

PS ITEM 2
March 21, 2016
Worksession

MEMORANDUM

March 17, 2016

TO: Public Safety Committee

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Worksession:** Resolution to Approve a police Mutual Aid Agreement with the City of Baltimore

The following Executive staff are expected to attend today's worksession:

- Assistant Chief Luther Reynolds
- Captain Bob Bolesta, Special Operations Division
- David Stevenson, Office of the County Attorney

This resolution, sponsored by Lead Sponsor Council President at the request of the County Executive, was introduced on February 23, 2016. A public hearing was held on March 15 at which a representative of the Executive testified in support of the Agreement (see ©11)

The resolution would approve a mutual aid agreement with the City of Baltimore to authorize mutual aid under certain conditions set forth in the agreement. The agreement would allow both jurisdictions to request aid in the event of a significant public emergency. Examples provided in the Executive memorandum include civil disturbance, civil unrest, or a natural disaster.

As explained in the transmittal memorandum and Chief Michael Wahl's testimony at the public hearing, the civil unrest in Baltimore City in April 2015 was the catalyst for the proposed agreement. The Executive argues that those events demonstrated a need to pre-plan for the sharing of police resources in emergency situations. Chief Wahl noted that during the April 2015 unrest, Baltimore City requested assistance and the County sent a contingent of officers from the Department's Special Events Response Team. They found that regulating the flow of traffic was essential for control of the unrest and for the protection of the public and officers. Without a mutual aid agreement in place, the County officers were unable to enforce the Maryland Vehicle Law.

Provisions of note in the proposed agreement include:

- Whenever practical, the County Police Chief and the City Police Commissioner must consult with their presiding officials before requesting assistance.
- A request for assistance will be evaluated by the responding agency based on the circumstances of the request and the capacity of the responding agency to provide the aid while providing adequate services to residents.
- The County Police Chief or City Police Commissioner can terminate the agency's participation in an aid request if circumstances become such that continued participation is not in the best interest of the County/City.
- The Chief/Commissioner has the sole authority to determine for their respective departments what personnel or equipment is available for assistance.
- An officer who acts under the proposed agreement remains an employee of the employing unit.
- The proposed agreement authorizes an officer who is providing assistance to enforce the Maryland Vehicle Law within the jurisdictions of the receiving jurisdiction.

Executive staff will be at the worksession to answer any questions the Committee may have about the proposed agreement.

This packet contains:	<u>Circle #</u>
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Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the Request of the County Executive

SUBJECT: Approval of a police Mutual Aid Agreement between Montgomery County and the City of Baltimore

Background

1. Maryland Code, Criminal Procedure Article, § 2-105 (b) empowers the County to authorize its police officers, together with all necessary equipment, to go beyond the boundaries of the County, to any place within or outside the State.
2. Maryland Code, Criminal Procedure Article, § 2-105 (e) authorizes the County to enter into a reciprocal Mutual Aid Agreement with the City of Baltimore, Maryland, to provide and receive the extraterritorial police assistance allowed by Criminal Procedure Article, § 2-105 (b).
3. Montgomery County Code, 2004, Section 35-13, authorizes the County Executive to enter into a police mutual aid agreement subject to the approval of the County Council, and subject to the approval of the County Attorney as to form and legality.
4. Maryland Code, Criminal Procedure Article, § 2-102 (b) (2) states that a police officer is not authorized to enforce the Maryland Vehicle Law beyond the police officer's sworn jurisdiction, unless the officer is acting under a mutual aid agreement authorized under § 2-105 of the Criminal Procedure Article.
5. Situations such as civil unrest or a natural disaster can develop in which Montgomery County or the City of Baltimore would not have sufficient police resources immediately available, and would require assistance from the other jurisdiction to provide the prompt and effective professional law enforcement service required to meet the public's needs. Adoption of the attached Mutual Aid Agreement will provide both jurisdictions the ability to pre-plan for the provision of mutual aid under the conditions and terms set out in the Agreement, when circumstances warrant such a response. And when providing mutual aid in the neighboring jurisdiction, the parties' police officers will have the authority to enforce the Maryland Vehicle Law.

