Montgomery County Council

Committee: Directly to Council
Committee Review: N/A
Staff: Marlene Michaelson, Executive Director
Purpose: Receive briefing and have discussion – no vote expected
Keywords: FY21 Operating Budget

AGENDA ITEM #2
April 16, 2020
Discussion

SUBJECT

FY21 Operating Budget Highlights and Approach

EXPECTED ATTENDEES

- Rich Madaleno, Director, Office of Management and Budget
- Mike Coveyou, Director, Department of Finance

COUNCIL DECISION POINTS

- Overall approach to FY21 operating budget.

DESCRIPTION/ISSUE

Council staff will present the following information on the FY21 operating budget and the Council's approach given the context of the current global health pandemic:

- A summary of the County Executive's Recommended FY21 Operating Budge as submitted on March 16;
- A summary of budgetary and fiscal changes that have occurred since March 16 due to the COVID-19 health crisis;
- Updated FY20 and FY21 revenue projection scenarios due to the ongoing economic impact from the health crisis, developed in conjunction with Executive Branch staff;
- Initial data on a FY21 "same services" budget option as requested by the Council in Resolution 19-388; and
- Options for moving forward with the FY21 operating budget approval process.

<u>This report contains:</u>

Council Staff Report	1-12
Staff Report Attachments	©1-21

M E M O R A N D U M

April 13, 2020

TO: County Council

FROM: Marlene Michaelson, Executive Director
Craig Howard, Deputy Director
Gene Smith, Legislative Analyst

SUBJECT: **FY21 Operating Budget Highlights and Approach**

A. Summary of County Executive's FY21 Recommended Operating Budget

On March 16, the Executive transmitted his Recommended FY21 Operating Budget to the Council. This section provides a broad overview of the Executive's recommended budget in several key areas.

1. Overview of Recommended FY21 Funding and Staffing

The recommended budget totals $5.926 million, an increase of $164.3 million or 2.9% increase from the approved FY20 Operating Budget. Total tax supported expenditures of $5,133.1 million are recommended for FY21, an increase of $100.1 million or 2.0% from FY20. Table 1 details the FY21 recommended budget by agency and debt service.

Table 1. FY21 Recommended Budget by Agency ($ millions)

Agency	Total Budget			Tax Supported Budget		
	FY21 CE Rec.	Change from FY20 $	Change from FY20 %	FY21 CE Rec.	Change from FY20 $	Change from FY20 %
Montgomery County Government	**2,214.2**	45.1	2.1%	**1,704.2**	13.4	0.8%
Montgomery County Public Schools	**2,795.5**	114.9	4.3%	**2,603.7**	89.4	3.6%
Montgomery College	**318.4**	3.7	1.2%	**268.9**	3.4	1.3%
M-NCPPC	**161.2**	3.2	2.0%	**133.8**	1.4	1.1%
Debt Service	**436.7**	(2.6)	(0.6%)	**422.5**	(7.5)	(1.7%)
Total	**5,926.0**	164.3	2.9%	**5,133.1**	100.1	2.0%

Montgomery County Government. The Executive's recommendation of $1,704.2 million, excluding debt service, represents 33.2% of the total tax-supported budget. A summary of changes within County Government departments and programs is attached at ©1-8.

MCPS. The Executive recommends $2,795.5 million for MCPS, an increase of 4.3% from FY20 and $39.1 million more than the required Maintenance of Effort (MOE) level. The recommendation is $5.0 million below the Board of Education's request. The increase in MOE for FY21 is $26.6 million. MCPS represents a little more than half (50.1%) of the recommended tax supported budget.

Montgomery College. The Executive's recommended budget for Montgomery College reflects a 1.2% increase. This recommendation is $165,000 above the required MOE level and fully funds the Board of Trustee's request.

M-NCPPC. Recommended tax supported funding for Park and Planning, excluding debt service, is a 1.1% increase from FY20 but approximately 5.4% less than the agency's request.

Changes in workforce. The Executive's FY21 recommended operating budget would provide staffing increases for all agencies except for Montgomery College. The Executive's recommended FY21 Operating budget includes a total of 819 new FTEs, 775 of which are tax-supported. Nearly three-quarters of the increased FTE's are for MCPS. The recommendation for County Government includes an increase of 147 tax supported FTEs in FY21, slightly greater than the FY20 increase of 139 FTEs. Table 2 reflects changes in FTEs by agency.

Table 2. Total Staffing by Agency, FY19-FY21 CE Recommended

	FY19	FY20	*Change, FY19-20*	FY21 CE Rec.	*Change, FY20-21*
Total All Agencies					
Tax Supported	32,428.16	32,974.63	*546.47*	33,749.30	*774.67*
Non-Tax Supported	3,339.87	3,338.96	*(0.91)*	3,382.85	*43.89*
County Government					
Tax Supported	8,440.60	8,579.67	*139.07*	8,727.18	*147.51*
Non-Tax Supported	1,859.91	1,853.55	*(6.36)*	1,889.99	*36.44*
MCPS					
Tax Supported	21,254.35	21,649.85	*395.50*	22,257.28	*607.43*
Non-Tax Supported	1,197.91	1,217.26	*19.35*	1,219.51	*2.25*
Montgomery College					
Tax Supported	1,810.10	1,803.35	*(6.75)*	1,803.35	*0.00*
Non-Tax Supported	115.50	107.50	*(8.00)*	107.50	*0.00*
M-NCPPC (Montgomery)					
Tax Supported	923.11	941.76	*18.65*	961.49	*19.73*
Non-Tax Supported	166.55	160.65	*(5.90)*	165.85	*5.20*

2. Tax Revenues

The Executive's recommended two significant departures from prior year's budgets as it relates to the County's tax revenues.

- Recommended an **increase from $692 to $800** for the Income Tax Offset Credit (ITOC) to eligible properties. This recommendation results in an **additional** $1.66 million in property tax revenues estimated in FY21. The ITOC has been set at $692 since FY11.
- Recommended a **3.18 cent property tax increase** for a "supplementary school funding property tax" to fund expenditures for Montgomery County Public Schools. This recommendation, including the $800 ITOC recommendation, yields in an additional $65.52 million in property tax revenues estimated in FY21. These revenues exceed the inflation rate threshold established in Section 305 of the County Charter.

These two recommendations produce an increase of 4.78 cents to the weighted property tax rate compared to FY20's rate. **At the median sales price of $450,000, a household's property tax bill will increase by about $110, which includes the additional savings from the increase in the ITOC**.

The remaining tax revenue estimates were comparable with the estimates provided by the Department of Finance revenue update in December 2019.[1] The only significant difference from the December 2019 revenue update was income tax revenues were increased by approximately $31.0 million in the March 2020 recommended budget, totaling an increase of $55.0 million compared to FY20 approved income tax revenues.

The December 2019 revenue update estimated that FY21 tax revenues would increase by approximately $17.0 million compared to the FY20 approved revenues. The March 2020 recommended budget estimates that tax revenues will increase by $110.7 million compared to the FY20 approved tax revenues. The Executive's proposed real property tax increase and the revision to the income tax revenues explain 100% of the estimated tax growth for FY21 compared to FY20.

3. Fiscal Policy – Reserves, Debt Service, OPEB, and PAYGO

The County allocates substantial resources each year to pay for costs already incurred or set aside resources for known future obligations. The County's rigorous standards for sound financial management are outlined in Resolution No. 16-1415, Reserve and Selected Fiscal Policies (June 29, 2010), which the Council adopted during the depth of the Great Recession. The Council added specific annual reserve targets in Resolution No. 17-312

Reserves. The Executive's recommended budget includes enough resources to maintain 10.0% reserves throughout FY21. The budgeted FY21 reserve contributions, however, are much smaller compared to prior years because the budget estimates they County will close FY20 at 10.0%. By closing FY20 with enough resources in the reserves, limited resources are needed to maintain the 10.0% policy goal in FY21. However, this estimate was produced prior to the current health crisis and factors impacting reserves in both FY20 and FY21 have changed.

