

Clerk's note: Refer to Resolution No.18-474 adopted May 16, 2016.

| | |
|-----------------|-----------------------|
| Resolution No.: | <u>18-460</u> |
| Introduced: | <u>April 19, 2016</u> |
| Adopted: | <u>April 26, 2016</u> |

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Government Operations and Fiscal Policy Committee

SUBJECT: Collective Bargaining Agreement with Fraternal Order of Police

Background

1. Section 510 of the County Charter requires the County Council to provide by law for collective bargaining with binding arbitration with an authorized representative of the County police officers.
2. Chapter 33, Article V of the County Code implements Section 510 of the Charter and provides for collective bargaining with representatives of certain police officers and for review of the resulting agreement by the County Council.
3. On April 1, 2016, the County Executive submitted to the Council an agreement between the County government and Fraternal Order of Police for the year July 1, 2016 through June 30, 2017. A copy of the Agreement is attached to this Resolution.
4. The County Executive outlined the terms and conditions of the collective bargaining agreement that require or may require an appropriation of funds or changes in any County law or regulation in FY17.
5. The joint Government Operations and Fiscal Policy Committee and Education Committee considered the Agreement and made recommendations at a worksession on April 21, 2016.
6. The County Council has considered these terms and conditions and is required by law to indicate on or before May 1 its intention regarding the appropriation of funds or any legislation or regulations required to implement the agreement.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The County Council intends to approve the following provisions for FY17:

1. 0.5% general wage adjustment for all bargaining unit members on the first pay period after July 1, 2016.
2. 0.5% general wage adjustment for all bargaining unit members on the first pay period after January 1, 2017.
3. 3.5% service increments for all eligible members on their anniversary date.
4. Tuition assistance cap at \$135,000.
5. 3.5% longevity increments for eligible members.

The County Council intends to reject the following provisions for FY17:

1. 3.5% service increment for all bargaining unit members whose service increment was deferred during FY12 or FY13, and who is otherwise eligible, effective the first pay period after July 1, 2016.
2. The Council intends reject the group insurance provisions in the agreement. The Council intends to approve the group insurance provisions as they were included in the Executive's Recommended FY16 operating budget, including a Medicare Part D Employer Group Waiver Prescription Drug Plan for Medicare-eligible retirees. To the extent that this approval is inconsistent with any provision of the collective bargaining agreement, that provision is rejected.

The Council intends to approve all other provisions of the Agreement subject to Council review.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

**MEMORANDUM OF AGREEMENT
BETWEEN
MONTGOMERY COUNTY, MARYLAND
AND THE
FRATERNAL ORDER OF POLICE,
MONTGOMERY COUNTY LODGE #35, INC.**

Montgomery County, Maryland (hereinafter *County*) and the Fraternal Order of Police, Montgomery County Lodge 35, Inc. (Union), conducted negotiations pursuant to Section 33-75, *et seq.*, of the Montgomery County Code for the term July 1, 2016 through June 30, 2017. As a result of those negotiations, the County and Union agree that the Collective Bargaining Agreement shall be amended according to the terms set forth below.

Please use the key below when reading this document:

| | |
|----------------------------|--|
| <u>Underlining</u> | <i>Added to the existing collective bargaining agreement</i> |
| [Single boldface brackets] | <i>Deleted from the existing collective bargaining agreement</i> |
| *** | <i>Existing language unchanged by the parties</i> |

Article 28 Service Increments

Section A. Service Increments

1. A service increment is a 3.5% increase in salary which may be granted annually, upon approval of the chief of police or designee, to each employee having merit status who assumes the duties and responsibilities of their position at an acceptable level of competence as determined through performance evaluation or in accordance with this Agreement and whose work generally meets expectations. Service increments are earned by performance of work at an acceptable level of competence. An employee cannot be awarded a service increment automatically or solely on the basis of length of service.
2. Each employee is eligible to be considered each year for a service increment award to be effective on the assigned increment date. A service increment may be

granted only to the extent that an employee's salary does not exceed the maximum salary for the assigned grade.