6. The attached Mutual Aid Agreement has been executed by the County Executive and the Chief of the Police Department of Montgomery County. The Agreement has also been executed by the Mayor of Baltimore City, and the President of the Baltimore City Council. The Baltimore City Board of Estimates approved the attached Agreement on December 16, 2015.
7. The County Executive recommends Council approval of the attached Mutual Aid Agreement, which the Department of Police and the County Attorney's Office believe to be sound, desirable, practicable, and beneficial to the County.
8. Approval of this Agreement will provide more effective and efficient utilization of existing law enforcement resources.
9. The County Attorney has approved the attached Mutual Aid Agreement, for form and legality.
10. The Council's Public Safety Committee held a worksession on the Mutual Aid Agreement on [date] and recommended that the Council [approve/disapprove] the Agreement.

Action

The County Council for Montgomery County, Maryland, based on the reasons presented above, approves the following resolution:

The Council accepts and approves the attached police Mutual Aid Agreement between Montgomery County and the City of Baltimore, which Agreement is made a part of this resolution.

The Council authorizes the County to request, provide, and receive mutual aid under the circumstances described, and to the extent specified, in the Mutual Aid Agreement.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

**MUTUAL AID AGREEMENT
BETWEEN
MONTGOMERY COUNTY, MARYLAND, THE
MONTGOMERY COUNTY POLICE DEPARTMENT, AND
THE CITY OF BALTIMORE, MARYLAND, AND
THE BALTIMORE POLICE DEPARTMENT**

DEC 16 2015

THIS MUTUAL AID AGREEMENT, made this _____ day of _____, 2015, by and between **MONTGOMERY COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland, by and through the **COUNTY EXECUTIVE** and **COUNTY COUNCIL OF MONTGOMERY COUNTY, MARYLAND**, (collectively, "**MONTGOMERY COUNTY**"), the **MONTGOMERY COUNTY POLICE DEPARTMENT** ("**MCPD**"), the **MAYOR AND CITY COUNCIL OF BALTIMORE**, a municipal corporation of the State of Maryland (the "**CITY**"), and the **BALTIMORE POLICE DEPARTMENT**, an agency and instrumentality of the State of Maryland ("**BPD**").

WHEREAS, it is in the public interest that law enforcement agencies throughout the State of Maryland cooperate to the greatest extent possible to provide prompt, effective, and professional police services.

WHEREAS, it is in the public interest that law enforcement agencies throughout the State of Maryland cooperate to the greatest extent possible to ensure effective, and professional police services is maintained by sharing of resources between communities/jurisdictions during an emergency.

WHEREAS, the City, BPD, Montgomery County and the MCPD anticipate that circumstances may arise in their respective jurisdictions where there is a need for outside assistance in the form of law enforcement personnel and equipment.

WHEREAS, all law enforcement officers (hereinafter sometimes called "police" or "officers") are trained in current law enforcement techniques and have completed a course of training prescribed by the Maryland Police Training Commission.

WHEREAS, Section 2-102 (b)(1) of the Criminal Procedure Article of the Maryland Annotated Code states, in pertinent part, the following: "[s]ubject to the limitations of paragraph (3) of this subsection, a police officer may make arrests, conduct investigations, and otherwise enforce the laws of the State throughout the State without limitations as to jurisdiction."

WHEREAS, Section 2-102(b)(3) of the Criminal Procedure Article of the Maryland Annotated Code states, in pertinent part, the following: "(3) A police officer may exercise the powers granted by this section when: (i) 1. the police officer is participating in a joint investigation with officials from another state, federal, or local law enforcement unit, at least one of which has local jurisdiction; 2. the police officer is rendering assistance to another police officer; 3. the police officer is acting at the request of a police officer or State Police officer; or 4. an emergency exists; and (ii) the police officer is acting in accordance with regulations adopted by the police officer's employing unit to carry out this section."

WHEREAS, Section 2-105 (e)(1) of the Criminal Procedure Article of the Maryland Annotated Code states, in pertinent part, the following: "The governing body of a county or municipal corporation or the Maryland-National Capital Park and Planning Commission may make a reciprocal agreement for the period that it considers advisable with the District of

Columbia or a county, municipal corporation, or the Maryland-National Capital Park and Planning Commission, within or outside the State, and establish and carry out a plan to provide mutual aid by providing its police officers and other officers, employees, and agents, together with all necessary equipment as provided in subsection (b) of this section.”

