



Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: Review – straw vote expected
Keywords: FY21 Budget

AGENDA ITEM #21
 April 28, 2020
Worksession

SUBJECT

Office of the County Attorney (OCA)

EXPECTED ATTENDEES

Marc Hansen, County Attorney
 Naeem Mia, OMB

EXECUTIVE RECOMMENDATION

FY21 Executive Recommendation	\$6,587,300	41.70 FTE
Increase (Decrease) from FY20	\$245,331 3.87%	(1.5) FTE (3.5%)

COUNCIL STAFF RECOMMENDATION – CONTINUITY OF SERVICES BUDGET

FY21 Council Staff Recommendation	\$6,211,498	40.70 FTE
Increase (Decrease) from FY20	(\$130,471) (2.1%)	(2.5) FTE (5.8%)
Increase (Decrease) from CE FY21 Rec	(\$375,802) (5.7%)	(1) FTE (2.4%)

EXECUTIVE RECOMMENDED ITEMS NOT INCLUDED IN CONTINUITY OF SERVICES

- *Shift Deputy Privacy Officer from HHS to OCA (\$133,484).* The function would be moved from HHS to OCA with HHS paying for .50 FTE. The position was funded in the FY19 and FY20 HHS budget at .50 FTE. For FY20, the position was vacant because the incumbent was re-assigned to other duties. OCA planned to pay for the other .50 FTE by reducing the use of outside counsel in child welfare cases.
- *Increase outside counsel expenses (\$110,000).* The \$110,000 increase in the FY21 recommended budget for outside counsel better reflects actual historical expenses. In addition, the Covid-19 crisis has increased the need to use outside counsel for HHS child welfare cases.
- *Print and Mail adjustment (\$603).*
- *Enhance Training for Newly Hired Attorneys (\$10,000).*
- *Add Social Media Discovery Software Tool (\$3500).*
- *Increase FY21 Compensation Adjustments (\$118,215).*

CONTINUITY OF SERVICES FROM FY20

- Annualization of FY20 Compensation Increases of \$88,849.
- Annualization of FY20 Personnel Costs of \$55,611.

- Annualization of Mid-Year FY20 Position Actions result in savings of (\$7,116).
- Retirement Adjustment savings of (\$56,536).

POTENTIAL REDUCTIONS

- As the result of personnel turnover in FY20 with more experienced attorneys being replaced with less experienced attorneys, OCA has experienced some compensation budget savings that OCA proposed be used in FY21 to erase the years-long structural budget shortfall in outside counsel expenses. Reducing the outside counsel budget below historical averages has resulted in overruns for this category in the past.

POTENTIAL ITEMS RELATED TO COVID-19

- *Increase in outside counsel costs for assistance to HHS during the health crisis.* Courts are currently closed until June 5th. This means that an estimated 500-600 child welfare cases that would have been heard in FY20 will be pushed into early FY21. The Court of Appeals ordered that child welfare cases are postponed only for the same number of days as the court is closed - this means that all hearings will be scheduled **in addition to** all hearings that are already scheduled to be heard in the months following the crisis. There is no relaxing of the already-scheduled hearings. This will result in double the workload for however long it takes to recover. These hearing can only be covered with the assistance of outside counsel. Although difficult to be precise, OCA estimates the additional COVID-19 related costs would be \$20,000 in FY20 and \$70,000 in FY21. It may be that CARES Act funding could be used to pay for these outside counsel expenses.

This report contains:

County Attorney FY21 Recommended Budget

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County Attorney

RECOMMENDED FY21 BUDGET

\$6,587,300

FULL TIME EQUIVALENTS

41.70

✳️ MARC HANSEN, 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 FY21 Recommended Operating Budget for the Office of the County Attorney is \$6,587,300, an increase of \$245,331 or 3.87 percent from the FY20 Approved Budget of \$6,341,969. Personnel Costs comprise 87.15 percent of the budget for 77 full-time position(s) and one part-time position(s), and a total of 41.70 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 12.85 percent of the FY21 budget.

In February 2020, the County Executive announced ongoing efforts to identify no cost/low-cost reorganization efforts that will strengthen the delivery of priority outcomes, realign resources with policy objectives, and improve the efficiency and effectiveness of County government. As part of this plan, the Office of County Attorney proposes to consolidate its programs/divisions into three areas: Administration, General Counsel, and Litigation.