The FY11, FY12, and FY13 service increments were not funded by the Montgomery County Council. For the term of this agreement the [FY12 and] FY13 service increments shall continue to be deferred.

Article 36 Wages

Section A. Wages. Effective July 1, 2007, the salary schedule shall be increased by adding \$3,151 at Step 0, Year 1 with increments and promotions for all other steps and pay grades calculated from the new Step 0, Year 1 basis. Increments and longevity shall continue to be calculated as required by Article 28. The percentage increases upon promotion shall continue (up to the maximum for each rank) to be: 5% between PO I and PO II; 5% PO II and PO III; 5% between PO III and MPO; 10% between MPO and Sergeant; and, subject to Section D, *infra*, 5% between POC and POI.

The four and one-quarter (4.25) percent wage increase scheduled to take effect in the first full pay period following July 1, 2009 shall be postponed, and shall not be effective during fiscal year 2010, 2011, 2012 2013, 2014, and 2015. Salary-based benefits shall not be diminished as a result of the postponement, and such benefits will be calculated as if the postponed wage increase had been received as scheduled. (Appendix T)

The County agrees to pay a \$2,000 lump sum payment in FY2013 to employees who are actively employed by the County on that date. This payment will be made in one lump sum, by separate payment, at the conclusion of the first full pay period of FY2013. Employees who are unpaid leave and return to work during FY2013 shall receive the \$2,000 lump sum on their date of return to the workforce and will receive their payment by separate payment following their return to active employment with the County. The lump sum payment is considered regular earnings for income, withholding, and employment tax purposes. The payment will not be added to the employees' base salary. These payments are not considered "regular earnings" for retirement/life insurance purposes and employees will not receive any retirement/life insurance benefits based on these payments. Employees will not be required to contribute toward their retirement for this payment.

Effective the first full pay period after July 1, 2013, each unit member shall receive a wage increase of two and one-tenth percent (2.1%). Each unit member whose service increment was deferred during FY2011, FY2012 and/or FY2013, and who is otherwise eligible, shall receive a salary adjustment of 1.75% effective the first full pay period following February 1, 2014.

Effective the first full pay period following July 1, 2014, each unit member shall receive a wage increase of two and one-tenth percent (2.1%). Each unit member whose service increment was deferred during FY2011, FY2012 and/or FY2013, and who is otherwise eligible, shall receive a salary adjustment of 1.75% effective the first full pay period following February 1, 2015.

Effective the first full pay period following July 1, 2016, each unit member shall receive a wage increase of one half of a percent (0.5%). Effective the first full pay period following January 1, 2017, each unit member shall receive a wage increase of one half of a percent (0.5%). Each unit member whose service increment was deferred during FY2012 and/or FY2013, and who is otherwise eligible, shall receive a salary adjustment of 3.5% effective the first full pay period following July 1, 2016.

Article 47 Duration of Contract

The duration of this agreement shall be one year, become effective on July 1, [2015]2016, and terminate on June 30, [2016] 2017.

Article 72 Body Worn Camera System

Section A. A Body-worn Camera means a device worn on the person of a law enforcement officer that is capable of recording video and intercepting oral communications. This article applies to any Body Worn Camera System (BWCS). All recordings and recording devices will be used for official business only. Use of the BWCS will comply with all applicable laws and this agreement. Neither this agreement nor any use of BWCS shall be construed as a waiver of any constitutional, statutory, civil, or other legal right by any unit member.

Section B. The provisions of Article 64 apply to the use of BWCS.

Section C. Location of BWCS. The BWCS will be worn in a manner consistent with department training (industry standards will be considered).

Section D. Use of Recordings.

- 1 The County will not use BWCS recordings in a discriminatory, arbitrary or capricious manner.

- 2 BWCS recordings shall not be routinely reviewed for the express purpose of discovering acts of misconduct or instances of poor performance without cause. An employee's supervisor may use BWCS recordings to address performance when cause exists. Any recording used must be reviewed with the subject employee prior to any documentation of performance. Any documented review will be included in the employee's supervisory file. The employee shall have the opportunity to respond in writing to the document. The response shall be attached to the supervisor's document. The employee and the employee's representative shall be provided access to the referenced recording if requested. Performance evaluation shall not be the sole reason for the County retaining a recording beyond the agreed upon term.

