Office of the District of Columbia Auditor

Testimony of

The Hon. Kathy Patterson

District of Columbia Auditor

Prepared for the

Council of the District of Columbia

Committee of the Whole

Public Hearing on the

FY 2025 Budget for the Office of the D.C. Auditor

April 25, 2024

The John A. Wilson Building
1350 Pennsylvania Ave., N.W.
Washington, DC 20004

Good morning, Chairman Mendelson and members of the Committee of the Whole. I am Kathy Patterson, the District of Columbia Auditor. I greatly appreciate the opportunity to discuss the budget for the Office of the D.C. Auditor (ODCA) for Fiscal Year 2024, year to date, and proposed for Fiscal Year 2025. I will also use this opportunity to provide my perspective on the proposed FY 2025 budget and the Budget Support Act and the challenge facing you and other policymakers in this current budget cycle and into the future.

I will begin with a discussion of our current budget and spending plan.

ODCA FY 2024 budget and current litigation

ODCA's original FY 2024 approved budget is $7,347,706. Our revised FY 2024 budget is $9,943,337 which consists of $6,031,126 personal services funding for the current fiscal year (including $152,000 in funds carried over from Fiscal Year 2023) and our non-personal services budget is $3,912,212 million which includes $2,443,631 in funds carried over from Fiscal Year 2023. The ability to carry over funds to a new fiscal year was approved by the Council several years ago to support ODCA's increasing use of contractors for audits that make use of subject-matter expertise, such as our October 2021 audit of the District's 911 operations. Most of our contracts extend beyond the current fiscal year either because they are complex and lengthy or based on when we conclude a request for proposal and award process. The Council and the District have been well-served by the flexibility we have had to contract for work across fiscal years as shown by the use the Council has made of our audits on 911, police use-of-force, and programs and services to address substance use disorders.

You'll note we have what appears to be a large reserve in our NPS funds due to the FY 2023 carryover. It is my hope that we will be able to use the majority of those funds for additional contract audits that we will finalize during the fiscal year. At issue, though, and the reason we have not yet issued such contracts is litigation we face brought by three sworn members of the Metropolitan Police Department (MPD). The case in D.C. Superior Court, *Richard Mazloom et al v. Kathleen Patterson, et al*, challenges the publication of the October 6, 2022, ODCA report, 36 Fired MPD Officers Reinstated; Receive $14 Million in Back Pay. Three staff auditors and I plus the District itself are being sued for libel, slander, and defamation largely based on the fact that we "named names" of the officers who were fired and had their positions restored following often-lengthy administrative and judicial procedures. The information we used in the report was publicly available and/or shared with us by the MPD.

We hired outside counsel to defend ODCA and our lawyers are taking the lead in the defense, in cooperation with the Office of the Attorney General. To date we have paid out $345,807 in legal costs and are awaiting a judge's decision on our motion to dismiss the case on several grounds that I would summarize as simple lack of merit. If the case goes forward to trial we anticipate the cost will be significant, potentially using the bulk of our current NPS reserve.

The issues in the case against ODCA are serious. It is critical from a public policy perspective that the suit either be dismissed or won by ODCA and the District. At issue is the public's right

to know what is occurring in the District government and how taxpayer dollars are spent. At issue is accountability itself. Mr. Chairman, you have taken the lead on the Council in promoting accountability on the part of the Metropolitan Police Department and its sworn members through legislation that eliminates discipline from collective bargaining, authorizes the Deputy Auditor for Public Safety, and requires additional public reporting on key issues including officer discipline. The litigation is a direct attack on that enhanced accountability. We hired outside counsel with strong litigation experience because of the importance of preserving government accountability as well as protecting the current and future exercise of the D.C. Auditor's independence and authority.

Proposed budget for FY 2025

The Mayor's proposed budget for ODCA includes $7,805,591 million and 41 FTEs. That total includes $6,123,994 million for personal services and just $1,681,598 million for non-personal services, the largest amount of which is in the "contractual services" line. Again, I would anticipate that the largest portion of the NPS funding will support contract audits.

Competitiveness of ODCA compensation

The proposed budget is sufficient to meet ODCA's mission. We currently have unfilled positions and expect to resume hiring once we have a clear picture of our legal costs for the year. In our budget hearing last year I shared that we were considering the trade-off between filling additional allocated FTEs or continuing to upgrade the compensation for our current staff. In the three fiscal years 2019 through 2021 we lost seven or eight members of the ODCA staff, or nearly a quarter of the staff in each year. We had four colleagues leave in FY 2022. Over the summer we conducted comparability studies of other similar offices including the Office of the Inspector General and at the end of the calendar year we provided a series of equity raises to ODCA staff. I have shared previously that we tend to lose staff to federal accountability offices based in part on their higher pay schedules. One of our prospective new hires two years ago opted, instead, to join the Government Accountability Office. Two former ODCA staff now work at the Department of Defense Inspector General's office. With the boost in salaries and generous flexibility in our remote work policy I am hopeful we will retain what has proven to be an excellent staff. In the last 12 months we have had only a single auditor leave ODCA.

