



Text File

Introduced: 12/30/2016

Bill No: 2017-1112, **Version:** 1

Committee: Committee on Public Safety
Services

Status: Passed Finally

Ordinance authorizing the Mayor and the Director of the Department of Public Safety to enter into a Memorandum of Understanding (MOU)/Intergovernmental Cooperation Agreement (ICA) for participation in the Presidential Inauguration Task Force (PITF) for the 2017 Presidential Inauguration in Washington, D.C. between the City of Pittsburgh and the United States Attorney's Office for the District of Columbia (D.C.) and the Metropolitan Police Department of Washington, D.C., to provide operational assistance and professional law enforcement services for the 2017 Presidential Inauguration.

WHEREAS, Washington, D.C. is the site of the 2017 Presidential Inauguration (hereinafter the "Inauguration"), a National Special Security Event, which is to be held during the week of January 15-21, 2017; and

WHEREAS, the City of Washington, D.C., through its Metropolitan Police Department ("MPD") is responsible for coordinating the overall public safety planning and operations at the local law enforcement level; and

WHEREAS, MPD is one of the participating agencies of the Presidential Inauguration Task Force (PITF), along with the United States Attorney's Office for D.C., the United States Marshals Service, United States Secret Service, United States Federal Bureau of Investigation and National Park Service; and

WHEREAS, MPD has requested the City of Pittsburgh Bureau of Police ("Bureau") to participate in the PITF and the Bureau would like to offer its participation and assistance to the MPD and United States Attorney's Office; and

WHEREAS, all personnel of participating agencies of the PITF will be federally deputized with the United States Marshals Service securing the required deputation authorization; and

WHEREAS, each individual deputized as Special Deputy U.S. Marshals will have all necessary law enforcement authority as provided by 28 U.S.C. §564, 566(c) and (d), 18 U.S.C. §3053, 28 C.F.R. §0.112 and the deputation authority of the Deputy Attorney General; and

WHEREAS, each individual deputized as Special Deputy U.S. Marshals will be treated as federal employees for purposes of the PITF event; accordingly, each such individual may be eligible for workers' compensation pursuant to 5 U.S.C. §8101 and also may be eligible for indemnification and/or defense from tort claims pursuant to 28 U.S.C. §§2671 and 2679; and

WHEREAS, the City will be exposed for acts or omissions of its employees while en route to and from this

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event, including but not limited to auto accidents; this is not an uncommon risk, as the City is exposed to such claims any time a City employee uses a City vehicle to travel inside or outside the Commonwealth of Pennsylvania; and

WHEREAS, some jurisdictions (i.e. West Virginia and D.C.) may not recognize the Pennsylvania Political Subdivision Tort Claims Act (“Tort Claims Act”), 42 Pa. C.S. §§8541 *et seq.*, which provides the City limited immunity and/or a \$500,000 cap on damages; and

WHEREAS, other states will analyze matters arising under the Tort Claims Act on a case-by-case basis (i.e. Virginia), such that a state may recognize the Pennsylvania Cap and/or recognize Pennsylvania's right to apply a cap but raise the cap to a level consistent with that state's cap (i.e. Maryland); and

WHEREAS, if a City employee's actions or omissions traveling to or from the event give rise to a tort claim, the City would also have to retain counsel in that jurisdiction to defend the City and/or its employee because members of the Law Department are not licensed to practice therein.

