

MEMORANDUM

April 29, 2022

TO: Government Operations (GO) Committee

FROM: Naeem M. Mia, Legislative Analyst

SUBJECT: **FY23 Recommended Operating Budget – Office of the County Attorney (OCA)**

PURPOSE: Make Committee recommendations for Council Consideration

Expected Participants:

- John Markovs, Acting County Attorney (OCA)
- Carolyn Kilgariff, Budget Manager, OCA
- Rafael P. Murphy, Fiscal and Policy Analyst, Office of Management and Budget (OMB)

Council Staff Recommendation(s):

1) Approve the FY23 Recommended Operating Budget for OCA as requested by the County Executive.

Summary of FY23 Recommended Budget:

County Attorney	FY22 Approved	FY23 CE Recommended	Change from FY22 Approved
General Fund	\$6,429,488	\$6,761,851	\$332,363 5.2%
Personnel Costs	\$5,596,655 41.70 FTEs	\$5,927,012 42.80 FTEs	\$330,357 1.10 FTEs
Operating Costs	\$832,833	\$834,839	\$2,006
Total Expenditures (All Funds)	\$6,429,488 56.35 FTEs	\$6,761,851 56.35 FTEs	\$332,363 1.10 FTEs

Public Hearing/Testimony:

There were no speakers or testimony related to the Office of the County Attorney during the Council's April 2022 operating budget public hearings.

A. Key Budget and Discussion Items

1. Property and Real Estate Development Project and Transaction-Focused Attorney (+ \$94,081, 0.8 FTE)

The Departments of General Services and Transportation are the principal County departments involved in land and real estate related activities. Both departments requested that OCA provide a full-time dedicated attorney to work on existing and new development agreements.

Currently, there is one attorney that handles development agreements in addition to other significant real estate matters. Current staff does not have the capacity to absorb additional work expected to be generated by DGS and DOT.

The Grade 32 position is funded in FY23 at \$94,081 and 0.80 FTEs; the full-year cost is \$125,411. Future costs may be charged to CIP projects depending on specific work assignments.

Council staff recommendation: Approve as requested by the County Executive.

2. Technical Adjustments (+ \$238,282)

OCA's FY23 recommended budget also includes several technical adjustments to reflect updated personnel costs from the approved FY22 and proposed FY23 compensation agreements, retirement adjustments, reduced chargebacks to other departments, and print and mail chargebacks.

Council staff recommendation: Approve as requested by the County Executive.

3. Staffing Recruitment Issues

Update from OCA: OCA is having great deal of difficulty filling vacant positions. OCA currently has two vacant attorney positions and one paralegal position. Those positions were advertised for months without suitable candidates applying. Another attorney is resigning effective May 13, 2022 to return to private practice which creates a third vacant attorney position.

Salaries that OCA can offer are significantly less than are being offered by private law firms and corporations. Also, the benefits being offered by the private sector match or exceed benefits being offered by the County. The County's retirement plans are not keeping up with inflation. The GRIP is capped at 7.25% and inflation is eroding the ROI.

Right now, OCA cannot compete with the private sector for experienced lawyers and paralegals. It is unclear whether there will be any retirements in FY22 or FY23. With the current labor market,

it is anticipated that other attorneys may leave OCA as a result of seeking increased compensation and benefits.

Council staff recommendation: Monitor the department’s staffing issues for the time being. If existing trends persist, the County Executive and Council may consider increased personnel funding in the future.

4. Minority, Female, and Disabled (MFD) Disparity Study – Status Update

Update from OCA: OCA is in the process of selecting a vendor to complete the study. The solicitation for the MFD study was issued and responses have been submitted by vendors. OCA anticipates finalizing the selection and entering into a contract with the chosen vendor before the end of FY22 with the intent of completing the study before the end of FY23.

Council staff recommendation: None.

This report contains:

1. FY23 Publication Pages – OCA

Circle Page #

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County Attorney

RECOMMENDED FY23 BUDGET

\$6,761,851

FULL TIME EQUIVALENTS

42.80

JOHN MARKOV, ACTING COUNTY ATTORNEY

MISSION STATEMENT

The mission of the Office of the County Attorney is to act as the Chief Legal Officer of Montgomery County Government and to conduct all its legal business.