Debt service. As detailed on page 1, the $436.7 million in FY21 debt service expenditures are a slight decrease (0.6%) from FY20. This decrease is due to the Executive including savings from refunding General Obligation (G.O.) bonds during the fiscal year. The budget assumes $15.0 million in savings in FY21. Previously, the Executive did not include this type of savings in the recommended budget because it was difficult to calculate the actual savings prior to the sale of the refunded bonds. The Council may need to consider adjusting this assumption to ensure there is enough resources to fund the County's debt obligations in FY21.

[1] https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2019/20191210/20191210_6.pdf.

OPEB pre-funding. The Executive's recommended FY21 budget includes $90.1 million in tax supported OPEB pre-funding, fully meeting the actuarily determined contribution. This represents a decrease of $31.0 million from the FY20 approved pre-funding of $121.1 million. **The Executive recommends reducing the OPEB pre-funding contribution Montgomery County Government by $22.4 million from the approved FY20 level based on an updated actuarial valuation.** The pre-funding contribution for MCPS also decrease by $9.2 million based on an updated actuarial valuation.

Additionally, the County Executive recommends an FY20 savings plan to reduce the FY20 contribution for County Government by $21.1 million (from $34.7 million to $13.6 million) based on the updated valuation (©9).

PAYGO. Resolution No. 17-312 also states: "The County should allocate to the CIP each year as PAYGO [cash] at least 10% of the amount of general obligation bonds planned for issue that year." FY21 PAYGO is $32.0 million, the same level as FY20 following the Council's actions to reduce general obligation borrowing. As will be discussed in the CIP update, staff will provide the Council with scenarios to reduce PAYGO as part of CIP reconciliation options.

4. Collective Bargaining Agreements

For FY21, the Executive negotiated new three-year agreements with MCGEO and the FOP and a new two-year agreement with the IAFF. The table below shows the FY21 general wage adjustments and service increments negotiated by the Executive. In addition, the Executive recommends funding a "salary schedule adjustment" for eligible FOP members as well as a past year service increment for eligible MCGEO members who did not receive a service increment during the recession year of FY11. The Council will receive a more detailed briefing on the collective badinaging agreements and other compensation and benefit issues on April 23rd.

Table 3. CE Recommended FY21 MCG General Wage Adjustments and Service Increments

Employee Group	General Wage Adjustment	Service Increment	Past Year Service Increment	Salary Schedule Adjustment
FOP	1.0% (effective July)	3.5%	None	3.5% (effective July)
IAFF	2.25% (effective Aug.)	3.5%	None	None
MCGEO	1.25% (effective Oct.)	3.5%	1.25% from FY11 (effective July)	None
Non-Represented	1.25% (effective Oct.)	3.5%	None	None
MLS/PLS	1.25% (effective Oct.)	Performance-based pay in lieu of service increments.	None	None

Other pay adjustments recommended by the Executive include:

- **Lump Sum Payments.** The agreement with MCGEO includes a lump sum payment of $1,000 for employees (including those at top of grade) who are not eligible for a service increment in FY21.

- **Longevity Adjustments.** The Executive funds existing longevity adjustments for eligible employees at top of grade.

- **Retirement Contribution Shift.** For MGEO members and non-represented employees, the Executive recommends changing the percent of annual salary contributed by both the employee and the County Government. The County's contribution rate would increase by 1.0% of the employee's salary while the employee's contribution rate would decrease by 1.0% percent of salary. As a result, the effective pay increase for these employees would be an additional 1.0% higher.[2]

Table 4 shows that the pay adjustments recommended by the Executive would have a combined FY21 cost of $28.0 million ($22.4 million tax supported). These estimates include the salary and wage costs as well as employee benefit costs borne by the employer. However, as many of the pay adjustments take effect several months into the fiscal year, the amount budgeted for FY20 does not reflect the full annualized cost (that is, the 12-month cost) of the Executive's recommendations. The annualized cost of the FY21 pay adjustments is $38.2 million ($30.4 million tax supported). The annualized cost of the pay adjustments exceeds the FY20 cost by $10.2 million ($7.8 million tax supported). These costs would become part of the FY22 budget base.

Table 4. Estimated Cost of CE Recommended FY21 Pay and Retirement Contribution Adjustments

Pay Adjustment	Total Cost		Tax Supported Cost	
	FY21	Annualized	FY21	Annualized
General Wage Adjustments	$9,548,459	$12,076,289	$8,061,102	$10,034,249
Service Increments (includes past year increment and schedule adjustment)	$10,386,368	$16,581,886	$8,607,855	$13,447,410
Retirement Contribution Shift	$2,519,285	$5,417,946	$1,850,378	$3,964,747
Other	$5,565,137	$4,142,214	$3,897,885	$2,918,676
Totals	**$28,019,249**	**$38,218,335**	**$22,417,220**	**$30,365,082**

[2] For MCGEO employees who participate in the State retirement plan or part-time employees who do not participate in any retirement plan, the agreement also contains an additional 1.0% general wage increase.

5. Productivity Improvements NDA

The County Executive's recommended FY21 budget also includes a Productivity Improvements Non-Departmental Account (NDA) funded at negative $10 million. The budget describes this NDA as follows:

> "This NDA recognizes cost efficiencies identified by Montgomery County Government staff through the evaluation of service delivery models, supervisory/management and workforce structures, relevant tools, equipment, and technologies, operating budgets, and contracts with outside vendors. The critical assessment of these factors and formulation of strategies to maintain, increase, or improve service delivery at a lower cost is a pillar of good government, especially in a fiscally challenging environment. The productivity and performance improvement effort is a collaborative initiative that involves County leadership, management, and represented employees."

Council staff notes that the County Attorney has previously concluded that the Council is not allowed to approve a negative appropriation (©11-17). **As a result, the Council could not approve the Executive's budget as recommended without finding an additional $10 million in resources or reducing department budgets by a total of $10 million.**

B. Changes Since the Executive's March 16 Budget Submission

The COVID-19 health pandemic has resulted in several immediate budget impacts, while at the same time several other budget impacts are still unknown. The Office of Management and Budget is currently working on the 3rd quarterly analysis, which will provide a better picture of where and how much expenditures have increased (or decreased) due to COVID-19 and what might be anticipated in the 4th quarter of the fiscal year.

Additional FY20 appropriations. Since March 16, the Council has made $38.5 million in FY20 appropriations out of reserve, nearly all to provide emergency assistance related to COVID-19.[3] These expenditures will reduce the resources available in the reserve for both the year-end FY20 calculation and the assumption for FY21. The actions include:

- $20 million for the Public Health Emergency Grant Program to provide emergency grants for local businesses and non-profits with 100 employees or less that are struggling to survive the economic impact of COVID-19.
- $10 million to help hospitals meet the urgent health care needs of residents and make emergency purchases to expand health care capacity.
- $6 million special appropriation for direct emergency assistance; $5 million will go towards direct financial assistance for County residents while $1 million will go to support safety-net services for vulnerable residents.

[3] The Council approved $2.0 million for an Economic Development Fund transaction unrelated to COVID-19 on March 24, 2020.

- $260,000 for Manna Food Center to provide needed food to families
- $250,000 to provide hotel or motel room for medical staff and first responders.

There may be need for additional COVID-19 related expenditures, in particular for the Public Health Emergency Grant Program.

COVID-19 pay differential. On April 5, the Chief Administrative Officer announced that the County had reached an agreement with the three employee unions to provide a pay differential for staff whose jobs cannot be performed remotely during the COVID-19 health crisis. The agreements cover six pay periods starting March 29, or until the Maryland State of Emergency is lifted. The CAO also extended the same differential to non-represented employees on the general salary schedule (GSS). The differential does not apply to MLS, PLS, or Fire management employees. The details of the pay differential include:

- The differential pay will be uniform for FOP and IAFF members. For MCGEO-represented and GSS employees, the differential will distinguish between front-facing onsite and back office onsite work. The differential pay for all impacted employees are retroactive to March 29, the beginning of the current pay period.
- The front-facing onsite employees will receive an additional $10/hr and the back-office onsite will receive $3/hr.
- Represented employees will also receive one week of compensatory time for the period from March 22-28.

