

# Office of the County Attorney

**Mission** To provide the best possible legal counsel and representation to County officials and agencies in support of their mission to protect and enhance the community.

**Focus** The Office of the County Attorney is divided into five sections: The General Law Section; the Land Use/Environmental Law Section; the Personnel/Administrative Law Section; the Community Services Board Section; and the Public Private Partnership and Housing Section.

The General Law Section advises County agencies on highly complex financial matters and bond issues, including the formation of special tax and transportation improvement districts; interacts with the Virginia General Assembly on proposed legislation; drafts proposed County ordinances; reviews County contracts; and issues legal opinions to the governing body and the County government on all manner of subjects. The Section also maintains intensive collection and litigation efforts regarding bankruptcies. In addition, the General Law Section defends litigation brought by, among others, large corporations located in the County to challenge real estate, business personal property and Business, Professional and Occupational License (BPOL) tax assessments. In addition, this Section represents the County's interests in utility cases before the State Corporation Commission. The General Law Section also provides support in addressing Conflict of Interests Act inquiries and questions under the Virginia Public Procurement Act. If a County procurement is challenged, this Section defends the County's interests in such litigation. Finally, this Section provides legal advice and counsel regarding all aspects of election law.

The Land Use/Environmental Law Section is an integral part of the County's Zoning Ordinance Modernization (Z-Mod) initiative and assists in the drafting and enforcement of the Zoning Ordinance and building and land development regulations. This Section also brings and defends condemnation actions, assists the County in acquiring, leasing, and selling real property, initiates legal action against developers who default on land development projects, advises County agencies on environmental issues, and reviews subdivision documents affecting County property interests. In addition, one of the Section's attorneys serves in a full-time capacity on the County's legislative team in Richmond while the General Assembly is in session and throughout the remainder of the year reviews draft legislation and staffs various groups and commissions appointed by the General Assembly. This Section works closely with the Department of Planning and Development (DPD) and Department of Public Works and Environmental Services (DPWES), and Land Development Services (LDS) to evaluate a variety of legal issues in a proactive effort to resolve conflicts when possible and thereby diminish the chances of litigation over the Board's legislative decisions. If litigation results, this section defends the legislative decision of the Board of Supervisors in the state and federal trial and appellate courts. The Land Use/Environmental Law Section is also called upon to enforce environmental regulations such as the County's erosion and sediment control and stormwater ordinance, in addition to the Chesapeake Bay Preservation Ordinance. Further, attorneys from the Section are an integral part of the County's MS-4 permit compliance team. The Land Use/Environmental Law Section also plays a crucial role in the efforts of the Zoning Administrator, the Property Maintenance Code Official, and the Director of DPWES to improve communities through the enforcement of various land use laws in the Zoning Ordinance, Fairfax County Code, and the Code of Virginia. This Section works closely with the Department of Code Compliance to address these problems and files numerous cases each year to bring properties across the County into compliance to maintain the high quality of life in the County's residential neighborhoods.

The Personnel/Administrative Law Section defends County personnel decisions before administrative bodies and in state and federal court. In addition, this Section defends the County and its agencies in alleged employment discrimination cases, other federal civil rights claims, Americans with Disability Act litigation, and tort actions (such as personal injury automobile

accidents). This Section also renders legal advice on an ongoing basis to County agencies and employees in an effort to prevent and resolve legal issues on an informal basis and, failing that, to ensure that the County is in the best legal position possible if litigation ensues. Attorneys in this Section also draft and review personnel regulations and retirement ordinances. In addition, this Section civilly prosecutes cases involving abuse and neglect of children and elders. Abuse and neglect cases occupy the efforts of five full-time attorneys, and these attorneys each handle between 40 to 60 active litigation cases at a time. These attorneys also review agreements and memoranda of understanding between state and federal agencies and the Department of Family Services.

The Community Services Board Section provides legal services and representation to the Fairfax-Falls Church Community Services Board (CSB). The Section represents the CSB's and the County's interests in civil commitment hearings for individuals requiring mandatory inpatient mental health services. The number of hearings has been steadily increasing each fiscal year since FY 2011 when this office first absorbed this work. In FY 2011, this office handled 124 hearings, and in FY 2017, the attorneys in this section handled 1,303 hearings. The Section also addresses subpoenas for CSB personnel and records and gives guidance to CSB regarding its duties and responsibilities under the many complex state and federal laws and regulations governing the health care industry.