BUDGET OVERVIEW

The total recommended FY23 Operating Budget for the Office of the County Attorney is \$6,761,851, an increase of \$332,363 or 5.17 percent from the FY22 Approved Budget of \$6,429,488. Personnel Costs comprise 87.65 percent of the budget for 79 full-time position(s) and one part-time position(s), and a total of 42.80 FTEs. Total FTEs may include seasonal or temporary positions and may also reflect workforce charged to or from other departments or funds. Operating Expenses account for the remaining 12.35 percent of the FY23 budget.

COUNTY PRIORITY OUTCOMES

While this program area supports all seven of the County Executive's Priority Outcomes, the following is emphasized:

Effective, Sustainable Government

INITIATIVES

- Publishes monthly report in the County's dataMontgomery portal and publishes quarterly reports on the OCA website with status reports covering litigation, contracts, code enforcement, workers compensation and debt collection. Beginning 2022, and in compliance of Bill 19-21, OCA will periodically provide County Executive and County Council certain settlement agreements entered by the County. The County Attorney will also quarterly brief the County Council on pending litigation. OCA supports a responsive and visible government.
- Successfully completed all documents required to submit the Wheaton Office Building to a condominium regime (M-NCPPC owns the building, and the County owns the underground garage), leased a portion of the M-NCPPC condo unit to the County for office space, assisted in the Marian Fryer Plaza to be put to community use, and transferred 8787 Georgia Avenue for redevelopment of M-NCPPC's former headquarters.
- Successfully quieted title to the property located at 4010 Randolph Road in Silver Spring, the Bushey Drive Elementary School site and most recently the headquarters for the County's Department of Recreation. Because OCA quieted title, the County may convey the property to an affordable housing developer who will provide rental and for-sale housing to

households whose income is within the range of 30 percent to 70 percent of the area median income for the Washington Metropolitan Statistical Area.

- ★ The new Property and Real Estate Development Project and Transaction Focused Attorney will support the Department of General Services and the Department of Transportation as they engage in significantly more complex real estate development projects that require assigning an experienced lawyer to work exclusively on those projects. Many of these projects will require the creation of development agreements, condominium documents, covenants, easements, and other transactional documents that require months of effort to complete.

INNOVATIONS AND PRODUCTIVITY IMPROVEMENTS

- ★ Successfully launched the Non-Procurement Contract Portal in accordance with Administrative Procedure 2-4. The portal allows all County agencies to view a list of non-procurement contracts subject to AP 2-4, create an online checklist (e-Checklist) for preparation of contracts, view FAQs (frequently asked questions) related to AP 2-4, and user instructions.
- ★ In collaboration with TEBS and DGS, OCA initiated and helped develop an archiving application to allow County agencies to submit online transmittal form for archiving records with built-in workflows. OCA manages a large volume of legal files that must be kept according to their retention policy. The new application allows agencies to submit requests to archive to DGS electronically, request archived records and return records via the one-stop portal. The project will be completed in FY22 and is in the process of final phase of testing and user training.
- ★ Improved its current version of the Legal Hold application by developing a preservation process. The new processes include a dedicated SharePoint portal to allow OCA to notify agencies to preserve electronic records upon Notice of Claims which may later evolve into lawsuits and created a built-in workflow to send email notifications. The portal allows agencies to respond to preservation notices, track progress, and allow TEBS to place legal holds to O365. The new application enables OCA to track preservation and legal hold records.
- ★ Developed and will implement a new online portal application with built-in workflow to centralize all routing and responses to subpoenas issued to HHS and other agencies for summons of records and witness testimony. OCA processes over 300 subpoenas per year under the current ad hoc and labor-intensive process (snail mail, email, etc.). The new system allows agencies to immediately create an online entry and upload subpoenas to OCA for processing. OCA is notified by the application via email, can file email in the ProLaw case management system, and assign attorneys to respond. This application enables OCA to manage, sort and track all pending subpoenas for appropriate responses, e.g. Motion to Quash/Motion for Protective Order. OCA legal staff can view status of a subpoena and track its outcome accurately.
- ★ Complex County lawsuits with large volumes of depositions, transcripts, exhibits, discovery documents and videos, requiring labor intensive efforts to review, prepare, and compile documents, media files, and deposition transcript excerpts for trial have risen significantly. To make the pre-litigation process manageable, OCA deploys a third-party off-the-shelf cloud-based application to empower attorneys who work on the large lawsuits to better prepare for hearings, depositions, and trials. The software allows for full-text searching, coding, and tagging throughout and across multiple transcripts and records.
- ★ Continues to expand the electronic citation application for use by more departments. Taxicab and Alcohol Beverages Services were added this year and the departments have been trained to issue citations electronically using e-Citation.