- 3 Employees will be provided written notice from their immediate supervisor, or designee, of the County's intent to use BWCS recordings for the purpose of performance evaluations which result in a below average rating in one or more categories. This notice will be given at least four months prior to the end of rating period. Any recording supporting below average performance being referenced within the last four months of a rating period may also be used if the employee received written notice at least 30 days before the conclusion of a rating period. If a recording is referenced from the last 30 days of the rating period, the rating will serve as written notice. Any portion of a recording used by the County for the purpose of documenting below average performance in a performance evaluation will be reviewed with the subject employee and documented as a counseling session in accordance with Article 51, Section D, of the CBA.

- 4 Employees will be given written notice of the County's intent to rely upon BWCS as a basis of discipline for employees. This notice will be given when an employee is served with their internal investigation notice (MCP 242). The employee will be afforded the opportunity to review BWCS recordings related to the incident being investigated administratively with their selected representative at least five days prior to being interrogated.

- 5 Employees will be given written notice of the Department's intent to utilize BWCS recordings for training purposes. This notice and opportunity to review the recording, will be provided to the employee at least ten working days before the recording is used in the training venue. An employee captured in the video or audio may object to the use of the recording, in writing, to the Director of the Public Safety Academy (or designee) within five working days of receiving the notice of intent to use the recording for training as to any reason(s) why the he or she does not wish the recording be used. The Director of the Public Safety Training Academy (or designee) will consider any reason submitted by the employee before proceeding with use. The decision shall be based upon a determination as to whether the training value outweighs the member's objection.

- 6 Employees shall not record non-work related personal activity.

Section E. Release of Video

1. Release of BWCS video in absence of a specific request: The County will provide written notice to the FOP prior to the release of any BWCS recording to the public. In the event of an emergency or a bona fide public safety need the County may provide written notice after the release. This does not include release of recordings in connection with litigation. In events where there is no exigency, an employee captured in the recording may object to the use of the recording, in writing, to the Chief of Police (or designee) within two calendar days of receiving the notice of intent to release the recording as to any reason(s) why he or she does not wish the recording to be released. The Chief of Police (or designee) will consider any reason submitted by the employee before proceeding with the release.
2. The release of recordings of an employee's death or injury shall not occur absent compelling law enforcement related reasons to release the recording or in situations where the release of those recordings are required by law.
3. The County shall ensure that all external requests for copies of recordings, including subpoenas and summonses, will be reviewed for compliance with applicable standards, including those imposed by law or by provisions of this Agreement. The County will maintain a log of all MPIO requests for BWCS recording that it receives. The County will make this log, the underlying MPIO request, and the requested recording, available to the FOP for inspection. If the FOP objects to the release of any portion of the recording, it must promptly notify the County of its objection(s) and its intent to file a "reverse MPIO" action if the County decides to release the requested recording. The County will promptly notify the FOP of any decision to release the requested recording and the date and time of that release, unless the FOP first serves the County with a "reverse MPIO" action it has filed in a court of competent jurisdiction. The parties will make all reasonable efforts to provide each other with expeditious notice under this section given the relatively short time limits in the MPIO and its overall policy of providing the public with prompt access to public records without unnecessary delay.

Section F. Retention of Data

- 1 All BWCS recordings will be destroyed after 210 days, unless the Department deems it necessary to retain the recording for a longer period of time.
- 2 An employee may elect to save BWCS recordings for longer than 210 days if the recording was used to support a performance evaluation which resulted in single category being rated as below requirements

- 3 If an employee activates a BWCS generating a recording of a prohibited use or that is not a law enforcement related encounter or activity, the employee shall notify his or her supervisor promptly. Recordings deemed by the County to be recorded inadvertently and which are of no legitimate purpose to the County, shall be destroyed expeditiously.