WHEREAS, the Commissioner of BPD, pursuant to Public Local Laws §16-7(11) has the authority “[t]o make and execute contracts and other instruments as may be authorized in the exercise and performance of the powers vested in him and the Department”

WHEREAS, the City and Montgomery County enter into this Agreement to provide Mutual Aid, pursuant to the authority granted by Section 2-105(e)(1) of the Criminal Procedure Article of the Maryland Annotated Code.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, Montgomery County, MCPD, the City, and the BPD do hereby agree as follows:

1. The foregoing recitals are hereby incorporated into, and made a part of this Agreement.
2. Whenever any of the conditions set forth in Section 2-102(b)(3) of the Criminal Procedure Article of the Maryland Annotated Code exists, and in the judgment of the Chief of MCPD (or designee) and the Commissioner of BPD (or designee) outside assistance is needed, each party may request assistance in the form of police personnel or equipment from the other jurisdiction.
3. Whenever practicable, the Chief of MCPD (or designee) and the Commissioner of BPD (or designee) shall consult with their respective presiding officials of Montgomery County and the City before requesting assistance or mutual aid under this Agreement. However the failure of the Chief of MCPD (or designee) or the Commissioner of BPD (or designee) to consult with the presiding officials of Montgomery County or the City does not make a request for assistance invalid.
4. Any request for assistance or mutual aid shall be directed, in writing, to the Commissioner BPD (or designee), or the Chief of MCPD (or designee). The request shall describe in detail the nature of the circumstance meeting any of the conditions under Section 2-102(b)(3) of the Criminal Procedure Article of the Maryland Annotated Code, the number of police officers and the amount and type of equipment needed, and a reasonable estimate of the length of time they will be needed.
5. A request for assistance will be evaluated by the responding agency’s Commissioner/Chief (or designee), based on the circumstances of the request, and the capacity of the responding agency to provide the requested aid; while providing adequate services to the residents of the responding jurisdiction. The responding agency will engage in good faith efforts to provide necessary support to the requesting agency.
6. The Chief of MCPD (or designee) or the Commissioner BPD (or designee) shall have the authority to terminate their participation in meeting any request for assistance or mutual aid, at any time when circumstances are such that continued participation is deemed not in the best interest of either Montgomery County or the City. However, the Chief of MCPD (or designee) or the Commissioner BPD (or designee) covenant to engage in good

faith discussions with the other party, when feasible, before terminating any participation in response to a request for assistance or mutual aid.

7. In the circumstances where Montgomery County or the City wish to terminate this Agreement, that party shall provide written notice to the other party, thirty (30) days prior to the proposed date of termination. Written notice of termination may be accomplished by email.
8. The Chief of MCPD (or designee) and the Commissioner of BPD (or designee) shall have the sole authority to determine, for their respective Departments, the personnel and equipment, if any, available for assistance or mutual aid.
9. Notwithstanding anything to the contrary herein, this Agreement shall not be construed to authorize the Chief of MCPD to "deputize" the law enforcement officers of BPD as officers and deputies of MCPD.
10. Notwithstanding anything to the contrary herein, this Agreement shall not be construed to authorize the Commissioner of BPD to "deputize" the law enforcement officers of MCPD as officers and deputies of BPD.
11. The manner of providing assistance, as set forth in this Agreement, shall be in addition to, and shall not limit, the authority granted police officers in matters involving fresh pursuit as provided in Section 2-301 of the Criminal Procedure Article or the powers granted by Sections 5-801, 5-802, 5-807, 5-808, and 5-901 of the Criminal Law Article of the Maryland Annotated Code.
12. Pursuant to Section 2-105(c), of the Criminal Procedure Article of the Maryland Annotated Code, Montgomery County and the City acknowledge that any and all acts performed in furtherance of, or pursuant to, this Agreement by any police, other public officials, or employees of Montgomery County and the City shall be deemed to be for a public and governmental purpose.
13. This Agreement shall not be construed as a waiver of any immunity from tort liability, statutory, common law or otherwise, enjoyed by Montgomery County, the City, the Chief of MCPD, the Commissioner of BPD, any police officer covered by this Agreement, or any employee of Montgomery County or the City.
14. Pursuant to Section 2-105(c)(3) of the Criminal Procedure Article of the Maryland Annotated Code, Montgomery County and the City acknowledge that their officers, agents and employees, when acting in furtherance of the authority of this Agreement beyond the boundaries of the jurisdiction within the State in which they are commissioned or employed, have all the immunities from liability described in Section 5-612 of the Courts & Judicial Proceedings Article of the Maryland Annotated Code, and exemptions from laws, ordinances and regulations, and all the same pension, relief, disability, workers' compensation, and other benefits enjoyed by them, to which these police officers and employees are otherwise entitled while performing their respective duties within the boundaries of the jurisdiction in which they are commissioned or employed.
15. Montgomery County, MCPD, the City, and BPD each acknowledge that they shall only be responsible for all the pension, relief, disability, workers' compensation, other benefits