The Office of Management and Budget currently estimates that the pay differential will cost approximately $3.2 million per pay period. Additional information will be available in two weeks, following the first pay period when the differential was in effect.

Federal and State reimbursement. The ultimate level of Federal or State reimbursement for County COVID-19 expenditures is also unknown. To date, the County anticipates receiving $183.2 million in funding from the Coronavirus Aid, Relief, and Economic Security (CARES) Act. This funding, however, is restricted to certain activities related to the COVID-19 crisis and could not be used to fund other programs.

C. Updated Revenue Projection Scenarios

Council and Executive staff discussed extensively the likely impacts to the County's tax revenues due to the health crisis. Below are potential scenarios developed based on the assumed reduction in economic activity and using the FY20 estimates provided in the Executive's March recommended budget as the base. **Given the limited information about current impact and the limited historical economic data from a health crisis like today, Council and Executive staff stress there is a high degree of uncertainty in all estimates**. In addition, none of the scenarios consider offsetting changes in expenditures by the County or the potential of additional Federal and State aid. Three scenarios were considered.

- Scenario #1: Short recession, quick recovery. This scenario assumes a short recession due to the health crisis, followed by a recovery period by the end of FY21. **This was initially considered to explore all options. Given updated information from the State and other governments, this scenario is highly unlikely**.

- Scenario #2: Short recession, long recovery. This scenario assumes a short recession due to the health crisis, followed by a longer recovery period into FY24.

- Scenario #3: Deep recession, long recovery. This scenario assumes a protracted, significant recession, followed by a recovery period into FY25 or FY26.

Based on the current estimated ranges and limited data, a negative impact to the FY20 and FY21 tax revenues is anticipated regardless of the depth and length of the recession and recovery. **Executive staff are continuing to update the revenue estimates based on new information as it is available. Most new data will not be available till the end of April.**

Table 5: Estimated Impact Range to County Tax Revenues due to Health Crisis ($ millions)

	FY20	FY21	FY20/21 Combined
Scenario #1 – Short recession, quick recovery			
Total Estimated Reductions in Tax Revenues	-60 to -100	-90 to -150	**-150 to -250**
Scenario #2 – Short recession, long recovery			
Total Estimated Reductions in Tax Revenues	-60 to -100	-200 to -400	**-260 to -500**
Scenario #3 – Deep recession, long recovery			
Total Estimated Reductions in Tax Revenues	-60 to -100	-300 to -500	**-360 to -600**

Note: All reductions are based to the FY20 Est. total tax revenues in the March 2020 budget.

Regional context. Multiple state and local governments in the DC region have recently reported significant reductions in revenue projections and/or revised FY21 budget recommendations. Of note:

- Maryland's Comptroller recently reported the State is expecting a $2.8 billion shortfall in General Fund revenues for FY20. The Director of the Bureau of Revenue Estimates stated on April 10, 2020, a reduction of 22% of withholding tax "never seen before." This reduction amounts to an estimated average monthly loss of $185 million and accounts for 45% of the entire General Fund for the State.

- D.C. is estimating a $600 million shortfall in revenues for FY20 (ends September 30, 2020) and another $600 million shortfall in revenues for FY21, for a combined $1.2 billion shortfall.

- Alexandria City is estimating a $36 million shortfall in revenues for FY20 and another $56 million shortfall in revenues for FY21.

- Fairfax County's Executive resubmitted a recommended FY21 operating budget with reductions and elimination of a proposed property tax increase for affordable housing.

Factors Impacting Revenue Changes. As noted above, due to the unique nature of this crisis there is still a high degree of uncertainty in the revenue projections. Below are the major factors that could negatively impact the County tax revenues due to the health crisis and are included in the scenarios detailed above:

- Reduction in wage and salary income due to furloughed and unemployed individuals.
- Reduction in capital gains income due to significant market correction and decreased economic activity.
- Reduction in property taxes due to significant increase in appealed assessments and decrease in new construction.
- Reduction in property sales due to social distancing and decreased economic activity.

Unknown Factors Impacting Revenue Estimates. Below are the major unknown factors that could further impact these scenarios, either positively or negatively.

- Unknown impact on wage and salary income for unemployed and furloughed individuals due to the benefits under the CARES Act.
- Unknown recovery period for regions as the strict distancing measures are lifted.
- Unknown State and local government benefits from CARES Act or possible future Federal action to support State and local governments.
- Unknown future stock market corrections and fluctuations throughout the entire calendar year 2020.
- Unknown restructuring or repositioning by businesses and industries (e.g., more teleworking options, fewer office leases) following the health crisis.

D. FY21 Operating Budget Approach

a. Framework for review and action on FY21 operating budget

The current COVID-19 health crisis has required significant changes to the Council's framework for review and action on the FY21 operating budget. However, there are several deadlines that the Council still is required to meet:

- The Council must take action to express its intent to approve or reject the collective bargaining agreements by May 1st; or by May 15, if extended[4], and
- The Council must approve an operating budget by June 1st (but is currently scheduled to act on May 21). Under the Charter, the Council must pass a balanced budget and, unlike the Federal government, cannot go into debt.

[4] If the Council rejects any provision in a collective bargaining agreement, the Executive and the union have 9 days after the Council resolution indicating intention to reject a provision to try to renegotiate the Agreement before the Council takes final action on the budget.

As a result of the COVID-19 related social distancing and stay-at-home orders, the Council President has cancelled all Committee worksessions. Instead, the Council will function as a Committee of the Whole and hear all relevant aspects of the recommended budget. Additionally, the Council will be meeting on Tuesdays and Thursday through adoption of the budget instead of the typical five days a week to limit the need for staff to be in the building.

On March 24, the Council unanimously approved Resolution 19-388 requesting options for the approval of the FY21 budget (attached at ©18). The resolution requires:

- Council staff to develop viable options to streamline the budget process for this fiscal year, so that the Council may adopt an aggregate operating budget that reflects a continuation of the services provided at the same level as FY20.
- These options must include funding for the County Board of Education and Montgomery College at the required Maintenance of Effort levels and should avoid funding any new programs unrelated to relieve for County residents and businesses related to the COVID19 viral disease pandemic.
- These options should also include flexibility for possible future appropriations related to assisting County residents and businesses to recover from the pandemic, as well as provide additional resources for other County programs and employee wage and benefit enhancements, if available, after the crisis is over.

b. Initial estimate of same services budget

Council staff prepared a draft estimate of the FY21 budget that reflected a continuation of services (or "same services") budget from FY20 as requested by the Council in Resolution 19-388. **Based on the Council's guidelines, approximately $70.3 million could be reduced from the agency uses in the recommended budget**. This amount is slightly greater than the $65.5 million levied from the proposed property tax increase in the recommended budget. Significant Council input is required to finalize the adjustments for each agency and department.

Council staff's preliminary estimate of same services focused on changes from FY20 to FY21. For the recommended budgets for County Government, staff used the recommended changes highlighted in the Executive's FY21 budget for this estimate as follows:

Budget Changes Included as "Same Services"	Budget Changes Not Included as "Same Services"
• Annualization of FY20 compensation costs and positions. • Adjustments to operational costs such as mail, motor pool, etc. • Shifts/Realignments. Most of these moved costs from one budget to another. • Technical adjustments. • Reductions recommended by the Executive. • Increases due to legal or policy requirements to fund the same and/or required services. (e.g. school health nurses for new schools, etc.).	• FY21 compensation and benefit adjustments. • Enhancements (unless required by law or policy). • Additions for new costs, staff, or programs. • Restoration of items that were not included in the FY20 budget.

For MCPS and Montgomery College, this analysis assumes funding at the MOE level as requested in the resolution. For M-NCPPC, Council staff estimated the annualization of FY20 expenditures and other adjustments like the budgets for the County Government.

