METROPOLITAN NASHVILLE-DAVIDSON COUNTY TRANSPORTATION LICENSING COMMISSION

Minutes of June 18, 2012

The Metropolitan Nashville-Davidson County Transportation Licensing Commission (the "Commission") met in special session on this date at Metro Southeast. The Commissioners present were Chair Helen Rogers and Commissioners Sal Hernandez, Rhonda Marko, Sam Patel, and Curt Wallen (5). Also attending were Metro Legal advisors Theresa Costonis and Jenny Howard, and Brian McQuistion, Director-Executive Secretary to the Commission.

Chair Neien Regers called the meeting to order. She read the Notice of Appeal statement, advising of the right to appeal decisions of the Transportation Licensing Commission. Chair Rogers stated that Jenny Howard was being transferred to other duties within the legal department, and would be replaced by Theresa Costonis. She expressed appreciation for the support Ms. Howard had provided to the Commission and staff for the previous ten months.

CONSIDERATION OF ACTIONS TO BE TAKEN IN RESPONSE TO HUMAN RESOURCES INVESTIGATION INTO ALLEGED MISCONDUCT

Chair Helen Rogers stated that the Commission had received a report from Human Resources Director Rita Roberts-Turner concerning the investigation HR had conducted into allegations of misconduct by inspectors and the director. She stated that civil service rules required the issuance of charge letters to the employees, if appropriate, followed by a department meeting with each employee to consider the charges. Concerning the preparation of the charge letters, she stated that the Commission had two options: deciding as a Commission on which charges should be included in the charge letters, or delegating that responsibility to someone.

Chair Rogers asked if the process then had to go back to Human Resources. Legal advisor Costonis stated that the next stage was the departmental meetings with the employees. She stated that the Commission could either hold the meetings as a commission, or could delegate this back to the Human Resources department to appoint a hearing panel. She stated that HR might draw panel members from other departments. Director McQuistion asked if the Commission could not also designate one of its members to conduct the meetings; legal advisor Costonis responded that she would recommend that for preparation of the charge letters. She recommended that the Commission delegate responsibility to the Chair to review and sign the charge letters prepared by HR and counsel.

Chair Rogers stated that the Commission could delegate responsibility for drafting the charge letters to her and legal advisor Costonis; and that the proposed letters could then be brought to the Commission for approval at the next meeting. Commissioner Curt Wallen moved to delegate responsibility to Chair Rogers and legal advisor Costonis to present a draft of the charge letters to the Commission at

the June 28 meeting. Commissioner Rhonda Marko seconded, and the motion passed (4-0).

Chair Rogers asked if the Commission, following issuance of the charge letters, wanted to then investigate and determine what should be done with the employees, or if it wanted to delegate that to the Civil Service Commission. She stated that she thought it would be difficult for the Commission to hold the hearings and then to continue to work with the director and employees; so she was inclined to delegate the responsibility back to Human Resources. She added that she was also concerned that commissioners lacked expertise with civil service rules. She stated that if the Commission held the departmental meetings, as public meetings this would allow others to speak on behalf of or against the employees. Legal advisor Costonis clarified that employees would be allowed to present witnesses and be represented by counsel at the departmental meetings, regardless of which option was selected. She stated that if the hearing panel option was selected, then that panel would only make recommendations back to the Commission as the Appointing Authority; the final decision would remain with the Commission.

Commissioner Sal Hernandez moved to delegate to the Civil Service/Human Resources office the duty of holding the departmental meetings, after the charge letters were prepared, and to make recommendations back to the Commission. Commissioner Sam Patel seconded, and the motion passed (4-0).

CONSIDERATION OF ENFORCEMENT POLICY OPTIONS

Chair Helen Rogers stated that the Commission had a number of ordinances that required enforcement, and that it was important to determine what the role of inspectors should be to carry out that enforcement. She stated that there were four distinct issues which needed to be addressed: whether badges were appropriate; whether inspectors should carry firearms; whether the inspectors should use lights on their patrol cars; and the job descriptions of the inspectors. She noted that the tasks required in the inspectors' job descriptions would impact on whether they would need badges, firearms, and lights. Chair Rogers stated that the Commission needed to make policy decisions concerning whether it should rely more on the police department to perform the enforcement function, or whether the inspectors should provide a certain level of enforcement.

Director McQuistion reported that until 2006 the inspectors had not issued citations, and enforcement had been limited to reacting to consumer complaints. He added that as a result only half of the wrecker companies operating in the county at the time were even licensed. He stated that for licensure to be effective it was important to have street enforcement, and because violators were in vehicles it was necessary to be able to stop them. He stated that Tennessee state law prohibited the use of blue lights, and that this had been brought to his attention by Fleet Management when they had removed the blue lights from inspectors' patrol cars at the end of 2009. He added that since then inspectors had been able to stop vehicles using white lights only. The director stated that the inspectors' civil service job descriptions, written many years ago, included "make arrests"; but that this should be eliminated from their job descriptions. He stated that the issuance and carrying of firearms by the

inspectors deserved some legal review of past decisions within Metro government. He explained that inspectors had been issued firearms by the government, and had been allowed to retain them even after special police commissions were no longer given. He stated that the staff had turned in the issued weapons on its own initiative, and that state law changes in the 1990s may have resulted in handgun carry permits being used to authorize weapons for inspectors. He stated that badges had been turned in. The director stated that there had been very few citations issued by police for violations of Code chapters enforced by transportation licensing inspectors, and recommended that inspectors continue to be empowered to enforce them. He stated that making traffic stops was dangerous after dark, and that it would not be appropriate to expect inspectors to do so without firearms.