and death claims of their own employees that may arise out of performance of this Agreement.

16. The Chief of MCPD and the Commissioner of BPD each acknowledge that he or she shall be solely responsible for the discipline of any police officer (under their respective commands) who commits misconduct while taking law enforcement action under this Agreement. Upon learning of the facts and circumstances comprising potential misconduct by a law enforcement officer under their command committed within the jurisdiction of the other party, the Chief of MCPD (or designee) and the Commissioner of BPD (or designee) shall immediately (within twenty four (24) hours) notify the other party of the facts and circumstances comprising potential misconduct. Again, notification by email is deemed sufficient under this Agreement.
17. A police officer who acts under the authority granted by this Agreement remains at all times and for all purposes an employee of the employing unit (the unit acting beyond its boundaries).
18. Pursuant to Section 2-105 of the Criminal Procedure Article of the Maryland Annotated Code, Montgomery County and the City each agree to the following:
 - (a) To waive any and all claims that are against the other parties to this Agreement and that may arise out of their activities outside their respective jurisdictions under the Agreement; and
 - (b) To indemnify and hold harmless the other parties to this Agreement from all claims by third parties that are for property damage or personal injury and that may arise out of the activities of the other parties to the Agreement outside their respective jurisdictions under the Agreement.
19. Montgomery County, MCPD, the City, and BPD each agree to cooperate fully with the other party in the defense of claims, pursuant to the indemnifications of Paragraph 18(b) above. This cooperation will include, but is not limited to, the following:
 - (a) Immediate notification to the other party of any accident, incident or enforcement action resulting in personal injury, damage or having the potential for liability;
 - (b) Permit a party to this Agreement to conduct a parallel independent investigation of any accident or incident;
 - (c) Make reports, records, and equipment available for purposes of the defense of any claim or suit.
20. Senior ranking personnel (and their contingent) responding to a request for assistance or for mutual aid under this Agreement shall report to the senior police officer of the agency requesting assistance or mutual aid, and Unified Command will be established. Command officers of the responding agency will work closely with command officers of the requesting agency in addressing their IAP's (Incident Action Plans), goals, objectives, and operational needs, and in determining parameters regarding deployment of assets. Overall command of the operation will reside in the senior police officer of the requesting agency.
21. Radio communication between the jurisdictions shall be coordinated through the Communications Section of MCPD and BPD, respectively.
22. A responding police officer who is providing assistance or mutual aid under this Agreement shall use the forms and reports of the requesting agency. Any responding

police officer who makes an arrest shall transfer the arrestee to the custody of a police officer of the requesting agency for processing, in accordance with the procedures of the requesting agency. Any report that is filed by a responding police officer to a requesting agency is deemed sufficient notice to the Chief of MCPD or the Commissioner of BPD under Section 2-102(c)(1) of the Criminal Procedure Article of the Maryland Annotated Code.