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

- ★ Successfully defended a legal challenge to County's pesticide law (established under Bill 52-14) in *Complete Lawn Care v. Montgomery County*. The law restricts the application of certain pesticides for cosmetic purposes on County and private property and is codified in Chapter 33B of the County Code.
- ★ Successfully defended a legal challenge to the Amendment to the Westbard Master Plan in *Bennett v. Montgomery County*, where several residents of the Westbard area filed a lawsuit challenging an amendment to the Westbard Sector Plan. The amendment modernized the Master Plan and allowed for the redevelopment of the aging Westwood Shopping Center. The redevelopment includes affordable housing and is projected to yield economic development benefits, including additional tax revenues, for the County as a whole.

INNOVATIONS AND PRODUCTIVITY IMPROVEMENTS

- ✳️ Prosecuted over 6,200 code citations in FY19, an increase of 76 percent over the number of citations prosecuted in FY17, using existing staff resources.

- ✱ In coordination with the Department of Housing and Community Affairs (DHCA), County Attorney implemented an online electronic citations application (eCitation) for code enforcement. This application standardizes and improves the process of issuance of citations. The eCitation program allows inspectors of user departments to easily look up violation codes, search specific citation ticket, and run ad hoc report and export data from the portal. OCA has completed training for the Health and Human Services and Police Animal Services Division inspectors. Additional training will be expanded to other departments and agencies.

PROGRAM CONTACTS

Contact Carolyn Kilgariff of the Office of the County Attorney at 240.777.6766 or Naeem Mia of the Office of Management and Budget at 240.777.2786 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 FY20 estimates reflect funding based on the FY20 Approved Budget. The FY21 and FY22 figures are performance targets based on the FY21 Recommended Budget and funding for comparable service levels in FY22.

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 FY18	Actual FY19	Estimated FY20	Target FY21	Target FY22
Overall average rating from Internal Customer Satisfaction Survey	3.39	3.38	3.39	3.50	3.50

FY21 Recommended Changes	Expenditures	FTEs
FY20 Approved	0	0.00
Re-align: Administration and Support Services Programs into New Administration Program	2,397,630	12.95
Enhance: Training and Education for Newly-Hired Attorneys	10,000	0.00
Add: Social Media Discovery Software Tool	3,500	0.00
Multi-program adjustments, including negotiated compensation changes, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting multiple programs.	(17,540)	0.00
FY21 Recommended	2,393,590	12.95

✱ 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.

Program Performance Measures	Actual FY18	Actual FY19	Estimated FY20	Target FY21	Target FY22
Appeals lost	2	1	1	1	1
Appeals won	13	24	17	17	17
Forfeitures collected (\$000)	\$286.00	\$384.68	\$296.14	\$296.14	\$296.14
Number of adoptions granted	19	34	22	22	22
Number of children in need of assistance (CINA) or guardianship hearings	2,618	2,465	2,613	2,613	2,613
Number of new CINA petitions filed	193	183	182	182	182

Program Performance Measures	Actual FY18	Actual FY19	Estimated FY20	Target FY21	Target FY22
Number of new termination of parental rights (TPR) petitions filed ¹	22	25	31	31	31
Number of termination of parents rights (TPR's) granted ²	32	19	30	30	30
Debt collection - cost/revenue ratio ³	2.7%	4.1%	3.3%	3.3%	3.3%
Percent of appeals in the Appellate Court won	87.00%	96.00%	93.00%	100.00%	100.00%
Child welfare litigation - ratio of termination of parental rights (TPR) and child in need of assistance (CINA) adjudicated granted or denied	99.5%	99.5%	99.5%	100%	100%
Debt collection - collected/total referred ratio	191.0%	139.5%	173%	150%	150%

¹ The number of Termination of Parental Rights petitions filed is determined by the number of times the court challenges a child's plan for reunification to adoption. The increased number of adoption cases in FY17 could reflect more serious cases coming into Juvenile Court where reunification with a parent cannot be achieved and/or more cases with sibling groups. The increase in the number of petitions filed reflect the judges' commitment to permanency in Juvenile Court.

² The number of Termination of Parental Rights petitions filed is determined by the number of times the court challenges a child's plan for reunification to adoption. The increased number of adoption cases could reflect more serious cases coming into Juvenile Court where reunification with a parent cannot be achieved and/or more cases with sibling groups. The increase in the number of petitions filed reflect the judges' commitment to permanency in Juvenile Court.

³ This measure indicates the labor cost spent on collection. This is an indicator designed to show that the County is able to keep the collection cost low compared to outside private industry.