WHEREAS, if a City employee's actions or omissions during the PITF event give rise to tort and/or civil rights claims and the Department of Justice (“DOJ”) refuses to defend the officer, the City and/or Fraternal Order of Police (“FOP”) would have to retain counsel in that jurisdiction to defend the City and/or its employee because members of the Law Department are not licensed to practice therein; and

WHEREAS, the City may be exposed to any direct tort and/or civil rights claims arising from the actions of its employees during the PITF event, as well as traveling to and from the event; the degree of such exposure depending upon the action or omission of the officer, the allegation(s) in the Complaint, and/or the DOJ decision to accept or reject the officer's claim for defense and/or indemnification; and

WHEREAS, the Intergovernmental Cooperation Act (“Act”), 53 Pa. C.S. §§ 2301 *et seq.*, authorizes intergovernmental cooperation between a local government and the Federal government; and

WHEREAS, the City of Pittsburgh has submitted a copy of the Memorandum of Understanding/Intergovernmental Cooperative Agreement (“MOU/ICA”) to the Local Government Commission for its review and recommendations as required by 53 Pa. C.S. §2314; and

WHEREAS, the City now desires to enter into the aforementioned MOU/ICA to participate in the PITF and provide professional law enforcement services during the Inauguration.

The Council of the City of Pittsburgh hereby enacts as follows:

Section 1.

The Mayor and the Director of the Department of Public Safety are hereby authorized to enter into a Memorandum of Understanding/Intergovernmental Cooperation Agreement (MOU/ICA) for participation in the Presidential Inauguration Task Force (PITF) for the 2017 Presidential Inauguration in Washington, D.C.

between the City of Pittsburgh and the United States Attorney's Office for the District of Columbia (D.C.) and the Metropolitan Police Department of Washington, D.C., to provide operational assistance and professional law enforcement services for the 2017 Presidential Inauguration held from January 15-21, 2017.

Section 2.

Pursuant to 53 Pa. C.S. §2307, the following information is hereby specified:

- (1) The conditions of agreement relating to the use of Bureau officers by MPD and the PITF during the Inauguration are set forth in the Act and the MOU/ICA, including but not limited to: Sections IV of the MOU/ICA (setting forth the procedure for City of Pittsburgh personnel to be deputized as federal employees) and IX (establishing scope of liability and immunity).
- (2) The term of the MOU/ICA runs from the execution of the document by all parties, and Bureau Officers will be arriving in the City of Washington, D.C. on or about Sunday, January 15, 2017. Operational assistance commitments will cease with the release of the Bureau personnel from PITF security duty, which is slated to occur no later than Saturday, January 21, 2017 at 11:59 p.m. The parties also agree that certain covenants and responsibilities contained within the MOU/ICA are ongoing and shall survive and remain effective as necessary.
- (3) The purpose of the MOU/ICA is to provide additional law enforcement personnel and services to the City of Washington, D.C. and PITF during the Inauguration events as defined in the MOU/ICA. The scope of authority designated to the Bureau officers are set forth in Section IV as authorized pursuant to federal deputation procedures as described therein. Specific law enforcement methods will conform to the organizational command structure set forth in the MOU/ICA at Section III, the U.S. Constitution, and applicable state and federal law.
- (4) The manner and extent of financing the Bureau's participation in the PITF at the Inauguration is set forth in Section VIII of the MOU/ICA and includes the provision of lodging, food and reimbursement for allowable salary and other expenses by the District of Columbia and United States Government as agreed to by the parties. Funds are hereby authorized for initial travel expenses to be paid by the Bureau prior to reimbursement from the District of Columbia and/or United States Government. These travel expenses are limited to approximately Seven Hundred Fifty Dollars (\$750.00) to be paid via invoices not covered under a contract and subject to the approval of City Council.
- (5) The organizational command structure required to implement the MOU/ICA is set forth in its Section III. The Command Center for the operations will be located at the MPD Headquarters and will be staffed by officers from the United States Marshals Service, MPD, U.S. Park Police and the Federal Bureau of Investigation, said officers serving as the Executive Council for this operation.
- (6) Section VII of the MOU/ICA addresses the Bureau's provision of equipment and

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vehicles for the PITF event.

- (7) No new intergovernmental entity is created under the terms of the MOU/ICA.

The MOU/ICA is subject to the review and approval of the City Solicitor as to form and substance to protect the interests of the City.

Section 3.

Any Resolution or Ordinance of part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.