### METROPOLITAN NASHVILLE-DAVIDSON COUNTY TRANSPORTATION LICENSING COMMISSION

### Minutes of March 9, 2012

The Metropolitan Nashville-Davidson County Transportation Licensing Commission (the "Commission") met in special session on this date at the Metropolitan Courthouse. The Commissioners present were Vice Chair Brian Winfrey and Commissioners Jennifer Brundige, Sal Hernandez, Sam Patel, and Curt Wallen (5). Also attending were Metro Legal advisor Jenny Howard and Brian McQuistion, Director-Executive Secretary to the Commission.

**Vice Chair Brian Winfrey** called the meeting to order. He led the Pledge of Allegiance and read the Notice of Appeal statement, advising of the right to appeal decisions of the Transportation Licensing Commission.

The minutes of the January 24, 2012 meeting were approved.

# <u>PUBLIC HEARING: APPLICATIONS FOR TRANSFER OF EMERGENCY WRECKER LICENSE AND ZONE (BROWN'S WRECKER SERVICE)</u>

Director McQuistion reported that this public hearing had been scheduled for January, but had been postponed due to the death of Joseph Michael Martin. He stated that applications for the transfer of the emergency wrecker license and zone assigned to Brown's Wrecker Service had been received from Joseph Michael Martin and Margaret Martin; Jim Mitchell, owner of Dad's Towing; and Daniel Adugna, owner of Victory Towing. The director stated that Gary Brown, owner of Brown's Wrecker Service, was present and wanted to address the Commission.

Gary Brown appeared. He stated that he and Mr. Martin had been longtime friends. He stated that under the terms of a business arrangement, he had expected to go to work for Mr. Martin following the transfer. He stated that the death of Mr. Martin had stopped that process, and he had decided to continue to operate Browns Wrecker Service. He asked the Commission to call off the transfer.

**Vice Chair Brian Winfrey** asked to hear Mrs. Martin. Margaret Martin appeared. She stated that she wanted to withdraw her application.

Director McQuistion stated that it was rare for the Commission to hold a public hearing for the transfer of an emergency wrecker service license, unless there was already a business arrangement or sale pending between the current license holder and at least one of the applicants. He noted that in some cases this had been a problem when business arrangements were not concluded after the Commission approved the transfer. He added that in other cases, the Commission had transferred a license due to violations by a company or a company's inability to service the zone. He recommended that the Commission allow the other applicants to be heard.

Commissioner Jennifer Brundige asked if Brown's had served the zone well. The director responded that he knew other companies had backed up Brown's when Mr. Brown was sick; but noted that it was typical of zone operators to do so for each other. He added that as a result staff seldom heard complaints concerning companies that were not servicing their zones. Mr. Brown stated that he had major surgery in 2008.

Daniel Adugna, owner of Victory Towing, appeared. He stated that he had a general wrecker company license, but desired to provide emergency wrecker services. **Vice Chair Winfrey** stated that Mr. Adugna had the right to pursue the transfer. Director McQuistion read Section 6.80.545.D of the Metro Code, which applied to the zone transfer requirements. Following discussion about the nonrefundable fee and whether he wished to compete for transfer of the zone, Mr. Adugna stated that if Mr. Brown wanted to continue operating the zone, he would not pursue this transfer.

Jim Mitchell, owner of Dad's Towing, appeared. He agreed to withdraw his application and asked if this application could apply to any future application for transfer of the Brown's license.

**Commissioner Brundige** moved to have Brown's Wrecker Service retain the license and zone. **Commissioner Sam Patel** seconded, and the motion passed (4-0).

#### APPLICATION FOR CARRIAGE DRIVER PERMIT: BRENDA SMITH

Director McQuistion reported that the Commission had suspended Mrs. Smith's previous permit on February 22, 2011, and she was applying for a new permit. He provided a copy of her application and an extract of the minutes of the February 2011 minutes. The director noted Mrs. Smith worked for her husband's company, and that the company had provided copies of letters from Pigeon Forge and Franklin in support of her application.

Mrs. Smith appeared with Johnny Smith, owner of Sugar Creek Carriage. Mrs. Smith explained that she was no longer taking medication or alcohol. She stated that she had driven a carriage in Pigeon Forge during the last year. Mr. Smith provided additional letters of recommendation on her behalf.

**Commissioner Sal Hernandez** moved to approve a permit, with the conditions that she would be on probation for one year and would be required to submit to random drug testing, as directed by director McQuistion. **Commissioner Sam Patel** seconded. And the motion passed (4-0).

#### **APPLICATIONS FOR TAXICAB DRIVER PERMITS:**

**Burmell Phillips:** Mr. Phillips appeared with Johnny White, co-owner of American Music City Taxi. Director McQuistion reported that Mr. Phillips was issued his first taxi driver permit in 1994, but had not held a permit continuously since then for various reasons. He provided the following details concerning Mr. Phillips:

- o In 1996 he was ineligible because he had a careless driving conviction.
- o In 1997 he was issued a permit.
- In 1998 he pled guilty to possession of cocaine, and did not apply for a permit.
- In 1999 the Commission approved a permit, but placed him on probation for 3 years.
- In 2000 he was issued a permit.
- He did not apply for a permit from 2001 until 2006.
- o In 2006, 2007, and 2008 he was issued a permit.
- He did not apply in 2009. From October to November 2009 he was incarcerated for failure to pay child support.
- He did not apply for a driver permit in 2010.
- On March 15, 2011 he applied for a permit. He tested positive for marijuana on his drug screen, and was therefore ineligible for a permit.