23. This Mutual Aid Agreement authorizes a police officer who is providing assistance or mutual aid beyond the officer's sworn jurisdiction, to enforce the Maryland Vehicle Law within the territorial jurisdiction of the requesting/receiving county or municipal corporation.
24. Section 35-13 of the Montgomery County Code authorizes the County Executive to enter into police mutual aid agreements with counties and municipal corporations, subject to the County Council's approval of such an agreement.
25. This Agreement shall be governed by the laws of the State of Maryland.
26. Any notification permitted under this Agreement shall be made to the parties listed below:

<p>FOR MONTGOMERY COUNTY: Isiah Leggett County Executive Executive Office Building 101 Monroe Street, 2nd Floor Rockville, MD 20850 Email: oemail@montgomerycountymd.gov</p>	<p>FOR THE CITY: Stephanie Rawlings-Blake Mayor City Hall 100 N. Holliday Street Baltimore, MD 21202 Email: Stephanie.Rawling-Blake@baltimorecity.gov</p>
<p>FOR MCPD: J. Thomas Manger Chief of Montgomery County Police Department 100 Edison Park Drive, 3rd floor Gaithersburg, MD 20878 Email: MCPDCHIEF.ChiefPolice@montgomerycountymd.gov</p>	<p>FOR BPD: Kevin Davis Commissioner of the Baltimore Police Department 601 East Fayette Street Baltimore, MD 21202 Email: Kevin.Davis@baltimorepolice.org</p>

[SIGNATURES TO FOLLOW ON NEXT PAGE]

AS WITNESS the hands and seals of the Parties the day, month, and year first above written.

ATTEST:

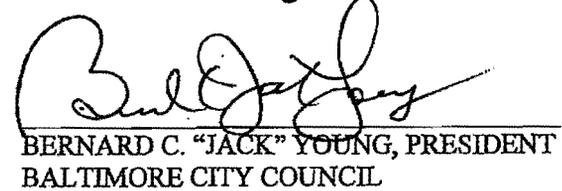
MAYOR AND CITY COUNCIL OF
BALTIMORE


CUSTODIAN OF THE CITY SEAL

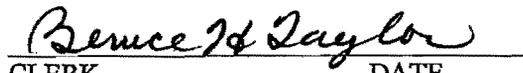
BY:


STEPHANIE RAWLINGS-BLAKE, MAYOR

BY:


BERNARD C. "JACK" YOUNG, PRESIDENT
BALTIMORE CITY COUNCIL

APPROVED BY THE BOARD OF ESTIMATES

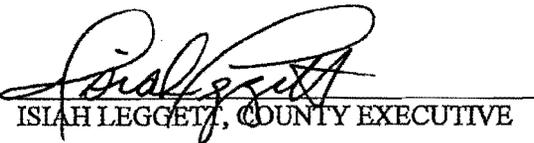

CLERK DATE
DEC 16 2015

ATTEST:

MONTGOMERY COUNTY



BY:

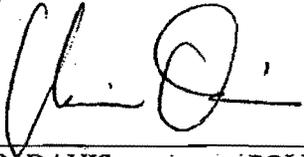

ISIAH LEGGETT, COUNTY EXECUTIVE

APPROVED BY THE MONTGOMERY
COUNTY COUNCIL
RESOLUTION # _____

DATE: _____

**POLICE DEPARTMENT OF BALTIMORE
CITY**

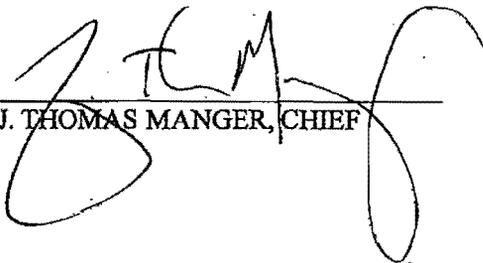
BY:



KEVIN DAVIS, POLICE
COMMISSIONER

**MONTGOMERY COUNTY
DEPARTMENT OF POLICE**

BY:



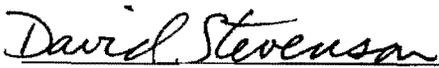
J. THOMAS MANGER, CHIEF

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:



MARK DEWIRE 10/27/2015
CHIEF CITY SOLICITOR
CITY OF BALTIMORE, DEPARTMENT OF LAW

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:



DAVID E. STEVENSON 9/30/15
ASSOCIATE COUNTY ATTORNEY
MONTGOMERY COUNTY, MARYLAND



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MEMORANDUM

February 2, 2016

Isiah Leggett
County Executive

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett 
County Executive

SUBJECT: Introduction – Resolution approving a Mutual Aid Agreement

I am forwarding for Council approval a Mutual Aid Agreement (MAA) between Montgomery County and the City of Baltimore. When fully executed, this MAA will provide a legal framework for the sharing of police resources and will allow for pre-planning of the provision of mutual-aid assistance during certain types of emergencies, and when situations warrant such a response. This MAA has been executed by the Mayor, Board of Estimates, and Police Commissioner of the City of Baltimore, and signed by Chief Manger and me. I am submitting this MAA to the Council in accordance with the provisions of §35-13 of the County Code.