Section G. Access to Recordings

1. A recording made by an employee may be reviewed by the recording employee for any work related reason, including but not limited:
 - a. to ensure the BWCS system is working properly.
 - b. to assist with the writing of a report or other official document.
 - c. to review/critique his or her own performance.
 - d. to review/prepare for court.
 - e. to respond to a civil suit, criminal investigation (if the employee is the subject of the investigation), citizen or administrative complaint; the employee shall have the ability to review their BWCS recording of the subject incident prior to making a statement.
2. Employees are not allowed to view another employee's recordings except for a work-related reason which is authorized by their supervisor,
3. An employee or the FOP shall have access to a BWCS recording that is directly related to any administrative investigation, or civil suit (where the employee is a named defendant).
4. When a recorded incident or recording of an incident is used to question an employee during a formal internal investigation, access to all BWCS recordings related to the incident shall be provided to the employee at least five working days in advance of such questioning.
5. Management shall have access to recordings for any legitimate matter.
6. A log will be kept to record access to all recordings. The log will include the:
 - a. name of employee accessing the recording;
 - b. reason for access with reasonable clarity ;
 - c. date recording was accessed, and
 - d. the length of time it was viewed.
- 7 The employee recorded must be given timely and ongoing access to the log.

Section F. General Use

1. The County shall provide work time for employees to perform a function test of the BWCS in accordance with the manufacturer's recommendations and department policy.
2. Employees discovering a BWCS malfunction shall promptly report the malfunction to a supervisor.
3. If employees are unable to begin recording with the BWCS due to circumstances making it unsafe, impossible, or impractical to do so, employees shall begin recording with the BWCS at the first reasonable opportunity to do so.

IN WITNESS WHEREOF, the parties hereto have caused their names to be subscribed hereto by their duly authorized officers and representatives this 29th day of March 2016.

FRATERNAL ORDER OF POLICE,
MONTGOMERY COUNTY LODGE 35

By: T. Cooke 3/29/16
Torrin Cooke
President

M. Frasca 3/29/16
Matt Frasca
Chief Negotiator

MONTGOMERY COUNTY,
MARYLAND

By: I. Leggett 3/31/16
Isiah Leggett
County Executive

J. Thomas Manger 3/30/16
J. Thomas Manger
Chief of Police

A. Mulloy
Approved for form and legality
County Attorney
Heather A. Mulloy

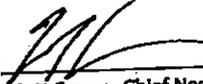
**Memorandum of Understanding between
Fraternal Order of Police Montgomery County Lodge 35, Inc. and
The Montgomery County Government Montgomery County, Maryland
For July 1, 2016 to June 30, 2017**

This Memorandum of Understanding between the Montgomery County Government (hereinafter, the ((County)) and the Fraternal Order of Police Montgomery County Lodge 35, Inc. (hereinafter the ((FOP)) hereby memorializes the agreements between the parties, arising out of collective bargaining negotiations that occurred during November, 2015 through January 2016.

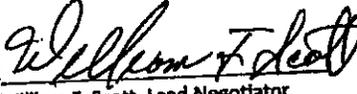
1. The parties acknowledge that the health, prescription and retirement benefits currently being provided by the Employer pursuant to previous County Council action are inconsistent with the provisions of the Collective Bargaining Agreement.
2. The parties agree that, notwithstanding the CBA language, the Employer will seek, for the FY17 recommended budget, funding for those benefits at the level set by Montgomery County Council Resolution No. 17-149, Bill 11-11 and Montgomery County Council Resolution No. 17-1111, and Montgomery County Council Resolution No. 18-150.
3. This agreement does not affect or alter the positions or rights of the parties in regards to these benefits. The FOP agrees that they will not file a prohibited practice charge referencing the funding of these benefits, identified in paragraph one, in the FY17 recommended budget.

IN WITNESS WHEREOF, the parties hereto have caused their names to be subscribed hereto by their duly authorized officer and representatives, this 4th day of February, 2016.

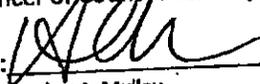
Fraternal Order of Police, Lodge 35, Inc.:

By:  2/4/16
Matt Frasca, Chief Negotiator Date

Montgomery County, Maryland

By:  2-4-16
William F. Scott, Lead Negotiator Date

Approved as to form and legality
Officer of County Attorney

By:  2/4/16
Heather A. Mulloy Date