Commissioner Rhonda Marko asked what would constitute enforcement by an inspector. The director responded that enforcement could include any action taken by an inspector to determine if a vehicle operator, for example, was in compliance with the ordinances regulated by the Commission. Commissioner Marko asked if there was any reason that the Commission would not want inspectors to do so. Chair Rogers stated that it might be possible for an inspector to identify a potential problem, and then call the police to conduct the appropriate traffic stop. She noted that this would not be effective if the police were otherwise occupied and could not respond. Chair Rogers asked legal advisor Costonis if there was a problem with the authorization of firearms for inspectors; Ms. Costonis responded that civil service policy had specific requirements which would have to be met in order for the inspectors to carry firearms. Director McQuistion stated that inspectors had handgun carry permits, but that these alone were not sufficient to meet the civil service requirements, and he had directed them not to carry firearms until further notice. Chair Rogers asked if including the carrying of firearms in the job descriptions would be sufficient; legal advisor Costonis responded that in addition to the approval of the job description by the civil service commission, it would require training by the police department, sheriff's office, or juvenile court; and would also require policies to be adopted related to the use of firearms by the inspectors. Commissioner Curt Wallen asked how long the inspectors had been working without firearms. Director McQuistion responded that he had directed them to stop in mid-April. Commissioner Wallen asked if the inspectors had reported any incidents in the interim when the lack of firearms had been a factor. The director responded that the inspectors had not made any traffic stops at night since mid-April, citing unwillingness to do so without self-protection. Chair Rogers asked if the inspectors had a form of identification which was being used in lieu of a badge. Director McQuistion responded that in January legal advisor Howard had provided statutory references which provided the necessary basis for the inspectors to perform their enforcement duties; and these had been cited in preparing new identifying credentials for the inspectors. Ms. Howard clarified that the references provided had justified the inspectors performing their duties as peace officers. Chair Rogers asked why the Metro employee identification card could not be used instead; the director stated that the current employee identification/access card did not address any authority given to the bearer. Commissioner Sam Patel asked if it would not be sufficient to send out a memorandum, explaining that the identification card was sufficient to demonstrate the authority of the inspectors; the director responded that it would not be possible to send out a memorandum to unidentified and illegal operators. The director stated that

a badge could be issued, provided that it did not identify the holders as police officers. Chair Rogers expressed concern that anyone carrying any badge might be perceived by the public as a police officer. Commissioner Marko stated that the issue raised in the investigation was that any badge carried by the inspectors should not include the word "police". Commissioner Sal Hernandez stated that there was a safety component to the carrying of a badge. He stated that if the Commission wanted an inspector to retain the ability to enforce the ordinances regulated by the Commission, then retaining the carrying of a badge would enable him to quickly identify himself as someone who was authorized to do so.

Commissioner Marko moved to allow transportation licensing inspectors to continue to enforce the laws and rules related to the industries regulated by the Commission. Commissioner Patel seconded, and the motion passed (4-0).

Commissionar Pate! moved to allow inspectors to carry badges, clearly identifying them as transportation licensing inspectors, and not including any wording that would identify them as members of the police department. Commissioner Marko seconded, and the motion passed (4-0).

Discussion followed on civil service policy and process, and the existing job description of the inspectors. Commissioner Hernandez moved to support inclusion of firearms in the job descriptions of the inspectors, subject to civil service approval, and including required training and policies. Commissioner Marko seconded, and the motion passed (4-0).

Commissioner Wallen moved to exclude "make arrests" from the job descriptions of the inspectors. Commissioner Marko seconded, and the motion passed (4-0).

Commissioner Patel moved to place consideration of a draft new job description for the inspectors as a public hearing item on the July meeting agenda. Commissioner Hernandez seconded, and the motion passed (4-0).

Discussion followed on the use of lights on patrol vehicles to initiate traffic stops. Commissioner Wallen moved to direct the legal advisor to investigate and provide a report on the appropriate lights and use of lights for enforcement at the July meeting. Commissioner Marko seconded, and the motion passed (4-0).

Following discussion, Commissioner Hernandez moved to have the legal advisor report on whether it would be appropriate for inspectors to hold special police commissions or to be deputized by the sheriff's department, and what that would require; and to include this in the new job descriptions. There was no second, and Commissioner Hernandez withdrew the motion. Legal advisor Costonis stated that this was already in the current job descriptions, but that it was questionable whether special police commissions could be obtained.

Commissioner Hernandez moved to remove wording related to special police commissions from the inspectors' job descriptions. Commissioner Patel seconded, and the motion passed (4-0).

Commissioner Hernandez moved to require the legal advisor to report to the Commission on what would be required to be able to obtain a special police commission or to become deputized by the sheriff's office, so that the Commission could consider options for inclusion in a revised job description. Commissioner Marko seconded, and the motion passed (4-0). Chair Rogers requested that Ms. Costonis provide the information in time to be considered at the July Commission meeting.

OTHER BUSINESS

There was no further business, and the meeting was adjourned.

ATTEST:	APPROVED:
Brian E. McQuistion Director-Executive Secretary	Helen S. Rogers Chair