PROGRAM CONTACTS

Contact Carolyn Kilgariff of the Office of the County Attorney at 240.777.6766 or Rafael Pumarejo Murphy of the Office of Management and Budget at 240.777.2775 for more information regarding this department's operating budget.

PROGRAM PERFORMANCE MEASURES

Performance measures for this department are included below (where applicable), with multi-program measures displayed at the front of this section and program-specific measures shown with the relevant program. The FY22 estimates reflect funding based on the FY22 Approved Budget. The FY23 and FY24 figures are performance targets based on the FY23 Recommended Budget and funding for comparable service levels in FY24.

PROGRAM DESCRIPTIONS

Administration

Under this program, administrative support, financial and operational management, and oversight is provided in support of the Litigation Program and the General Counsel Program. Also provides administrative, research, and technical guidance and support to divisions within the Department. Allows for an equitable distribution of work assignments, to cross-train staff, and to evaluate fairly the performance of the staff. Provides administrative support to the Risk Management Fund, Revenue Authority, and Solid Waste Fund.

Program Performance Measures	Actual FY20	Actual FY21	Estimated FY22	Target FY23	Target FY24
Overall average rating from Internal Customer Satisfaction Survey (1-4 scale)	3.38	3.55	3.44	3.44	3.44

FY23 Recommended Changes	Expenditures	FTEs
FY22 Approved	2,187,636	12.70
Increase Cost: Office of Intergovernmental Relations Legal Secretary Charge Back Elimination	20,670	0.30
Multi-program adjustments, including negotiated compensation changes, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting multiple programs.	(134,213)	(1.00)
FY23 Recommended	2,074,093	12.00

General Counsel

This program provides general counsel services to the agencies and instrumentalities of the County government. These general counsel services include providing legal advice to the Executive and Legislative Branches of County government; review of legislation and transaction for legal sufficiency; collection of debts owed to the County; representation of the County in child welfare cases; representation of the County in appellate cases; and representation of the County before administrative agencies.

FY23 Recommended Changes	Expenditures	FTEs
FY22 Approved	4,241,852	29.00
Add: Property and Real Estate Development Project and Transaction Focused Attorney	94,081	0.80
Multi-program adjustments, including negotiated compensation changes, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting multiple programs.	351,825	1.00
FY23 Recommended	4,687,758	30.80

Litigation

Through this program, OCA represents the County (and other members of the Self-Insurance Fund) before all courts and administrative agencies in which claims for relief are sought in connection with alleged wrong-doing by members of the Self-Insurance Fund and their employees. Under this program, OCA also provides the County with legal representation in State and Federal courts in connection with legal actions brought by the County to enforce County law. For FY22, all attorneys and

staff in this program are fully charged to the Self-Insurance Fund (SIF).

Program Performance Measures	Actual FY20	Actual FY21	Estimated FY22	Target FY23	Target FY24
Debt collection (\$000)	\$7,412	\$5,346	\$6,000	\$6,500	\$7,000
Forfeitures collected (\$000) ¹	\$301.16	\$552.46	\$400.00	\$400.00	\$400.00
Debt collection - cost/revenue ratio	6.5%	10%	6%	6%	6%
Code Citations processed ²	7,074	3,374	5,567	5,567	5,567
Debt collection - collected/total referred ratio	120.0%	51.02%	103.5%	103.5%	103.5%
Code enforcement collected (\$000) ³	\$437	\$392	\$495	\$495	\$495
Code enforcement - Win/loss ratio ⁴	99.68%	97.58%	98.88%	98.88%	98.88%
Worker's compensation cases: Total net gain to the County (\$000)	3,629	5,656	4,081	4,081	4,081

¹ Due to court closure and restrictions, there were only 13 forfeiture closed in FY21 compared to 49 in FY20. However, the collected amount is higher due to large forfeiture amounts for some cases.