FY21 Recommended Changes	Expenditures	FTEs
FY20 Approved	0	0.00
Re-align: Merge Finance and Procurement, Government Operations and Appeals, Health and Human Services, Human Resources, and Zoning, Land Use, and Economic Development Programs into New General Counsel Program	3,811,168	29.00
Shift: Deputy Privacy Officer from Health and Human Services (HHS)	133,484	1.00
Increase Cost: Outside Counsel Expenses	110,000	0.00
Decrease Cost: Annualization of Mid-Year FY20 Position Actions	(7,116)	(1.50)
Re-align: Personnel Charges to Other Funds/Departments	(78,108)	0.25
Multi-program adjustments, including negotiated compensation changes, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting multiple programs.	224,282	0.00
FY21 Recommended	4,193,710	28.75

✻ 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 FY21, all attorneys and staff in this program are fully charged to the Self-Insurance Fund (SIF).

Program Performance Measures	Actual FY18	Actual FY19	Estimated FY20	Target FY21	Target FY22
Total number of settlements	19	26	24	24	24
Number of workers' compensation hearings ¹	2,055	1880	1945	1945	1945
Code Citations processed	4,933	6,253	4,912	4,912	4,912
Ratio amount paid by County vs. amount demanded by the plaintiff	0.014	0.000	0.071	0.000	0.000
Total paid to plaintiff by the County (\$000)	\$91.8	\$0	\$61.9	\$0	\$0
Self-insurance fund litigation: Win/loss ratio	86%	100%	94%	94%	94%
Code enforcement collected (\$000)	\$578	\$656	\$595	\$650	\$650
Number of judgments in County's favor	44	30	39	30	30
Number of judgments paid	7	0	3	0	0
Last settlement amount demanded by plaintiff (\$000)	\$658,906	83,184	262,985	262,985	262,985
Worker's compensation cases: Total net gain to the County (\$000)	2,584	2,960	2575	3,130	3,187
Code enforcement - Win/loss ratio	99.2%	99.38%	99.08%	100%	100%

¹ The increase in workers compensation hearings in FY18 correlates to the increase in work-related injuries, which can be attributed to more

safety concerns and less resources dedicated to injury prevention.

FY21 Recommended Changes	Expenditures	FTEs
FY20 Approved	0	0.00
Re-align: Merge Insurance Defense Litigation Program into New Litigation Program	133,171	1.25
Shift: Chargeback from General Fund to Self-Insurance Fund	(133,171)	(1.25)
FY21 Recommended	0	0.00

REALIGNED PROGRAMS

Funding in the following programs has been realigned to other programs within this department.

☼ Administration

FY21 Recommended Changes	Expenditures	FTEs
FY20 Approved	1,628,792	7.50
Re-align: Existing Administration Program into New Administration Program	(1,628,792)	(7.50)
FY21 Recommended	0	0.00

☼ Finance and Procurement

FY21 Recommended Changes	Expenditures	FTEs
FY20 Approved	1,177,493	11.50
Re-align: Finance and Procurement Program Into New General Counsel Program	(1,177,493)	(11.50)
FY21 Recommended	0	0.00

☼ Government Operations and Appeals

Program Performance Measures	Actual FY18	Actual FY19	Estimated FY20	Target FY21	Target FY22
Debt collection (\$000)	\$17,889	\$11,693	\$14,799	\$14,799	\$14,799

FY21 Recommended Changes	Expenditures	FTEs
FY20 Approved	468,402	2.75
Re-align: Government Operations and Appeals Program into New General Counsel Program	(468,402)	(2.75)
FY21 Recommended	0	0.00

☼ Health and Human Services

FY21 Recommended Changes	Expenditures	FTEs
FY20 Approved	1,199,584	7.10
Re-align: Health and Human Services Program into New General Counsel Program	(1,199,584)	(7.10)
FY21 Recommended	0	0.00

☼ Human Resources

FY21 Recommended Changes	Expenditures	FTEs
FY20 Approved	1,139,986	7.50
Re-align: Human Resources Program into New General Counsel Program	(1,139,986)	(7.50)
FY21 Recommended	0	0.00

☼ Insurance Defense Litigation

FY21 Recommended Changes	Expenditures	FTEs
FY20 Approved	133,171	1.25
Re-align: Insurance Defense Litigation Program into New Litigation Program	(133,171)	(1.25)
FY21 Recommended	0	0.00

