that an entertainment vehicle for hire is not in compliance with this chapter or MTLC rules, the MTLC staff shall order the vehicle to be removed from service or brought into compliance within a reasonable period of time and require it to be re-inspected.

C. Every vehicle operating under this chapter shall be kept in a clean and satisfactory condition, according to rules and regulations promulgated by the MTLC.

D. Every vehicle operating under this chapter must be equipped with adequate seating as determined by the MTLC.

E. To the fullest extent permitted by Tennessee and federal law, every vehicle operating under this chapter shall undergo an annual detailed mechanical inspection conducted by a mechanic, as reasonably approved by the MTLC director, and pursuant to the requirements of rules and regulations adopted by the MTLC. The records of these inspections must be maintained and made available to MTLC staff as

provided by the rules and regulations adopted by the MTLC. The certificate holder shall certify under oath to the MTLC director compliance with this subsection.

F. The MTLC may, by rule, establish additional inspection requirements for entertainment transportation vehicles and other equipment used in the entertainment transportation vehicle service.

G. The MTLC shall have the authority to promulgate rules and regulations consistent with applicable law to ensure the safe operation of entertainment transportation vehicles.

Section 19. That Section 6.77.320 of the Metropolitan Code of Laws is hereby amended by deleting the Section in its entirety and replacing it with the following:

6.77.320 Operating area.

Entertainment transportation vehicles shall operate upon the streets within the metropolitan area on routes or zones, and within hours of operation, established by the MTLC or its staff. Any deviation from these approved routes, zones, or hours of operation, except for deviations caused by traffic accidents, must be approved by the MTLC or its staff. Any approved deviation must be reported to the MTLC or the MTLC director staff prior to beginning of operations. For the purposes of this section, the term “operate” shall mean when the entertainment transportation vehicle is transporting passengers and does not include when the driver or employee is operating the transportation vehicle for service, repair, or when driving to or returning from its point of origin or final destination without passengers.

Section 20. That Section 6.77.390 of the Metropolitan Code of Laws is hereby amended by deleting Subsection B and replacing it with the following:

B. In addition to the enforcement authority provided to inspectors in subsection A. of this section, other employees of NDOT tasked with such enforcement and officers of the Metropolitan Nashville Police Department shall have the authority to enforce this chapter. A police officer, upon observing a violation of this chapter or of any regulation or rule established by the MTLC or the MTLC director pursuant to this chapter, shall take necessary enforcement action to insure effective regulation of entertainment transportation vehicles.

Section 21. That Section 6.77.420 of the Metropolitan Code of Laws is hereby amended by adding the following new Subsection D:

D. Using a permitted service vehicle to increase capacity shall be grounds for immediate suspension of the certificate holder’s permit. Use of a permitted service vehicle is limited to replacing an out of service permitted vehicle only.

Section 22. That Section 7.24.040 of the Metropolitan Code of Laws is hereby amended by deleting Subsection C.1.a and replacing it with the following:

a. An “Enclosed Vehicle” means any motor vehicle that is fully enclosed by metal, plexiglass, professionally installed operable vinyl windows, or glass on all sides and on the top/roof. Any vehicle not meeting this definition would constitute an “unenclosed vehicle.” A vehicle is unenclosed if any portion of it lacks solid sides and a roof, including all appurtenances attached thereto, including, but not limited to, a wagon or trailer pulled by a tractor, within which passengers are capable of standing and circulating while the vehicle is in motion. For purposes of this section, a vehicle “side” must be a full side enclosure of the vehicle and cannot consist of solely a guard rail or railing. It may contain windows capable of being opened, but all windows, excluding the driver compartment if separate from the passenger area, shall be fully closed while the vehicle is in operation with customers aboard and any passenger is in possession of an open container. Enclosed vehicles shall maintain any required emergency access or exits but the emergency

access or exits may not be used to avoid the safety goals intended by the enclosure.

Section 23. This ordinance shall take effect from and after its enactment, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This ordinance, as amended, makes various amendments to Chapters 6.77 and 7.24 of the Metropolitan Code of Laws pertaining to the operation and regulation of Entertainment Transportation Vehicles.

The Council passed Substitute Ordinance No. BL2021-911, as amended, on October 19, 2021. This ordinance created Chapter 6.77 of the Metropolitan Code to create a framework for regulating entertainment transportation vehicles, which will take effect on April 1, 2022. In addition, it prohibited the consumption of alcoholic beverages during the operation of an unenclosed vehicle, which went into effect on December 1, 2021.

The ordinance under consideration makes various changes to these provisions.

A definition would be added for a “change in control” of a permittee or certificate holder and provisions about transferring certificates and permits would be amended to prohibit assignment, transference, sale, or giving of a certificate or permit without express written approval of the Metropolitan Transportation Licensing Commission (MTLC), including a change in control.

The provision prohibiting passengers from standing or riding on any part of an entertainment transportation vehicle other than a designated seating area while the vehicle is in motion would be deleted.

The consumption of beer, ale, wine, or other alcoholic beverages would be prohibited on all entertainment transportation vehicles, except to the extent permitted by the Beer Board. A driver or operator of an entertainment transportation vehicle who knowingly allows consumption of alcoholic beverages on an entertainment transportation vehicle in violation of Beer Board or MTLC rules or regulations would violate this chapter.

The definition of “enclosed vehicle” would be deleted and replaced with a definition that provides an “enclosed vehicle” means “a fully enclosed entertainment transportation vehicle.” “Unenclosed vehicle” would mean a vehicle that does not meet the definition of enclosed vehicle. Further, this definition would allow the MTLC to determine what constitutes a fully enclosed entertainment transportation vehicle and develop rules and regulations to ensure that both enclosed and unenclosed vehicles are safe and in compliance with existing noise ordinances.

The application provisions for a certificate would be amended to remove the requirement that applicants provide proof of citizenship or legal residency. Applicants would be required to provide a copy of their driver history for the last three years and any additional information the MTLC may require.

The requirements for minimum insurance coverage would be amended to give the MTLC authority, in consultation with the Metropolitan Government Insurance and Claims Manager, to set the minimum amounts of coverage.

Any insurance policy would need to remain in place at least through the length of licensing with the MTLC.

The authority of the MTLC to promulgate rules and regulations would be clarified to include that the MTLC must ensure safety and traffic flow, in addition to compliance with existing noise ordinances.

Section 7.24.040.C, which was added by BL2021-911 and prohibits the possession of an open container of alcoholic beverages or the consumption of alcoholic beverages on an unenclosed entertainment transportation vehicle, would be deleted in its entirety.

Other various housekeeping changes would be made throughout Chapter 6.77.