Recent events involving civil unrest in the City of Baltimore have demonstrated the need to pre-plan for the sharing of police resources between Maryland jurisdictions. It is clear that events can occur that can quickly overwhelm the capabilities and resources of a single law enforcement agency within the state. It is recognized that situations could develop in which Montgomery County or the City of Baltimore would not have sufficient police resources immediately available, and would require assistance from the other jurisdiction to provide the prompt and effective professional Law Enforcement service required to meet the public's needs. This Mutual Aid Agreement, which has been developed under the auspices of Section 2-105 of the Criminal Procedure Article, provides for the planning and future provision of mutual aid and the sharing of police resources between Montgomery County and the City of Baltimore in certain circumstances, in accordance with the procedures, notification requirements, reporting requirements and command authority specified in the agreement.

Adoption of this Mutual Aid Agreement between Montgomery County and the City of Baltimore will authorize mutual aid under conditions set out in the agreement and provide both jurisdictions with the ability to assist each other in the event of a significant public emergency in either jurisdiction, such as a civil disturbance, civil unrest, or a natural disaster.

Approval of this agreement will provide a benefit to public safety in Montgomery County, as well as more effective and efficient utilization of existing law enforcement resources within the County, without additional cost.

Thank you for your assistance. I look forward to working with you and the County Council on this matter.

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Captain Michael Wahl
Montgomery County Police Department
March 15, 2016

The Montgomery County Police Department Supports the Mutual Aid Agreement between Montgomery County and the City of Baltimore.

The events in April 2015 involving civil unrest in the City of Baltimore demonstrated the need to pre-plan for the sharing of police resources between Maryland jurisdictions. It is clear that although rare, events can occur that can quickly overwhelm the capabilities and resources of a single law enforcement agency within the state. It is recognized that situations could develop in which Montgomery County or the City of Baltimore would not have sufficient police resources immediately available to meet the public's needs.

During the civil unrest and state of emergency in the City of Baltimore, City officials requested mutual aid assistance from many regional law enforcement agencies. Montgomery County did have specialized resources capable of assisting, and did send a contingent of officers from the police department's Special Events Response Team in response to the overwhelming need. The response was legally authorized by Section 2-102 of the Maryland Criminal Procedure Article. However, this statute is principally intended to authorize individual or small groups of police officers to conduct police operations in neighboring jurisdictions, when requested, or when conducting joint task force type operations. This section, however, is not intended to authorize a detailed written agreement between one police department and another under which the departments agree, in advance, to a process of providing police resources to the other department in the case of a future emergency. Such a formal pre-planned agreement is intended by the Legislature to be accomplished through a mutual aid agreement, under the authority of Section 2-105 of the Criminal Procedure Article.

This Mutual Aid Agreement has been developed under the authority of Section 2-105 and provides for the pre-planning of mutual aid and the sharing of police resources in accordance with predetermined and agreed upon request procedures, notification requirements, reporting requirements, communication procedures, and command authority.

Further, during the civil disturbance operations in Baltimore City, we found that regulating the flow of traffic was often necessary and essential for the control and isolation of riot activity, and for the protection of the public and the officers dealing with the disturbance. Maryland law under Section 2-102 denies responding officers the legal authority to enforce the Maryland Vehicle Law outside their jurisdiction, however, a mutual aid agreement developed under section 2-105 does provide officers the authority to enforce the State traffic laws while operating outside their local government's jurisdiction.

This MAA has been carefully and thoughtfully drafted, prepared, and approved by Montgomery County and Baltimore City officials.

The Police Department remains committed to providing mutual-aid assistance to our regional law enforcement agency partners when situations warrant such a response. Approval of this agreement will provide a benefit to public safety in Montgomery County and in Baltimore City and as such the Montgomery County Police Department wholly supports this Mutual Aid Agreement.