A detailed fiscal summary of Council staff's initial "same services" budget scenario is available at ©30-21. Council staff's preliminary estimate of a same services budget is based on several assumptions that the Council must review and approve at future meetings. Council staff's assumptions are:

- Eliminates the proposed tax increase but keeps the ITOC at $800. The result is about **$65.5 million less in tax revenues in FY21**.
- Reduces the recommended shift from the General Fund to the HIF based on the FY20 transfer. The result is about **$4.4 million more in resources in FY21** for other uses.
- **Eliminates $70.3 million from Agency Uses based on "same services" reductions**. As noted above, this does not include the Executive's recommended pay and benefit adjustments for County Government. If these were included, $22.4 million would need to be added back into agency uses.
- Staff's preliminary analysis did not explore same services adjustments to the non-agency uses (includes debt service, PAYGO, CIP current revenue, and reserves). Special appropriations addressing the COVID-19 crisis and other changes in FY20 expenditures and revenues will likely result in FY20 ending reserves below the 10.0% policy level, unless the Council wants to make adjustments.

c. Options for moving forward with FY21 operating budget approval

Staff recommends that the Council decide its approach to the review of the Operating Budget, recognizing that the Council is scheduled to adopt the budget in 5 weeks on May 21. As noted in the section on revenues, there are too many uncertainties for staff to identify the size of the budget gap at this time (related to the length of time Montgomery County's economy will be impacted by the virus, the magnitude of potential new expenditures, loss of revenues, and potential offsets from Federal subsidies). Therefore, staff recommends that the Council adopt a conservative same services budget as a temporary measure recognizing that it will soon need to revisit the budget. Under this approach the Council would:

1) Adopt a "same services" budget with critical adjustments (see further information below).
2) Ask the Executive to submit revisions to the budget early in the fiscal year once we have additional information that can enable the Council to estimate better the magnitude of the likely reductions that will be required. In the highly unlikely scenario in which there are more resources than anticipated, the Council could consider adding resources.
3) Direct all agencies and departments to do everything possible to minimize expenses including freezing all but essential vacancies and minimizing all operating costs.
4) Consider whether the same services budget meets established fiscal policies (e.g. 10% reserve policy, etc.) and, if not, whether to make further changes or temporarily change fiscal policy.

To assist the Council in creating a same services budget, Council staff would identify the changes needed for each department and identify any obvious reductions (e.g., if a program that was supposed to operate in the summer of 2020 has already been canceled, we should account for any reductions in expenditures or revenues) and only the most critical additions. Under this scenario the Council would review the changes to each department's budget over the coming 2-3 weeks when it meets on Tuesdays and Thursdays. The Council would also need to make decisions related to fiscal policies such as the targeted reserve and contributions to OPEB.

Alternatively, if the Council believes that the nature of the crisis and expected revenue reductions indicates that the Council should make more dramatic reductions now, staff can identify reductions for the Council's consideration. Staff believes this will be challenging without a clear idea of the size of any budget gap. A target reduction would have to be identified. It may mean the Council will make one set of reductions now and then will need to revisit them and make another set of reductions a few months later. If the Council chooses this option, it may wish to identify parameters for potential reductions such as the following:

- Avoid reductions that would result in having to layoff existing employees.
- Minimize reductions for services that assist residents and businesses impacted by COVID-19.
- Maintain the County's financial stability and bond rating.

Recommended FY21 Operating Budget Additional Details

Notes:

1) All calculations are based on the change from the Council's approved FY20 operating budget to the Executive's Recommended FY21 operating budget, unless otherwise noted.
2) Only values greater than $1 million were noted. If a note states "increase" or "decrease" without a value, assume it is less than $1 million.

Tax Revenues

- See attached chart for details about how tax revenues have changed since the Council approved the FY20 budget. This chart details the: 1) FY20 Estimate – Finance's current estimated change in FY20 tax revenues from FY20 approved tax revenues as of March 2020; 2) FY21 Increase/Decrease (December) – Finance's estimated change in tax revenues for FY20 to FY21 from the December 2019 update; and 3) FY21 Increase/Decrease (CE rec.) – Finance's estimated change in tax revenues for FY20 to FY21 in the Executive's recommended FY21 budget. The key highlights from the charts are:
    - Finance estimates that FY20 property tax underperformed and will be at least $43.5 million less than the approved FY20 budget.
    - Finance estimated meager revenue growth of $16.9 million for FY21 in December.
    - Finance estimates an additional $31 million from income taxes in the recommended FY21 budget when compared to its estimates in December.
    - The proposed property tax increase and revision to the income tax explains all the tax revenue growth in the recommended FY21 budget.

MCPS

- Recommends funding $2.795 billion, a 4.3% increase from FY20 and $39.1 million more than the required Maintenance of Effort (MOE) level; the recommendation is $5.0 million less than the Board of Education's request.
- Assumes a new 3.18 cent supplementary school funding property tax.
- Includes $325.3 million in additional County support funded outside of MCPS' budget.

Montgomery College

- Recommends funding $318.3 million, a 1.2% increase that is at the required MOE level; fully funds the Board of Trustee's request.
- Includes an additional $165,000 in additional support beyond the College's request for the Montgomery Can Code program.

- CIP amendments include funding of $500,000 in the Facility Planning PDF for an East County Expansion Feasibility Study in FY21.

County Government

General Government

Board of Elections

- Increases budget by 1.7% for existing programs and services; includes funding for the Presidential General Election.

Community Engagement Cluster

- Adds 0.5 FTE each for Middle Eastern and LGBTQ Community Liaisons
- Shifts 1.0 FTE Community Outreach Manager position to Office of Racial Equity and Social Justice
- Shifts Business Solutions Group to NDA – Conference Center and 3.0 FTE Business Advancement Team in the Office of the County Executive.

Finance

- Increases budget by $4.4 million; most of this increase is due to the Self-Insurance Fund.

General Services

- Minor increase to budget, mostly funding existing programs and services.
  - Adds funding for Fire Watch Services and Fall Protection Equipment annual inspections.

MC311

- Increases budget by 7.4% for existing programs and services.

Office of the County Attorney

- Realigns programs, reducing from 8 displayed programs to 3 displayed programs; it may be more difficult to track expenditures and program performance beyond FY21.
- Increases budget by 3.9%.
  - Adds 1 FTE and subtracts 1 part-time position.
  - Reduces FTEs due to chargebacks to other departments.

Office of Human Resources

- Increases budget by 7.7%, primarily due to increases in the Employee Health Benefits Self-Insurance Fund.
- Move the Labor and Employee Relations program into a new Office of Labor Relations.

Office of Human Rights

- Increases budget by 10%.
  - Adds 1 Fair Housing Investigator.

Office of the Inspector General

- Increases budget by 63.3%.
  - Adds 7 positions to address enhanced role; positions are partially funded for FY21 based on hiring expectations.

OMB

- Increases budget by $1.3 million.

- Shifts CountyStat to OMB, includes 1 manager and 3 analysts.
- Adds 3 analysts for the new Shared Services Team.

Procurement

- Increases budget by 9.2%.
  - Adds 3 positions to implement center-led Strategic Procurement Initiative in certain CIP projects.

Public Election Fund

- Adds $1.5 million for potential disbursements to candidates in 2022 elections.

Technology Services

- Increases budget by 0.7%
  - Adds 4 positions to enhance FiberNet implementation
  - Transfers COO to OMB

Community, Economic Development and Housing

Economic Development - General

- Shifts several staff from multiple departments into the Office of the County Executive as the Business Advancement Team, includes realignment of these programs and positions. The Council must pass legislation to codify the new name and functions of the Business Advancement Team.
  - Adds funding for County sponsorship of private incubators.
  - Adds funding for BioHealth Innovation, Inc.
  - Level funds MCEDC.
  - Adds funding to WorkSource Montgomery for the Summer RISE Program.

Economic Development Fund

- Realigns programs, reducing to 1 displayed program; it may be more difficult to track expenditures and program performance beyond FY21.
  - It is unclear if/how this realignment impacts appropriation for specific programs in the EDF (e.g., Biotech Credit Supplement).
  - No funding was provided for the SBIR/STTR Program.