The Public/Private Partnership and Housing Section (P3) assists in the planning and negotiation of significant infrastructure projects that leverage both public and private resources and drafts the myriad of contracts that reflect these complicated transactions. The attorneys in the P3 Section also support the Fairfax County Redevelopment and Housing Authority (FCRHA), the Department of Housing and Community Development (HCD), and the Department of Planning and Development (DPD). A growing population density and an aging of that population, on lower fixed incomes during their retirement years, will look to the County to assist them in meeting their housing needs, resulting in more work for the Office in its provision of legal advice and transactional expertise to the FCRHA. The Board of Supervisors' successful initiative to provide more affordable and workforce housing also results in greater involvement of the County Attorney's Office in the work of the FCRHA. In its Housing capacity, the P3 section defends the existing stock of affordable dwelling units, ensures federal and state regulatory compliance, drafts leases and other Housing-related contracts, and assists with the review of Fair Housing claims. In addition, the P3 section supports the DPD in its mission to facilitate strategic redevelopment and investment opportunities within targeted commercial areas.

In addition to the above duties, all sections of the office handle requests for documents pursuant to the Virginia Freedom of Information Act (VFOIA) with the assistance and guidance of the two full-time FOIA attorneys approved by the Board in FY 2017. These two full-time attorneys are presently supervised by the Deputy County Attorney for P3/Housing. In addition to responding to FOIA requests, the attorneys continue to provide legal advice and guidance to County agencies, as well as training for specific agencies and general countywide training. The attorneys have assisted in training for specific agencies as well as general countywide training. The full-time FOIA attorneys also have been instrumental in working with the Office of Public Affairs (OPA) on the countywide FOIA program.

The County Attorney's Office also continues to be actively engaged in the Board's One Fairfax initiative. Senior members of the Office have worked extensively with the One Fairfax team and updates about One Fairfax have been shared in detail during office-wide all hands meetings. In addition, the Office has taken significant steps internally, including additional trainings and outreach, to enhance and promote diversity within the office and in the delivery of legal services.

All sections of the OCA also are engaged in reviewing draft legislation that is presented to the Virginia General Assembly for consideration. In the past fiscal year, this office submitted over 2,835 legal reviews during the 2020 General Assembly session. Further, all sections of the OCA are engaged in providing ongoing training for the multitude of County clients served by this office. The Office's attorneys also are engaged in state and local bar association activities; in fact, one of our attorneys is currently serving as the President of the Fairfax Bar Association. Attorneys also regularly serve as expert lecturers for continuing legal education seminars.

### **Pandemic Response and Impact**

The County Attorney's Office has continued to seamlessly provide legal advice, support, and representation to the Board of Supervisors, County agencies, County boards, authorities and commissions, and County employees during the COVID-19 pandemic. Each of the five sections in the Office has promptly and thoroughly addressed a plethora of legal issues resulting from the pandemic, many in new and previously uncharted areas of practice. The Office continues to provide around-the-clock legal review of urgent transactional matters and requests for legal advice as the pandemic continues.

More specifically, the General Law Section prepared the County's Declaration of Emergency and has provided on-going legal advice and support to the Office of Emergency Management. This section has also worked closely with the Department of Procurement and Material Management (DPMM) and the Office of Emergency Management (OEM) to quickly review procurement contracts associated with the pandemic response. The section also prepared both emergency and duly-advertised "continuity in government" ordinances to establish procedures by which the Board of Supervisors, as well as County boards, authorities and commissions, the Fairfax County School Board, the EDA, Fairfax Water, and the Board of Zoning Appeals may meet electronically without a quorum of the public body assembled in one location, which has been particularly crucial during the pandemic conditions. The General Law section also drafted resolutions continuing real estate and business license tax filing deadlines.

The Personnel Section has reviewed and provided legal advice about the various Executive Orders issued by the Governor of Virginia and the governors of several neighboring states in response to the pandemic. The section also continues to review and analyze federal legislation such as the Families First Coronavirus Response Act and the Coronavirus Aid, Relief and Economic Security Act and has provided timely legal advice about the impact of the federal legislation on County agencies. The Department of Family Services subsection, which consists of five attorneys dedicated to the prosecution of cases involving abused and neglected children and the elderly, has continued to provide legal representation in many emergency court hearings, both in-person and using audio-visual technology.

The Land Use Section has drafted emergency and non-emergency "continuity in government" ordinances for Land Development Services (LDS). This section also drafted the emergency and permanent ordinances that allow restaurants and fitness centers to operate in outdoor spaces. The section continues to provide legal advice to LDS, the Planning Commission, Architectural Review Board, and the Board of Zoning Appeals (BZA) with their need to use modified procedures during the pandemic. The section also has assisted with providing information and notices for public hearings that may be conducted electronically.