☼ Public Interest Representation

FY21 Recommended Changes	Expenditures	FTEs
FY20 Approved	0	0.00
Realignment of Programs	609,590	6.50
Multi-program adjustments, including negotiated compensation changes, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting multiple programs.	(609,590)	(6.50)
FY21 Recommended	0	0.00

☼ Support Services

FY21 Recommended Changes	Expenditures	FTEs
FY20 Approved	414,243	4.70
Re-align: Merge Support Services Program into New Administration Program	(414,243)	(4.70)
FY21 Recommended	0	0.00

☼ Zoning, Land Use and Economic Development

FY21 Recommended Changes	Expenditures	FTEs
FY20 Approved	180,298	0.90
Re-align: Zoning, Land Use and Economic Development Program into New General Counsel Program	(180,298)	(0.90)
FY21 Recommended	0	0.00

BUDGET SUMMARY

	Actual FY19	Budget FY20	Estimate FY20	Recommended FY21	%Chg Bud/Rec
COUNTY GENERAL FUND					
EXPENDITURES					
Salaries and Wages	4,942,515	4,281,032	4,149,314	4,500,306	5.1 %
Employee Benefits	1,544,093	1,348,655	1,313,219	1,240,609	-8.0 %
County General Fund Personnel Costs	6,486,608	5,629,687	5,462,533	5,740,915	2.0 %
Operating Expenses	504,498	712,282	728,695	846,385	18.8 %
Capital Outlay	100	0	0	0	---
County General Fund Expenditures	6,991,206	6,341,969	6,191,228	6,587,300	3.9 %
PERSONNEL					
Full-Time	76	76	76	77	1.3 %
Part-Time	2	2	2	1	-50.0 %
FTEs	43.50	43.20	43.20	41.70	-3.5 %
REVENUES					
Federal Financial Participation Reimbursements	284,621	250,000	250,000	250,000	---
Miscellaneous Revenues	74	0	0	0	---
Other Charges/Fees	(337)	0	0	0	---
Other Intergovernmental	93,853	45,630	45,630	45,630	---
County General Fund Revenues	378,211	295,630	295,630	295,630	---

FY21 RECOMMENDED CHANGES

COUNTY GENERAL FUND**FY20 ORIGINAL APPROPRIATION****6,341,969 43.20****Changes (with service impacts)**

Enhance: Training and Education for Newly-Hired Attorneys [Administration]	10,000	0.00
Add: Social Media Discovery Software Tool [Administration]	3,500	0.00

Other Adjustments (with no service impacts)

Re-align: Merge Finance and Procurement, Government Operations and Appeals, Health and Human Services, Human Resources, and Zoning, Land Use, and Economic Development Programs into New General Counsel Program [General Counsel]	3,811,168	29.00
Re-align: Administration and Support Services Programs into New Administration Program [Administration]	2,397,630	12.95
Shift: Deputy Privacy Officer from Health and Human Services (HHS) [General Counsel]	133,484	1.00
Re-align: Merge Insurance Defense Litigation Program into New Litigation Program [Litigation]	133,171	1.25
Increase Cost: FY21 Compensation Adjustment	118,215	0.00
Increase Cost: Outside Counsel Expenses [General Counsel]	110,000	0.00
Increase Cost: Annualization of FY20 Compensation Increases	88,849	0.00
Increase Cost: Annualization of FY20 Personnel Costs	55,611	0.00
Increase Cost: Print and Mail Adjustment	603	0.00
Decrease Cost: Annualization of Mid-Year FY20 Position Actions [General Counsel]	(7,116)	(1.50)
Decrease Cost: Retirement Adjustment	(56,536)	0.00
Re-align: Personnel Charges to Other Funds/Departments [General Counsel]	(78,108)	0.25
Re-align: Insurance Defense Litigation Program into New Litigation Program [Insurance Defense Litigation]	(133,171)	(1.25)
Shift: Chargeback from General Fund to Self-Insurance Fund [Litigation]	(133,171)	(1.25)
Re-align: Zoning, Land Use and Economic Development Program into New General Counsel Program [Zoning, Land Use and Economic Development]	(180,298)	(0.90)
Re-align: Merge Support Services Program into New Administration Program [Support Services]	(414,243)	(4.70)
Re-align: Government Operations and Appeals Program into New General Counsel Program [Government Operations and Appeals]	(468,402)	(2.75)
Re-align: Human Resources Program into New General Counsel Program [Human Resources]	(1,139,986)	(7.50)
Re-align: Finance and Procurement Program Into New General Counsel Program [Finance and Procurement]	(1,177,493)	(11.50)
Re-align: Health and Human Services Program into New General Counsel Program [Health and Human Services]	(1,199,584)	(7.10)
Re-align: Existing Administration Program into New Administration Program [Administration]	(1,628,792)	(7.50)