Housing and Community Affairs

- Increases budget by 12.8%.
  - Increases transfer from General Fund to the HIF by $6.416 million, totaling $25.343 million.
  - Increases Affordable Housing Loans allocation by $5.259 million, totaling 13.937 million.
  - Increases estimate for Recordation Premium Tax by $1.349 million, totaling $17.7 million.
  - Transfers $10.927 million to Debt Service Fund; estimates total debt service to be $18.224 million by FY26.
  - Total available for affordable housing project (HIF Operating + CIP) is $84.7 million.
  - Estimates $19.1 million for PILOT agreements by DHCA in FY21.
  - Includes $7.219 million in CBDG/HOME/ESG funding.
  - Adds an Accessory Dwelling Program Manager.

Office of Agriculture
- Decreases the budget slightly for existing programs and services.

Urban Districts
- Realigns programs, reducing from 6 displayed programs to 4 displayed programs; it may be more difficult to track expenditures and program performance beyond FY21.
- Increases expenditures by 8.7%, most of this funding supports existing programs and services.
    - Adds Town Plaza and Veterans' Park.
    - Adds Pike District placemaking funds.

Health and Human Services
- Increases budget by $20.2 million, includes $740,417 for a 1.5% inflationary increase to non-profit contracts.

Administration and Support Services
- Includes funding for a new program identified as Legal Representation.

Aging and Disability Services
- Adds 2 positions to support Adult Protective Services and Adult Foster Care.
- Adds 1.5 % inflationary increase for DDS and Medical Adult Day Care Supplement.

Behavioral Health and Crisis Services
- Adds funds to 24-Hours Crisis Center.
- Adds realignment of program funds and federal/state grants to Local Behavioral Health Authority.

Children, Youth, and Family Services
- Adds funding to open a High School Wellness Center at Seneca Valley High School.

Public Health Services
- Adds 16 school health nurse positions – 10 new and 6 annualized from the Council's special appropriation in FY20.

Services to End and Prevent Homelessness
- Adds $2 million to rental subsidy for Rental Assistance Program
- Adds funding to expand Rapid Re-Housing Program
- Restores funding for Youth Drop-in Center

Libraries and Recreation
Libraries
- Realigns programs, reducing from 3 displayed programs to 2 displayed programs; it may be more difficult to track expenditures and program performance beyond FY21.
- Minor funding increases for existing programs and services; increases total FTEs by 14 from FY20.
    - Adds a Workforce and Business Development Program; includes 1 FTE and minor operating expenses.
    - Adds 8 public service hours to Long Branch, White Oak, and Twinbrook branches.
    - Adds Early Literacy Outreach Librarian.

Recreation

- Increases expenditures by 5.8%; most of this increase funds existing programs and services.
    - Adds funding for senior programming at the Wheaton Community Recreation Center.
    - Restores funding for transportation to senior centers on Fridays
    - Adds transportation to the North Potomac senior program.

CUPF

- Minor decrease funds existing programs and services; includes $600,000 for ballfield maintenance.

Public Safety

Police

- Decreases budget by $7 million to shift Animal Services Division to a separate budget.
    - Adds 1 sergeant and 3 police officers for Police Athletic League.
    - Adds 1 social worker for stress management support to call takers and dispatchers.
    - Adds 7 crossing guard positions for new schools.
    - Adds funding for contingency planning when the public safety radio system switches to the new system.

Fire and Rescue

- Increases budget by $6.3 million; does not decrease apparatus or other services.
    - Adds 20 paramedic training positions.
    - Adds funding for contingency planning when the public safety radio system switches to the new system.

Department of Correction

- Increases budget by $2 million.
    - Adds funding related to a new State mandate for restrictive housing.
    - Adds funding to retrofit cell bunk, vents, and doors to prevent self-harm.

Sheriff

- Increases budget to support existing programs and services.

Office of Emergency Management and Homeland Security

- Increases General Fund budget by 62.6% ($879,000) primarily to fund additional faith-based organization security grants and for a new position to assist with planning for future storms/weather events. Does not include potential increase expenditures due to COVID-19.

Environment

DEP

- Increases General Fund budget by 13.3%, most of this increase funds the Tree Montgomery program.
- Increases WQPC Fund expenditures for DEP's new space in Wheaton.

Recycling and Resource Management

- Realigns programs, reducing from 21 displayed programs to 3 displayed programs; it may be more difficult to track expenditures and program performance beyond FY21.
- Increases overall expenditure by 13.4%; funded with increase in solid waste fees on the property tax bill, between 8.8% to 20% for single family properties depending on services.
- Increases contract costs by $12.4 million; unclear what this increase specifically funds.

Transportation

DOT

- Realigns programs, reducing from 23 displayed programs to 7 displayed programs; it may be more difficult to track expenditures and program performance beyond FY21.
- Minor funding increases for existing programs and services.
    - Adds funding for reflectorized pavement markings.

Mass Transit

- Realigns programs, reducing from 10 displayed programs to 3 displayed programs; it may be more difficult to track expenditures and program performance beyond FY21.
- Increases expenditures by $11.9 million or 8.2%; most of this increase funds existing programs and services.
- Ride On fares are changed to reflect Metrobus fares, which may change based on WMATA's decisions.

Parking Lot Districts

- Minor funding decreases for existing programs and services.
- Increases Monthly Access Card and Parking Convenience Sticker fees, demand-based parking rates, surface parking rates, and garage parking rates; increase fares and rates support Silver Spring PLD CIP.

Other

Cable

- Reduces revenue estimates by 3.8%.
- No transfer to the General Fund is expected.

Early Care and Education Initiative

- Funds this budget at $7.4 million - $1.4 million in new funds and $6.0 million in roll over funds from FY20.

Arts & Humanities Council

- Level funding.

Community Grants

- Shift of $3.8M to base of HHS, DHCA, Recreation, DTS, and Sheriff budgets.
- Includes $9.7M for one-year grant renewals.
- Adds funding for new programs.

MCG: Cost Sharing (Capital Grants)

- Includes $1.78 million in cost sharing grants to nonprofits.