² Due to pandemic, the District Court has stopped processing code enforcement cases until October 2020 and the Court still has a lot of backlogs.

³ Due to pandemic, the District Court has stopped processing code enforcement cases until October 2020 and the Court still has a lot of backlogs.

⁴ The ratio is affected by the lower number of cases closed. Due to pandemic, the District Court has stopped processing code enforcement cases until October 2020 and the Court still has a lot of backlogs.

FY23 Recommended Changes	Expenditures	FTEs
FY22 Approved	0	0.00
FY23 Recommended	0	0.00

BUDGET SUMMARY

	Actual FY21	Budget FY22	Estimate FY22	Recommended FY23	%Chg Bud/Rec
COUNTY GENERAL FUND					
EXPENDITURES					
Salaries and Wages	4,458,332	4,441,986	4,464,234	4,783,377	7.7 %
Employee Benefits	1,235,785	1,154,669	1,120,879	1,143,635	-1.0 %
County General Fund Personnel Costs	5,694,117	5,596,655	5,585,113	5,927,012	5.9 %
Operating Expenses	719,892	832,833	1,144,499	834,839	0.2 %
County General Fund Expenditures	6,414,009	6,429,488	6,729,612	6,761,851	5.2 %
PERSONNEL					
Full-Time	76	77	77	79	2.6 %
Part-Time	1	1	1	1	—
FTEs	41.20	41.70	41.70	42.80	2.6 %
REVENUES					
Federal Financial Participation Reimbursements	286,880	250,000	250,000	250,000	—
Miscellaneous Revenues	50,000	0	215,000	0	—
Other Intergovernmental	45,630	45,630	45,630	45,630	—
County General Fund Revenues	382,510	295,630	510,630	295,630	—

GRANT FUND - MCG

BUDGET SUMMARY

	Actual FY21	Budget FY22	Estimate FY22	Recommended FY23	%Chg Bud/Rec
EXPENDITURES					
Salaries and Wages	21,730	0	0	0	—
Employee Benefits	0	0	0	0	—
Grant Fund - MCG Personnel Costs	21,730	0	0	0	—
Operating Expenses	40,670	0	0	0	—
Grant Fund - MCG Expenditures	62,400	0	0	0	—
PERSONNEL					
Full-Time	0	0	0	0	—
Part-Time	0	0	0	0	—
FTEs	0.00	0.00	0.00	0.00	—
REVENUES					
Federal Grants	62,400	0	0	0	%
Grant Fund - MCG Revenues	62,400	0	0	0	—
DEPARTMENT TOTALS					
Total Expenditures	6,476,409	6,429,488	6,729,612	6,761,851	5.2 %
Total Full-Time Positions	76	77	77	79	2.6 %
Total Part-Time Positions	1	1	1	1	—
Total FTEs	41.20	41.70	41.70	42.80	2.6 %
Total Revenues	444,910	295,630	510,630	295,630	—

FY23 RECOMMENDED CHANGES

	Expenditures	FTEs
COUNTY GENERAL FUND		
FY22 ORIGINAL APPROPRIATION	6,429,488	41.70
<u>Changes (with service impacts)</u>		
Add: Property and Real Estate Development Project and Transaction Focused Attorney [General Counsel]	94,081	0.80
<u>Other Adjustments (with no service impacts)</u>		
Increase Cost: Annualization of FY22 Compensation Increases	112,523	0.00
Increase Cost: Annualization of FY22 Personnel Costs	93,367	0.00
Increase Cost: FY23 Compensation Adjustment	84,891	0.00
Increase Cost: Office of Intergovernmental Relations Legal Secretary Charge Back Elimination [Administration]	20,670	0.30
Increase Cost: Printing and Mail Adjustment	2,006	0.00
Decrease Cost: Retirement Adjustment	(75,175)	0.00
FY23 RECOMMENDED	6,761,851	42.80