The director stated that Mr. Phillips had applied again for a permit on February 15, 2012. He provided a copy of the application and fingerprint-based background check report. Director McQuistion summarized that Mr. Phillips was eligible for a permit, but had a sporadic record of convictions and documented evidence of drug use as recently as 2011.

**Commissioner Jennifer Brundige** asked Mr. Phillips about his history of drug use. Mr. Phillips explained the circumstances surrounding his arrests; he stated that he would not have anything to do with drugs anymore. Mr. White stated that he had known Mr. Phillips for many years. He stated that he did not have a vacancy for a driver at the time, but would hire Mr. Phillips if a position in his company became available.

**Commissioner Brundige** moved to approve a permit, with the following conditions: permit to be restricted to American Music City Taxi for one year; and Mr. Phillips to be on probation and subjected to random drug testing as directed by Director McQuistion for five years. **Commissioner Sal Hernandez** seconded, and the motion passed (4-0).

**Jason Sawyers:** Mr. Sawyers did not appear. **Commissioner Sam Patel** moved to disapprove the application. **Commissioner Curt Wallen** seconded, and the motion passed (4-0).

## APPLICATION FOR APPROVAL TO PERFORM NONCONSENT TOWING FROM PRIVATE PROPERTY: HAZCO, LLC

Director McQuistion reported that this hearing was to consider an application by a new general wrecker company for approval to perform nonconsent towing. The director stated that, unlike consensual towing done by any general wrecker service, nonconsent towing was highly regulated, and in the past had represented the most significant illegal activity involving wrecker services. He reported that Hazco, LLC had submitted an application for a new general wrecker company license on December 16, 2011; and on the same day had also applied for approval to perform nonconsent towing. The director noted that the general wrecker license had been issued. He stated that the required Final Use & Occupancy Permit from Metro Codes for a wrecker storage lot was provided on January 19. He noted that the company owners had experience in HAZMAT clean-up/recovery, but not in the wrecker/towing industry. The director stated that the staff's recommendation was to allow the company to operate as a general wrecker service for some time before considering them for nonconsent towing.

Inspector Bowling stated that nonconsent towing had been a big problem for other companies. He stated that the only experienced person listed in the Hazco application was a driver who had been cited for violations.

Curt Brinkley appeared for Hazco, LLC. He explained that the owners were involved in a clean-up operation. He provided packets to the Commissioners and stated that the company had a permit from the Corps of Engineers to perform recovery of submerged vehicles from J. Percy Priest Lake. He added that the Corps required that the vehicles be removed from the property after recovery, and that there were also some apartment complexes that wanted to contract with Hazco to remove vehicles from their property.

Commissioner Jennifer Brundige asked if contracts were required to perform nonconsent towing. Director McQuistion responded that State law did not require contracts, but did require that each specific vehicle to be towed without the vehicle owner's consent had to be approved in writing by the owner or designated agent of the owner of the private property. He emphasized that laws protected the rights of the vehicle owner, and not the private property owner. Mr. Brinkley stated that Hazco also employed a rollback driver who had operated a wrecker in other counties.

**Commissioner Sam Patel** expressed concern that the company did not have a track record of performance as a wrecker company. **Commissioner Brundige** agreed, adding that violations of nonconsent towing laws had resulted in numerous Commission disciplinary hearings and the revocations of licenses.

**Commissioner Patel** moved to disapprove the application without prejudice. **Commissioner Brundige** seconded, and the motion passed (4-0).

#### APPLICATION FOR LIVERY DRIVER PERMIT: KEVIN SPAIN

Director McQuistion reported that Mr. Spain had applied for an initial livery driver permit on October 19, 2011 to drive for Nashville Limousine. He provided Commissioners a copy of the application and the results of Mr. Spain's background check. He stated that Mr. Spain's application was to drive for Nashville Limousine, owned by Rick Williams, but noted that the company was not yet licensed. The director stated that, because Mr. Spain's convictions included a drug-related violation and assault, restricting a permit to one company would be in order; but this was complicated by the fact that Mr. Williams' company application was not yet complete. Mr. Spain appeared with Mr. Williams. Mr. Williams stated that a driver should be allowed to drive for any company. He recommended that Mr. Spain be issued a permit which would not be restricted to any company.

Vice Chair Brian Winfrey asked Mr. Spain to explain the conviction for domestic assault – bodily injury that was included on his record. Mr. Spain responded that it involved an altercation with his ex-wife. He stated that he was going to classes, and that after he completed them the charge would be expunged. Commissioner Jennifer Brundige asked him if he was in business elsewhere. Mr. Spain responded that he had been operating a flooring sales business for fifteen years.

After discussion **Commissioner Brundige** moved to approve the application, on the condition that Nashville Limousine receive a certificate, and to restrict his driver permit to Nashville Limousine for one year. **Commissioner Sam Patel** seconded, and the motion passed (4-0).

# RECEIPT OF APPLICATION FOR TRANSFER OF EMERGENCY WRECKER SERVICE LICENSE (ANCHOR TOWING & RECOVERY)

Director McQuistion reported that an application had been received from A. B. Collier Wrecker Service for the transfer of the emergency wrecker service license held by Anchor Towing & Recovery. By rule, the application was deferred for a public hearing at the next Commission meeting.

#### **OTHER BUSINESS**

| There was no further business, and the me        | eeting was adjourned.    |
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| ATTEST:  | APPROVED:                |
| Brian E. McQuistion Director-Executive Secretary | Helen S. Rogers<br>Chair |