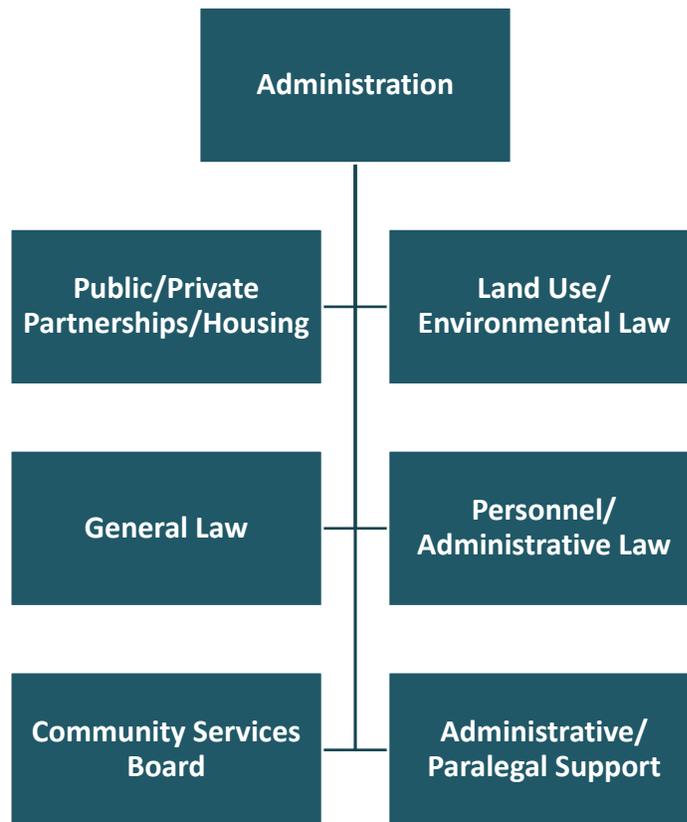
The P3/Housing Section continues to provide legal advice and support to the Fairfax County Redevelopment and Housing Authority (FCRHA), the development of affordable housing, and other real estate development. This section has been able to close on several major projects, as planned and without interruption, during the pandemic. In response to the Department of Economic Initiatives'

Microloan program, the section also quickly drafted a Memorandum of Understanding between the County and its implementing partner. Likewise, the FOIA subsection has timely responded to a surge in FOIA requests related to the pandemic.

Without any interruption, the Community Services Board Section has continued to provide legal representation to petitioners in connection with a heavy docket of daily civil mental health commitment hearings. These hearings are now held using audio-visual technology to ensure the safety of all parties. The section also continues to address HIPAA related agency questions from the CSB.

Throughout the pandemic, the County Attorney's office has quickly developed and implemented new operational models for fulfilling its mission. Many of these changes have been so successful that it is likely they will continue after the pandemic ends. Meetings and many of the Office's court hearings have been conducted using virtual technology, a practice that is now very familiar and a highly efficient use of attorneys' time. The Office of the County Attorney plans to continue innovating in response to changing conditions and work to implement all successful innovations into the office's permanent operations after the pandemic ends.

## Organizational Chart



**Budget and Staff Resources**

Category	FY 2020 Actual	FY 2021 Adopted	FY 2021 Revised	FY 2022 Advertised
<b>FUNDING</b>				
<b>Expenditures:</b>				
Personnel Services	\$7,728,972	\$8,158,657	\$8,158,657	\$8,282,746
Operating Expenses	832,933	413,846	973,345	413,846
<b>Subtotal</b>	<b>\$8,561,905</b>	<b>\$8,572,503</b>	<b>\$9,132,002</b>	<b>\$8,696,592</b>
Less:				
Recovered Costs	(\$466,472)	(\$466,522)	(\$466,522)	(\$466,522)
<b>Total Expenditures</b>	<b>\$8,095,433</b>	<b>\$8,105,981</b>	<b>\$8,665,480</b>	<b>\$8,230,070</b>
<b>Income:</b>				
Litigation Proceeds	\$139,524	\$143,254	\$143,254	\$143,254
<b>Total Income</b>	<b>\$139,524</b>	<b>\$143,254</b>	<b>\$143,254</b>	<b>\$143,254</b>
<b>NET COST TO THE COUNTY</b>	<b>\$7,955,909</b>	<b>\$7,962,727</b>	<b>\$8,522,226</b>	<b>\$8,086,816</b>
<b>AUTHORIZED POSITIONS/FULL-TIME EQUIVALENT (FTE)</b>				
Regular	65 / 65	65 / 65	65 / 65	66 / 66

**FY 2022 Funding Adjustments**

The following funding adjustments from the FY 2021 Adopted Budget Plan are necessary to support the FY 2022 program:

**Collective Bargaining Agreement** **\$124,089**  
 An increase of 1/1.0 FTE new position and \$124,089 is associated with the addition of an attorney position dedicated to providing legal support to the Board of Supervisors and County staff in connection with anticipated collective bargaining agreements. As a result of legislation adopted by the 2020 General Assembly Session, the Board of Supervisors may adopt an ordinance implementing collective bargaining in the County, effective May 1<sup>st</sup> or after. It should be noted that an increase of \$61,386 in Fringe Benefits funding is included in Agency 89, Employee Benefits. For further information on Fringe Benefits, refer to the Agency 89, Employee Benefits, narrative in the Nondepartmental program area.