FY21 RECOMMENDED**6,587,300 41.70****PROGRAM SUMMARY**

Program Name	FY20 APPR Expenditures	FY20 APPR FTEs	FY21 REC Expenditures	FY21 REC FTEs
Administration	0	0.00	2,393,590	12.95
Administration	1,628,792	7.50	0	0.00
Finance and Procurement	1,177,493	11.50	0	0.00
General Counsel	0	0.00	4,193,710	28.75
Government Operations and Appeals	468,402	2.75	0	0.00
Health and Human Services	1,199,584	7.10	0	0.00
Human Resources	1,139,986	7.50	0	0.00
Insurance Defense Litigation	133,171	1.25	0	0.00
Litigation	0	0.00	0	0.00
Support Services	414,243	4.70	0	0.00
Zoning, Land Use and Economic Development	180,298	0.90	0	0.00
Total	6,341,969	43.20	6,587,300	41.70

CHARGES TO OTHER DEPARTMENTS

Charged Department	Charged Fund	FY20 Total\$	FY20 FTEs	FY21 Total\$	FY21 FTEs
COUNTY GENERAL FUND					
Board of Appeals	General Fund	72,871	0.50	76,335	0.50
Intergovernmental Relations	General Fund	28,637	0.30	29,015	0.30
Finance	General Fund	172,276	1.05	180,262	1.05
Finance	Risk Management (Self Insurance - ISF)	3,111,743	20.50	3,102,886	21.00

CHARGES TO OTHER DEPARTMENTS

Charged Department	Charged Fund	FY20	FY20	FY21	FY21
		Total\$	FTEs	Total\$	FTEs
Human Resources	Employee Health Self Insurance	18,475	0.10	18,931	0.10
Correction and Rehabilitation	General Fund	133,894	1.00	159,607	1.00
Police	General Fund	71,933	0.50	178,216	1.00
Parking District Services	Bethesda Parking	24,084	0.10	22,832	0.10
Parking District Services	Silver Spring Parking	28,812	0.20	30,410	0.20
Health and Human Services	General Fund	0	0.00	52,757	0.50
Health and Human Services	Grant Fund	194,294	2.40	194,294	2.40
Permitting Services	Permitting Services	222,744	1.00	211,260	1.00
Housing and Community Affairs	General Fund	92,093	0.50	93,653	0.50
Housing and Community Affairs	Montgomery Housing Initiative	181,040	1.00	186,430	1.00
Recycling and Resource Management	Solid Waste Disposal	138,565	0.75	141,985	0.75
Recycling and Resource Management	Solid Waste Collection	46,188	0.25	47,328	0.25
CIP	Capital Fund	463,658	2.80	483,202	2.80
NDA - Montgomery County Employee Retirement Plans	General Fund	18,475	0.10	18,931	0.10
NDA - Montgomery County Employee Retirement Plans	Employees Retirement Savings Plan (RSP)	18,475	0.10	18,931	0.10
NDA - Montgomery County Employee Retirement Plans	Retirement Fund (ERS)	77,597	0.42	79,512	0.42
NDA - Retiree Health Benefits Trust	Retiree Health Benefits Trust Fund	31,408	0.17	32,183	0.17
NDA - Retiree Health Benefits Trust	RSP-Disability Benefits (LTD2)	11,085	0.06	11,359	0.06
Cable Television Communications Plan	Cable TV	120,420	0.50	114,160	0.50
Total		5,278,767	34.30	5,484,479	35.80

FUNDING PARAMETER ITEMS

CE RECOMMENDED (\$000S)

Title	FY21	FY22	FY23	FY24	FY25	FY26
COUNTY GENERAL FUND						
EXPENDITURES						
FY21 Recommended	6,587	6,587	6,587	6,587	6,587	6,587
No inflation or compensation change is included in outyear projections.						
Elimination of One-Time Items Recommended in FY21	0	(10)	(10)	(10)	(10)	(10)
Items recommended for one-time funding in FY21, including operating expenses for the Deputy Privacy Officer position added in FY21, will be eliminated from the base in the outyears.						
Labor Contracts	0	63	63	63	63	63
These figures represent the estimated annualized cost of general wage adjustments, service increments, and other negotiated items.						
Subtotal Expenditures	6,587	6,640	6,640	6,640	6,640	6,640

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