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| **Agenda Item No.:** | 6 | **Date:** | Jan. 13, 2016 |
| **Proposed No.:** | 2016-0004  | **Prepared by:** | Nick Wagner |

**SUBJECT**

A supplemental appropriation to the Department of Public Defense (DPD) to support the costs arising from two collective bargaining agreements with DPD employees.

**SUMMARY**

Proposed Ordinance 2016-0004 (Att. 1) would approve a supplemental appropriation to DPD to cover 2015-2016 costs arising from collective bargaining agreements (CBAs) between King County and the two unions that represent DPD employees. The CBAs would be approved by Proposed Ordinances 2016-0002 and 2016-0003, which have been referred to the Law, Justice, and Emergency Management Committee and are on that committee’s January 12 agenda for discussion and possible action.

The costs arising from the new CBAs are due primarily to extensive reclassification of DPD attorneys and other staff following their transition from independent, nonprofit public defense agencies to employment by the County. The reclassification is intended to promote parity of compensation and benefits between DPD and the Prosecuting Attorney’s Office. Parity of compensation, benefits, and resources between defense attorneys and prosecuting attorneys is one of the American Bar Association’s Ten Principles for a Public Defense Delivery System. Among the Public Defender’s duties under the King County Code is “ensuring that the [Ten Principles] guide the management of the department and development of department standards for legal defense representation.” KCC 2.60.026(A)(4).

The costs of the reclassification, which is retroactive to January 1, 2015, are expected to be about $9.3 million over the 2015-2016 biennium. That is also the approximate amount of the proposed supplemental appropriation. Of that amount, about $8.9 million would be drawn from the General Fund. According to executive staff, sufficient funds have been allocated in the 2015-2016 General Fund planned reserves to avoid having to draw from the General Fund undesignated fund balance. The remaining $400,000 would be drawn from the MIDD undesignated fund balance, reducing the fund balance from about $1.6 million to about $1.2 million, according to executive staff.

**BACKGROUND**

## DPD Staffing Levels

During the deliberations leading to the Council’s adoption of the 2015-2016 Biennial Budget Ordinance (the Budget), advocates on behalf of DPD clients and staff questioned the adequacy of the approximately $109 million and 343.75 FTEs allocated to DPD in the Executive’s proposed budget, as did the Public Defense Advisory Board (PDAB). The Council adopted the Budget without substantial change in the allocation to DPD, but subject to two provisos, which called for a report and recommendations from the Executive, in collaboration with PDAB, on the sufficiency of the staffing and other resources of DPD in relation to its caseload.[[1]](#footnote-1)

The Executive transmitted the requested report and recommendations to the Council in July 2015 with a request for a supplemental appropriation to DPD for 2015-2016 to fund the implementation of the recommendations. The Executive recommended the addition of 21.0 full-time equivalent (FTE) positions and 20 additional term-limited temporary (TLT) positions to DPD’s budget at a cost of about $6.9 million for 2015-2016. The proposed supplemental appropriation also included about $2 million to cover COLAs for the positions that had been included in DPD’s adopted budget. [[2]](#footnote-2) The Council approved the requested supplemental appropriation by Ordinance 18117 on September 21, 2015.

## DPD Compensation Levels

The King County Code provides in part, in KCC 2.60.026(A)(4), that among the duties of the King County Public Defender is “ensuring that the American Bar Association Ten Principles for a Public Defense Delivery System, as approved by the American Bar Association House of Delegates in February of 2002, guide the management of the department and development of department standards for legal defense representation.” Principle 8 of the ABA Ten Principles provides: “There is parity between defense counsel and the prosecution with respect to resources, and defense counsel is included as an equal partner in the justice system.” The ABA commentary on Principle 8 states in part: “There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.” [Footnote omitted.]

The supplemental appropriation requested by the Executive in July 2015 addressed the issue of how many attorneys and other staff should be funded in DPD, but did not address the issue of parity of compensation between DPD and the Prosecuting Attorney’s Office (PAO). That issue was a subject of ongoing negotiation at that time between the County and the unions representing DPD’s attorneys and other staff (PDMG and SEIU).[[3]](#footnote-3)

**ANALYSIS**

## Attorneys

### New Salary Structure

To achieve parity of compensation between DPD attorneys and PAO attorneys, the proposed new CBAs would create two new classifications: a non-supervisory classification, Public Defense Attorney I (PDA I), and a supervisory classification, Public Defense Attorney – Supervisor (PDA-S). As shown in Attachment 2, each classification would consist of several sub-classifications, and each sub-classification would include multiple steps. There would be a one-to-one correspondence between the steps of PDA I and PDA-S and the steps of the PAO’s Deputy Prosecuting Attorney (DPA) and Senior Deputy Prosecuting Attorney (SDPA) classifications, and the salaries at each step would be the same (*see* Att. 2).

### Initial Step Assignments

Under the new CBAs, the initial assignment of each DPD attorney to a step in the new salary structure would be based on the attorney’s total years of service in DPD and in the independent public defense agency (or agencies) in which the attorney was employed before joining the County.[[4]](#footnote-4) The initial step assignments of DPD attorneys are reflected in Attachment 3, which shows the number of attorneys initially assigned to each step.[[5]](#footnote-5)

### Assignment to Senior Levels

As shown in Attachment 3, the distribution of the initial step assignments of DPD attorneys does not yet reflect parity with the distribution of PAO Criminal Division attorneys, in that the PAO has a higher proportion of higher-paid attorneys. To further improve parity, both CBAs provide for promotion of some DPD attorneys to more senior levels, based on detailed criteria set forth in the CBAs. According to executive staff, the estimated cost of those promotions is included in the cost estimates contained in the Fiscal Note (Att. 8).