**Changes to FY 2021 Adopted Budget Plan**

The following funding adjustments reflect all approved changes in the FY 2021 Revised Budget Plan since passage of the FY 2021 Adopted Budget Plan. Included are all adjustments made as part of the FY 2020 Carryover Review, FY 2021 Mid-Year Review, and all other approved changes through December 31, 2020:

**Carryover Adjustments** **\$559,499**  
 As part of the FY 2020 Carryover Review, the Board of Supervisors approved funding of \$559,499 associated with encumbered funding in Operating Expenses primarily for existing contracts for outside counsel as well as funds for retaining experts in litigation filed against the County.

## Position Detail

The FY 2022 Advertised Budget Plan includes the following positions:

<b>OFFICE OF THE COUNTY ATTORNEY – 66 Positions</b>			
<b>Administration</b>			
1	County Attorney		
1	Administrative Associate		
<b>Administrative Support</b>			
1	Administrative Associate	1	Administrative Assistant III
1	Administrative Assistant V	1	Financial Specialist II
6	Administrative Assistants IV		
<b>Public/Private Partnerships/Housing</b>			
1	Deputy County Attorney	2	Assistant County Attorneys V
2	Assistant County Attorneys VII	1	Network Analyst II
1	Assistant County Attorney VI		
<b>Land Use/Environmental Law</b>			
1	Deputy County Attorney	5	Assistant County Attorneys VI
2	Senior Assistant County Attorneys	2	Assistant County Attorneys V
1	Assistant County Attorney VII		
<b>General Law</b>			
1	Deputy County Attorney	4	Assistant County Attorneys VI
2	Senior Assistant County Attorneys	3	Assistant County Attorneys V
1	Assistant County Attorney VII		
<b>Personnel/Administrative Law</b>			
1	Deputy County Attorney	7	Assistant County Attorneys VI
2	Senior Assistant County Attorneys	3	Assistant County Attorneys V [+1]
2	Assistant County Attorneys VII		
<b>Community Services Board</b>			
1	Deputy County Attorney	1	Assistant County Attorney VII
<b>Paralegal Support</b>			
2	Paralegal Supervisors		
6	Paralegals		
+	Denotes New Position(s)		

**Performance  
Measurement  
Results**

In FY 2020, 95 percent of lawsuits brought by or against the County were concluded favorably. The small percentage of unfavorable conclusions are primarily civil commitment hearings in which the patient was not committed. The continued success in litigation is accomplished through the dedication and skill of the attorneys staffing these cases.

The response time to all requests for legal opinions and advice is based on responses to requests from the Board of Supervisors, other boards, authorities and commissions, the County Executive and County departments. The Office of the County Attorney (OCA) continues to exceed the goal of 87 percent despite the increase in the volume and complexity of the assignments. OCA will continue to strive to meet the increasing demand for complex legal opinions and advice in an efficient and productive manner.

In FY 2020, OCA exceeded the target of 90 percent for filing zoning and other Code enforcement-related litigation within 40 days of receipt. The office will continue to provide timely legal representation in response to requests for zoning and property maintenance code enforcement, as well as provide legal guidance for viable solutions prior to filing legal actions.

The office will continue to strive to bring favorable conclusions to its cases and provide timely and comprehensive responses to requests from the Board of Supervisors, other County boards, authorities and commissions, the County Executive and County departments.

Indicator	FY 2018 Actual	FY 2019 Actual	FY 2020 Estimate	FY 2020 Actual	FY 2021 Estimate	FY 2022 Estimate
Percentage point change of lawsuits concluded favorably during the fiscal year	0	(1)	3	1	2	0
Percentage point change of responses meeting timeliness standards	(2)	6	(11)	0	(11)	0
Percentage point change in zoning enforcement requests meeting 40-day submission standard	(1)	(4)	(5)	4	(9)	0

A complete list of performance measures can be viewed at <https://www.fairfaxcounty.gov/budget/fy-2022-advertised-performance-measures-pm>