Montgomery Coalition for Adult English Literacy

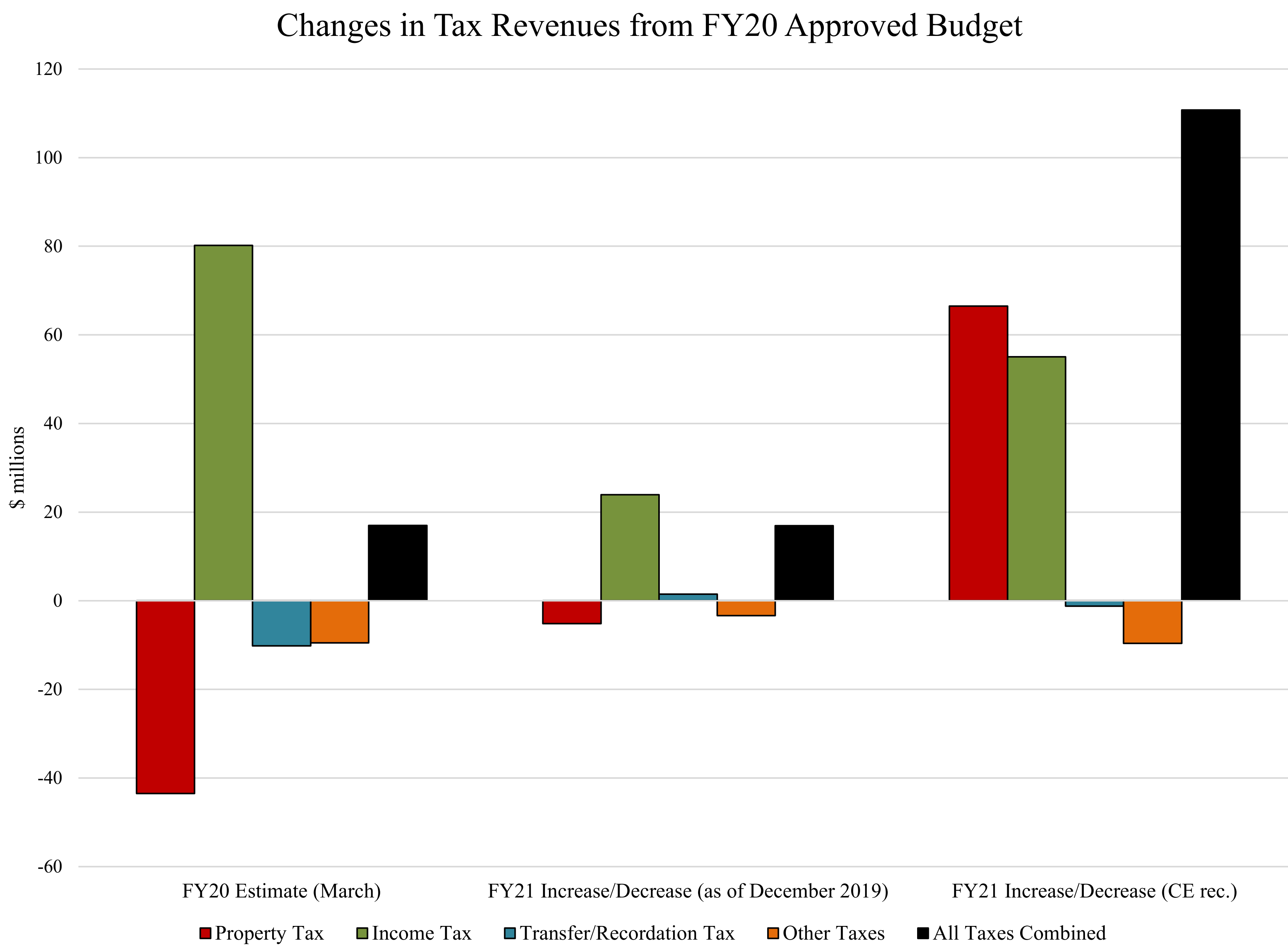
- Adds funding to ESOL programs and operating initiatives.

Park and Planning

- Increases total budget by 1.1%, excluding debt service.
  - Increases Planning's budget by 1.3%; funds $112,403 more than requested by the agency.
  - Increases Park's budget by 1.0%, $7.7 million less than requested by the agency.
  - Adds funding for ballfields initiative through CUPF.

WSSC

- Funds WSSC's submitted budget, includes a 7% rate increase.



Changes in Tax Revenues from FY20 Approved Budget
120
100
80
60
40
20
0
-20
-40
-60
$ millions
FY20 Estimate (March)
FY21 Increase/Decrease (as of December 2019)
FY21 Increase/Decrease (CE rec.)
Property Tax
Income Tax
Transfer/Recordation Tax
Other Taxes
All Taxes Combined

OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

March 18, 2020

TO: Sidney Katz, President, County Council

FROM: Marc Elrich, County Executive

SUBJECT: FY20 Savings Plan: NDA – Retiree Health Benefits Trust ($21,136,470)

My Fiscal Year (FY) 2021 Recommended Operating Budget includes additional FY20 expenditure savings recognizing an adjustment to the valuation information used to determine the original FY20 Other Post-Employment Benefits (OPEB) expenditure amount. Please find attached my recommended FY20 savings plan to recognize this adjustment. The expenditure reduction will increase the FY20 General Fund reserve by $21.1 million.

As you are aware, the County changed actuaries for the Consolidated Retiree Health Benefit Trust during the final year of the Leggett Administration. It is common practice for a new actuary to revisit the assumptions used by a previous actuary for both the current year and the budget year. The assumption adjustments, combined with the work of the Office of Human Resources on a new prescription drug contract, resulted in a significant reduction in OPEB pre-funding requirements.

The recommended expenditure savings reduce FY20 OPEB prefunding by $21.1 million. Unlike previous one-time reductions, this adjustment is to the revised actuarially determined contribution (ADC) amount and maintains full funding within FY20. My FY21 Recommended Operating Budget continues prefunding consistent with our fiscal policy. It should be noted that retirees will see no change to their benefits as a result of my recommendation, and their benefit claims will continue to be paid as they have been in the past.

It is important that the Council join me in this approach as it is aligned with our reserve funding target and is prudent at this moment in time. My staff is available to assist the Council in its review of the attached proposal.

ME:cbo

Attachment: Recommended FY20 Savings Plan Montgomery County Government

County Executive's Recommended FY20 Savings Plan
Montgomery County Government
March 2020

NDA	AMOUNT	DESCRIPTION
NDA - Retiree Health Benefits Trust	-21,136,470	Reduce spending to recognize valuation adjustment
TOTAL	**-21,136,470**	

OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Leon Rodriguez
County Attorney

MEMORANDUM

TO: Isiah Leggett
County Executive

Timothy Firestine, Chief Administrative Officer
Office of the County Executive

VIA: Leon Rodriguez
County Attorney

FROM: Marc P. Hansen Marc Hansen
Deputy County Attorney

DATE: May 5, 2009

RE: Negative Appropriation; Savings Plan

The Council approved the FY-09 Operating Budget for the County Government in Resolution 16-577. Through this resolution the Council approved specific appropriations for personnel costs for each department and office in the County government. For example, the Council approved an appropriation of $3,876,830 in personnel costs for the Office of Management and Budget. The total appropriation for personnel costs for all County departments was $571,013,140.

Although the resolution appropriates specific amounts to cover personnel costs for each department, Condition 25 of the Resolution requires the Executive to reduce at least $5,000,000 in "County personnel costs through retirement incentives" and an additional $8,000,000 in savings through reduced personnel costs, or by implementing other productivity improvements and increased efficiencies in County government operations.[1]

[1] Condition 25 provides: "In FY 2009, the County Executive must implement the retirement incentive program authorized in County Code Section 33-42 (j) and take any other legally authorized actions necessary to reduce at least $5 million in County personnel costs through retirement incentives. In FY 2009, the Executive must also take

marc.hansen@montgomerycountymd.gov
101 Monroe Street, Rockville, Maryland 20850-2540
240-777-6740 • TTD 240-777-2545 • Fax 240-777-6705

In order to reduce the total operating budget appropriations for the County government, the Council approved a negative non-departmental account in the amount of $13,000.000.[2] We have coined the term "negative appropriation" to describe the action taken by the Council in Condition 25 and the negative non-departmental account.

You have asked for an opinion concerning the legality of including in the annual operating budget a negative appropriation.

Short Answer

A negative appropriation is not consistent with the Charter. A negative appropriation acts as a generalized command to the Executive to reduce appropriations made elsewhere in the budget. This is not consistent with the Charter, because the Charter requires the Council to adopt a budget that includes appropriations of specific amounts for specific purposes for the ensuing fiscal year.

Our conclusion does not impact the Executive's ability to impound appropriated funds (known colloquially as a "savings plan"). The Executive's ability to impose a savings plan must be: 1) subject to Council approval or made under appropriate guidelines established in legislation; and 2) made in response to matters that arise after adoption of the budget.

Analysis

The Negative Appropriation—In General.

Under Charter Section 303, the Executive must recommend a capital and operating budget "for the **ensuing fiscal year**." Under Charter Section 305, the Council may "add to, delete from, increase or decrease any **appropriation item** in the operating or capital budget" recommended by the Executive. Under Charter Section 306, the Executive may "disapprove or delete any **item**" in the budget approved by the Council.

The terms "ensuing fiscal year", "appropriation", and "item" are highlighted because they embody two important concepts relative to understanding the reasoning behind this opinion:

1. The annual budget adopts the plan of expenditures for an entire fiscal year—a plan the Executive is entitled to rely on.

2. The fiscal plan must be expressed in terms of appropriations for specific items.

---

other legally authorized actions to reduce County personnel costs, or implement other productivity improvements and increased efficiencies in County government operations, that in the aggregate will reduce appropriated expenditures by at least $8 million"

[2] See attached Resolution 16-577, pages 6-7 and 6-17.