## Other Staff

To achieve parity for non-attorney staff, the proposed new CBAs would standardize their classifications and compensation levels, which had varied from one DPD division to another. (*See* Attachment 4, which shows the standardization of classifications for non-supervisory staff.) Most of the non-attorney staff would be assigned to existing county classifications, which already have pay ranges assigned to them. For the classifications that are unique to DPD, the parties have created new classifications and negotiated the pay ranges by comparison with existing classifications or job postings. For example, Public Defense Mitigation Specialist was considered comparable to a Probation Mental Health Specialist position that King County District Court had posted and was assigned a similar pay range.

## Average Percent Increase

On average, most of the DPD attorneys and other staff will receive substantial increases in compensation under the new CBA. The average increases by classification are summarized in Attachments 5 and 6. This has been anticipated for some time, since the County learned soon after the transition of attorneys and other staff to the County from the independent public defense agencies that the agencies had been employing substantially more staff at substantially lower individual compensation levels than the County had previously believed.

The new CBA provides for the increases in compensation due to reclassification to be retroactive to January 1, 2015, not to the July 1, 2013, transition date.

# FISCAL IMPACT

The combined 2015-2016 fiscal impact of the two CBAs is summarized in the table below, which is based on the Fiscal Note (Att. 8).

|  | **2015** | **2016** | **Total** |
| --- | --- | --- | --- |
| **General Fund – DPD** |  |  |  |
|  **SEIU – Reclassification** |  $4,091,223  | $4,513,733  |  $8,604,956  |
|  **SEIU – COLAs** | $562,150  |  $1,207,218  |  $1,769,368  |
|  **PDMG – Reclassification** | $161,983 | $25,854 | $349,820 |
|  **PDMG – COLAs** | $69,885 | $84,419 | $224,189 |
|  **Total Cost for 2015-2016** |  |  | $10,948,333 |
|  **COLA included in staffing supplemental appropriation** |  |  | ($2,025,369) |
|  **Total Supplemental Need** |  |  | **$8,923,000** |
|  |  |  |  |
| **MIDD – DPD** |  |  |  |
|  **SEIU – Reclassification** |  $143,688  |  $178,764  |  $322,452  |
|  **SEIU -- COLAs** | $17,511  |  $37,604  |  $55,115  |
|  **Total Supplemental Need** |  |  |  **$378,000**  |
|  |  |  |  |
| **Proposed Supplemental Appropriation** |  |  | **$9,301,000** |

According to executive staff, sufficient funds have been allocated in the 2015-2016 General Fund planned reserves to avoid having to draw from the General Fund undesignated fund balance. The $378,000 increase for employees who are supported by MIDD would come from the MIDD undesignated fund balance, reducing the fund balance from about $1.6 million to about $1.2 million, according to executive staff.

The projected fiscal impact for 2017-2018 and 2019-2020, according to the Fiscal Note (Att. 8), is $9,896,264 and $10,549,417, respectively.

**AMENDMENTS**

None anticipated.

**INVITED**

1. Dwight Dively, Director, Office of Performance, Strategy, and Budget
2. Sasha Alessi, Labor Negotiator, Office of Labor Relations
3. Ida Kovacic, Union Representative, SEIU, Local 925
4. Christine Jackson, Bargaining Team Member, Public Defense Management Guild

# ATTACHMENTS

1. Proposed Ordinance 2016-0004
2. Attorney Salary Structure of DPD vs. PAO Under Proposed New CBAs
3. Attorney Salary Structure of DPD vs. PAO, Including Current Employee Count, Under Proposed New CBAs
4. Previous vs. New Classifications of Non-Attorney Staff
5. Average Increases in Compensation – Non-supervisory
6. Average Increases in Compensation – Supervisory
7. Transmittal letter
8. Fiscal Note
1. Ordinance 17941, §§ 18 P3, 49 P1. [↑](#footnote-ref-1)
2. The COLAs had been inadvertently omitted from the proposed and adopted budgets for DPD. [↑](#footnote-ref-2)
3. Tentative agreement on the CBA with PDMG was not reached until August 18, 2015. That CBA was not ratified by the union until August 27, 2015, and was not signed by the Executive until December 14, 2015. The proposed ordinance that would approve that CBA (2016-0002) was transmitted to the Council on December 15, 2015. Tentative agreement on the CBA with SEIU Local 925 was not reached until July 30, 2015. That CBA was not ratified by the union until August 26, 2015, and it was not signed by the Executive until December 10, 2015. The proposed ordinance that would approve that CBA (2016-0003) was transmitted to the Council on December 15, 2015. [↑](#footnote-ref-3)
4. For non-supervisory attorneys, their “actual prior years of service in a comparable position” before joining the independent public defense agency would also be considered. [↑](#footnote-ref-4)
5. Attorneys who currently are being paid salaries higher than they would receive after the initial step assignments would be “Y-rated,” meaning that they would continue to receive their current salaries under the new CBA until the salary schedule caught up to them. The proposed initial salaries of all the members of the bargaining unit—attorneys and non-attorneys—are listed in the table attached to the MOA on Step Placement. [↑](#footnote-ref-5)