PROGRAM SUMMARY

Program Name	FY22 APPR Expenditures	FY22 APPR FTEs	FY23 REC Expenditures	FY23 REC FTEs
Administration	2,187,636	12.70	2,074,093	12.00
General Counsel	4,241,852	29.00	4,687,758	30.80
Litigation	0	0.00	0	0.00
Total	6,429,488	41.70	6,761,851	42.80

CHARGES TO OTHER DEPARTMENTS

Charged Department	Charged Fund	FY22 Total\$	FY22 FTEs	FY23 Total\$	FY23 FTEs
COUNTY GENERAL FUND					
Board of Appeals	General Fund	77,302	0.50	86,016	0.50
Intergovernmental Relations	General Fund	29,397	0.30	0	0.00
Finance	General Fund	182,531	1.05	192,478	1.05
Finance	Risk Management (Self Insurance - ISF)	2,906,534	21.00	3,180,654	21.00
Human Resources	Employee Health Self Insurance	18,945	0.10	12,773	0.10
Correction and Rehabilitation	General Fund	159,561	1.00	172,679	1.00
Police	General Fund	178,384	1.00	191,130	1.00
Parking District Services	Bethesda Parking	22,228	0.10	41,456	0.30
Parking District Services	Silver Spring Parking	30,405	0.20	32,914	0.20
Health and Human Services	General Fund	83,477	0.50	150,325	1.50
Health and Human Services	Grant Fund	194,294	2.40	194,294	2.40
Permitting Services	Permitting Services	205,768	1.00	182,985	1.00
Housing and Community Affairs	General Fund	94,958	0.50	96,010	0.50
Housing and Community Affairs	Montgomery Housing Initiative	186,626	1.00	192,021	1.00
Recycling and Resource Management	Solid Waste Disposal	142,091	0.75	144,192	0.75
Recycling and Resource Management	Solid Waste Collection	47,364	0.25	48,064	0.25
CIP	Capital Fund	483,235	2.80	508,698	2.80
NDA - Montgomery County Employee Retirement Plans	General Fund	18,945	0.10	18,945	0.10
NDA - Montgomery County Employee Retirement Plans	Employees Retirement Savings Plan (RSP)	18,945	0.10	12,773	0.10
NDA - Montgomery County Employee Retirement Plans	Retirement Fund (ERS)	79,571	0.42	53,648	0.42
NDA - Retiree Health Benefits Trust	Retiree Health Benefits Trust Fund	32,207	0.17	32,207	0.17
NDA - Retiree Health Benefits Trust	RSP-Disability Benefits (LTD2)	11,367	0.06	11,367	0.06
Cable Television Communications Plan	Cable TV	111,140	0.50	98,602	0.50
Total		5,315,275	35.80	5,654,231	36.70

FUNDING PARAMETER ITEMS

CE RECOMMENDED (\$000S)

Title	FY23	FY24	FY25	FY26	FY27	FY28
COUNTY GENERAL FUND						
EXPENDITURES						
FY23 Recommended	6,762	6,762	6,762	6,762	6,762	6,762
No inflation or compensation change is included in outyear projections.						
Annualization of Positions Recommended in FY23	0	125	0	0	0	0
New positions in the FY23 budget are generally assumed to be filled at least two months after the fiscal year begins. Therefore, the above amounts reflect annualization of these positions in the outyears.						
Labor Contracts	0	252	252	252	252	252
These figures represent the estimated annualized cost of general wage adjustments, service increments, and other negotiated items.						
Subtotal Expenditures	6,762	7,139	7,014	7,014	7,014	7,014

ANNUALIZATION OF FULL PERSONNEL COSTS

	FY23 Recommended		FY24 Annualized	
	Expenditures	FTEs	Expenditures	FTEs
Annualization of FY22 Personnel Costs	93,367	0.00	186,734	0.00
Property and Real Estate Development Project and Transaction Focused Attorney	94,081	0.80	125,441	0.80
Total	187,448	0.80	312,175	0.80

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