The Charter's expectation that a fiscal plan will be adopted for a fiscal year has been recognized in County Attorney opinions spanning nearly 40 years. In 1971 County Attorney David L. Cahoon observed that, "the approval of a capital budget item and the making of an appropriation for budget item established the fiscal policy of the legislative body for that fiscal year."[3] In 1984 County Attorney Paul A. McGuckian stated, "It is quite clear from the Charter language that the County Council must act on an annual basis through the budget and appropriation process to express its fiscal policy for the coming fiscal year."[4] The Council does not, therefore, have the authority to change the annual spending plan once it is adopted—except to grant additional expenditure authority to the Executive by way of a supplemental or special appropriation under Charter Sections 307 and 308.

The expectation that the fiscal plan must be expressed through appropriation of items stems from the nature of an appropriation and the meaning of the term "item". As we will see in the following discussion, the concept of appropriation and item are overlapping and conterminous—perhaps even redundant.

An appropriation is made by "a lawful legislative act whose primary object is to authorize the withdrawal from the state treasury of a certain sum of money for a specified public object or purpose to which such sum is to be applied."[5] McQuillin observes that "an appropriation must, of course, fix the amount, and annual appropriation bills are sometimes required by statute or charter to specify the amount appropriated for each purpose. Appropriation bills are generally required to specify the objects and purposes for which the appropriation is made." [6] Blacks Law Dictionary defines appropriation as a, "legislative body's act of setting aside a sum of money for a public purpose."

The Charter's concept of appropriating by item has been in place at least since the current Charter was adopted in 1968. The operative language of Charter Sections 305 and 306 have remained unchanged since that time. In a 1981 opinion County Attorney Paul McGuckian concluded, after surveying Maryland and other state case law, that a budgetary item "is the separate monetary amount that attaches to it. Without a separate monetary amount, it is not an 'item'."[7] The County operating budget, including the FY-09 operating budget, appropriates monies using the following "item" categories: personnel costs, operating expense, and capital outlay.

---

[3] This 1971 opinion of the Office of the County Attorney concluded that the Council may not approve capital appropriations contingent on later Council approval during the same fiscal year.

[4] This 1984 opinion concluded that "when the Council approves an item in the budget and appropriates the funds the Executive must consider that this funding is for the entire fiscal year, even where there is a gross under appropriation.... The action of the Council on the budget is final and unconditional. The Council has no authority to approve items in the budget, subject to its taking some future action."

[5] *Bayne v. Secretary of State*. 283 Md. 560, 570 (1978).

[6] McQuillin, Municipal Corporations (3rd Ed.) § 39:88.

[7] This 1981 opinion concluded that, "the County Council may re-approve only items contained in the budget which the Executive has vetoed. Furthermore, re-approval of any item may not take the form of restoration of only a portion of the item, but must be re-approval by the Council of the vetoed item in toto."

A negative appropriation is contrary to these Charter principles. The negative appropriation calls into question each amount appropriated for each item/category. For example the negative appropriation appearing in the FY-09 Annual Operating Budget leaves in doubt the Council's intent with respect to the amount to be appropriated for personnel cost for each department in the County government. With each appropriated item in doubt, the budget fails to articulate a fiscal plan with sufficient detail to qualify as an annual budget with appropriations by item as required by the Charter.

The Problem of a Retirement Savings Plan—A Proposed Solution.

The FY-09 Annual Operating Budget contained a negative appropriation in the amount of $13,000,000. Of the $13,000,000 the County Executive was instructed to reduce personnel costs of $5,000,000 through a retirement incentive program.

We understand that the retirement incentive program has been proposed in the past as a means of closing projected budget gaps and that, at the time of the budget adoption, the number of retirees and the positions to be abolished through the program are known only in a general sense. Thus, the savings associated with a retirement savings plan cannot be determined with precision at the departmental level.

This problem can be resolved by reducing appropriate departments' personnel costs by estimated amounts and then using the authority to transfer funds under Charter Section 309 to make final adjustments after the results of position reductions become known by department.

The Negative Appropriation and a Savings Plan—Distinguished.

The negative appropriation used in the FY-09 Annual Operating Budget is conceptually different than the Executive adopting, with Council consent, a savings plan that proposes to reduce expenditures because of unforeseen events occurring after adoption of the budget. Historically, savings plans have been proposed when it becomes apparent that revenue projections used as the basis for adoption of the budget will not be achieved. A savings plan is significantly different than the negative appropriation in the following ways:

1. The savings plan is premised on events that were not (and could not be) factored into the annual budget when adopted; and

2. The Executive proposes a savings plan which is then subject to Council approval.[8]

[8] A savings plan must be initiated by the Executive, because the Council cannot on its own initiative condition or reduce an appropriation already made. *See* County Attorney opinion to Robert Kendal, Director, Office of Management an Budget, dated April 7, 1999. Under the Charter it is important to keep the concept of impoundment (or savings plan), which is permitted, separate from the concept of dis-appropriation by the Council, which is not permitted.

The savings plan process, which has developed informally over the last several years to address revenue short falls experienced by the County, has become a means acceptable to both branches of government for the Executive to impound funds in order to address issues that arise after adoption of the budget.

Generally the Executive may not impound funds if impoundment would compromise the underlying purpose of the appropriation—except to avoid a needless expenditure of public funds. The Massachusetts Supreme Judicial Court, in an often relied upon opinion, addressed the constitutionality of a proposed Massachusetts statute that would require the Governor to expend the entire amount of an appropriation. In determining that this proposed state law was unconstitutional, the Court observed:

> "[H]owever minutely appropriations are itemized, some scope is left for the exercise of judgment and discretion by Executive or administrative officers or boards in the expenditure of money within the limits of the appropriation." [Citation omitted] We think there is a constitutional basis for such an assumption, in that the exercise of judgment in discretion in the implementation of legislative policy is necessary to the efficient and effective operation of government. Inasmuch as it is the function of the executive branch to expend funds, it must be implied that the "supreme executive magistrate," as head of one of the three coequal branches of government, is not obliged to spend the money foolishly or needlessly. The executive branch is the organ of government charged with the responsibility of, and is normally the only branch capable of, having detailed and contemporaneous knowledge regarding spending decisions. The constitutional separation of powers and responsibilities, therefore, contemplates that the Governor be allowed some discretion to exercise his judgment not to spend money in a wasteful fashion, **provided that he has determined reasonably that such a decision will not compromise the achievement of underlying legislative purposes and goals."** (Emphasis added)[9]

The Maryland General Assembly has authorized the Governor to impound funds within certain carefully crafted parameters. Section 7-213 of the State Finance and Procurement Article authorizes the Governor to reduce by not more than 25% "any appropriation that the Governor considers unnecessary." The Governor may not reduce an appropriation to the legislative branch or judicial branch of the State government nor reduce an appropriation for: (1) payment of principle or interest on state debt; (2) public schools; or (3) the salary of a public officer during the term of office. In addition, the Governor may not, except as provided under the State merit system law, reduce an appropriation for the salary of an employee in the classified or unclassified service of the State. The Court of Appeals upheld this state statute, turning away a

[9] *Opinion of the Justices to the Senate*, 375 Mass 827 (1978)

challenge to its constitutionality on the grounds that it violated the separation of powers doctrine. The Court stated,

> The General Assembly, in the statutory scheme for the administration of the budget, has provided sufficient safeguards with respect to the Governor's exercising of authority. For example, in order for the Governor to reduce an appropriation under Section 7-213, he must obtain the approval of the Board of Public Works. In addition, Section 7-210 provides that the Governor may not make any substantive changes to the budget bill pursuant to Section 7-213. Furthermore, Section 7-213 (b) delineates various types of appropriation which the Governor may not reduce. As to the other appropriations, the statute itself provides that the Governor may only reduce items which he deems "unnecessary." Finally, the statute only allows a reduction of 25%. These provisions circumscribe the Governor's exercise of authority while allowing a necessary degree of flexibility."[10]

Applying the principles delineated in these two cases to the County, it is clear that: 1) Normally, the Executive must expend appropriated funds in order to implement the legislative policy that motivated the appropriation, but the Executive has an inherent executive power to impound funds to the extent necessary to avoid expending funds "needlessly or foolishly". This power of impoundment is narrow. 2) The Executive may propose a savings plan in response to events that arise after adoption of the annual budget. The savings plan must, however, be approved by the Council in order to avoid having the Executive exercising a *de facto* veto over the Council's policy decisions embodied in the annual budget.

Given the informal nature of the County's current savings plan process, the Executive and Council may wish to consider adoption of legislation to regulate the process. In 1982, the Council considered legislation, in the form of Bill 49-82, to establish a process for executive reduction of appropriations. The bill required that the Executive submit a periodic revenue report and, within certain time frames, the Executive was to propose to the Council expenditure reductions associated with the revenue report. The Executive's proposed decreases would take effect within 30 days unless disapproved by the Council.[11] Section 7-213 authorizing impoundment by the Governor may also serve as another model for the Executive and Council to consider.

Conclusion

A negative appropriation is not consistent with the Charter because it fails to propose an expenditure plan by item for the ensuing fiscal year. A savings plan, however, is distinguishable from a negative appropriation. A savings plan is premised on events that arise after the adoption

[10] *Judy v. Schaffer*, 331 Md. 239, 264 (1993).
[11] Bill 49-82 was proposed in connection with a proposed Charter amendment to permit the Council to dis-appropriate funds. Neither was approved by the Council.

of the budget and only permits the Executive to impound appropriated funds with the consent of the Council. A savings plan, therefore, is consistent with the Charter, although we recommend that consideration be given to regularizing the savings plan through adoption of appropriate legislation.

CC: Philip M. Andrews, President
County Council

Joe Beach, Director
Office of Management and Budget

Kathleen Boucher, Assistant Chief Administrative Officer
Office of the County Executive

Steve Farber, Director
Council Staff

Michael Faden
Senior Legislative Attorney

MPH:jq
I:\GJ\HANSEM\Negative Appropriation-Impoundment=opinion.doc

Resolution No.:	19-388
Introduced:	March 24, 2020
Adopted:	March 24, 2020

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Navarro
Co-Sponsors: Councilmembers Albornoz, Friedson, Riemer, Rice and Council Vice President Hucker

---

SUBJECT: Options for the Approval of and Appropriation for the FY 2021 Operating Budget

Background

1. As required by Section 303 of the County Charter, the County Executive sent to the County Council the FY2021 Operating Budget on March 16, 2020.

2. As required by Section 304 of the County Charter, the Council must hold public hearings on the proposed operating budget.

3. A new coronavirus disease, called Covid-19, has spread extremely quickly, making its way to over 100 countries, including the United States.

4. On March 11, the World Health Organization officially declared the Covid-19 viral disease a pandemic.

5. The number of new cases in the United States is growing quickly and has spread to each of the 50 States and the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

6. To slow the spread of this communicable disease, Governor Hogan issued several emergency orders closing all non-essential businesses, restricting public transit, closing schools, prohibiting public gatherings of 10 persons or more, and postponing the Presidential Primary Election in Maryland.

7. Although County government operations are continuing during this pandemic, County employees are using situational teleworking wherever possible to perform their duties. Due to the need to limit person to person contact, many County residents have lost paychecks and many County businesses have lost revenue.

8. The Executive was required by the Charter to develop his recommended FY2021 Operating Budget before the most recent events clarified the full extent of the pandemic.

9. Considering this unprecedented global pandemic and national state of emergency, the Council must move expeditiously to provide continuity of operations in approving an operating budget for FY2021 that provides additional flexibility to help County residents and businesses recover.

Action

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

1. The Council directs staff to develop viable options to streamline our budget process, so that for FY2021, the Council may adopt an aggregate operating budget for our departments and agencies that reflects a continuation of the services provided at the same level as FY2020.

2. These viable options must include funding the Operating Budgets of the County Board of Education and Montgomery College at the required Maintenance of Effort level and should avoid funding any new programs unrelated to relief for County residents and businesses from the Covid-19 viral disease pandemic.

3. These viable options should include flexibility for possible future appropriations:

    a. to assist County residents and businesses to recover from the Covid-19 viral disease pandemic; and
    b. to provide additional resources for other County programs and employee wage and benefit enhancements, if available, after the crisis is over.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council

($ millions)	FY20 App.	FY20 Est.	FY21 CE Recommended	FY21 Council Staff Estimate	Difference	Notes
Revenues						
Property Tax	1,836.8	1,793.3	1,903.3	1,837.8	(65.5)	Assumed no property tax increase, kept $800 ITOC
Income Tax	1,640.3	1,720.5	1,695.4	1,695.4	0.0	
Transfer/Recordation Tax	182.8	172.6	181.6	181.6	0.0	
Other Taxes	283.2	273.7	273.6	273.6	0.0	
Other Revenues	1,152.8	1,155.3	1,174.1	1,174.1	0.0	
Total Revenues	**5,095.9**	**5,115.4**	**5,227.9**	**5,162.4**	(65.5)	
Net Transfers	16.1	7.8	12.6	17.0	4.4	Reduced HIF transfer from the General Fund
Total Resources	**5,112.0**	**5,123.2**	**5,240.5**	**5,179.4**	(61.1)	
Non-Agency Uses						
Debt Service	430.0	421.8	422.5	422.5	0.0	
PAYGO	32.0	32.0	32.0	32.0	0.0	
CIP Current Revenue	33.5	39.5	66.5	66.5	0.0	
Change in reserves	(19.6)	(24.4)	(2.7)	(2.7)	0.0	
Contribution to Undes.	8.1	13.4	3.0	12.1	9.1	$10.2 million in resources required to end FY21 reserves
Contribution to RSF	23.1	40.6	8.6	8.6	0.0	at 10.0% policy goal.
Set aside	1.9	0.0	0.0	0.0	0.0	
Total Non-Agency Uses	**509.0**	**522.9**	**529.9**	**539.1**	9.2	
Agency Uses						
MCPS	2,514.3	2,480.8	2,603.7	2,563.0	(40.7)	
MC	265.5	256.4	268.9	268.8	(0.2)	
MNCPPC (no debt)	132.4	132.7	133.8	137.5	3.7	
MCG	1,690.8	1,730.4	1,704.2	1,671.1	(33.1)	
Total Agency Uses	**4,603.0**	**4,600.3**	**4,710.6**	**4,640.3**	(70.3)	
Total Uses	**5,112.0**	**5,123.2**	**5,240.5**	**5,179.4**	(61.1)	
Surplus/(Gap)	0.0	0.0	0.0	0.0		

($ millions)	FY20 App.	FY20 Est.	FY21 CE Recommended	FY21 Council Staff Estimate	Difference	

Reserves

Beginning Reserves

Unrestricted General Fund	164.2	103.3	155.3	116.7	(38.5)	Reduced by $38.5 million due to FY20 supplementals
Revenue Stabilization Fund	340.8	341.5	382.2	382.2	0.0	
Total Reserves	**505.0**	**444.9**	**537.4**	**498.9**	(38.5)	

Additions to Reserves

Unrestricted General Fund	8.1	13.4	3.0	12.1	9.1
Revenue Stabilization Fund	23.1	40.6	8.6	8.6	0.0
Total Change in Reserves	**31.3**	**54.1**	**11.6**	**20.7**	9.2

Ending Reserves

Unrestricted General Fund	172.3	116.7	158.2	128.9	(29.4)	
Revenue Stabilization Fund	363.9	382.2	390.8	390.8	0.0	
Total Reserves	**536.2**	**498.9**	**549.0**	**519.6**	(29.3)	Total reserves are reduced from CE Rec. due to the elimination of the property tax increase.
Reserves as a % of AGR	**10.0%**	**9.3%**	**10.0%**	**9.6%**		