Because we are carrying 11 FTEs that are not currently filled and given the pressures on the FY 2025 budget, it would make sense to "give back" a number of those positions though I recommend that we minimize the resulting loss in personal service funds. The fact is that we would not be able to fill all of the vacant positions with our current budget and still maintain a competitive pay scale. At the same time I do not expect to hire 11 additional staff in the foreseeable future, and would suggest given the challenges you face in this budget cycle, that the committee reallocate a total of six of our unfilled FTEs for a savings of about $460,000. If you agree, we will share the recommended position numbers with the Committee staff.

ODCA leased space and costs

We moved into our new space at 1331 Pennsylvania Avenue N.W. in December 2022 after vacating the former offices at 717 14th Street N.W. in September. The new office includes individual offices and work stations and makes excellent use of natural light. We have a total of 13,902 square feet, including 9,928 square feet for our current office on the building's 8th floor and just under 4,000 square feet now used by the Deputy Auditor for Public Safety on the 7th floor. Because we are continuing to permit staff to work remotely we can work within the 8th floor space we have, with more individuals using work stations rather than individual offices. We have notified the Department of General Services that we would like to vacate the 7th floor space, and they are reviewing that option. I expect the space will revert to other District use at some point over the next year which would bring down ODCA's lease costs in FY 2026. The proposed budget for our leased space in FY 2025 is $791,855; it is $786,850 for FY 2024.

I testified a year ago that we experienced a safety incident on January 25, 2023, when a member of my leadership team opened the glass door to her office and a rectangular metal doorplate detached and fell on her head and arm. She suffered a concussion and was not able to return to work full-time until recently. I plan to share with the Council a series of recommendations concerning the District's worker's compensation program from my perspective not as D.C. Auditor but as a District agency executive and personnel authority. There is legislation pending before the Council and that offers the opportunity to weigh in with what we have learned through this experience.

Budget Support Act: SPRFs

An initial observation on the proposed FY 2025 Budget Support Act of 2024 is that it once again disregards recommendations from ODCA's 2019 report, Elected Officials Created Special Funds but "Sweep" Dollars for Other Purposes. The legislation would transfer more than $131 million from 103 of the District's 200-some Special Purpose Revenue Funds into the General Fund to cover costs unrelated to the statutory purposes of the special funds. Our report cited the Home Rule Act as permitting the Council to create special funds "from time to time" as "necessary for the efficient operation of the government." The new sweeps include $4.5 million from funds designed to support the Vision Zero initiative, an issue we have under review because of its priority for District residents and the frightening increases in traffic deaths. We recommended in 2019 that policymakers review whether each fund is performing as intended, "determine whether each existing fund continues to be necessary for the efficient operation of the District" and "repeal those that are not necessary." If, in fact, the Budget Support Act is zeroing out half of the special funds, this might also be a time to repeal the funds outright since they apparently no longer serve their intended purpose. We are preparing a more detailed budget brief on the issue of SPRFs to bring our 2019 report up to date and I hope to get that to the Council within a few weeks.

Budget transparency

Mr. Chairman as you know in last year's budget debate this Committee approved a one-time reduction in ODCA's budget for FY 2024 to enable a reallocation of funds to the Criminal Code Revision Commission. I sought to confirm that the funds were restored to the agency's budget in the outyear budgets in the four-year financial plan. I learned that agency-level budgets for FY 2025 through FY 2028 were simply not available. I was also interested in those agency-level spending projections to understand where the Mayor and Council anticipated major reductions to reflect the end of COVID-19 federal funding. In a June 2023 meeting Chief Financial Officer Glen Lee assured me that he had seen evidence of the planned agency-level spending reductions in order to certify that the budget submitted to the Congress was balanced in the out-years. But his staff was either not able or not willing to share the agency-level spending projections with me and he did not respond to repeated requests for that information.

I was finally able to get at least part of the information I sought from the Council's budget office—which I greatly appreciated—and I mention the following as examples. The Mayor and Council approved a FY 2025 local funds spending reduction of $28 million for the Office of Victim Services and Justice Grants; a $15 million cut to the Department of Behavioral Health; and a $21 million cut to the District Department of Transportation in the budget sent to Capitol Hill. But none of those or the other agency figures are anywhere to be found in the actual budget books despite statutory requirements that such information be published. Those were three of 40 budget lines that showed projected reductions in FY 2025 totaling $315 million to bring the budget into balance. Again, this was data prepared and approved by the Council via spreadsheets that existed but were not published. I was pleased to learn the projected spending for FY 2025 included a restoration of the one-year reduction in ODCA's budget.

I share this to recommend that the Council return to full transparency in the District's multi-year spending plan when the FY 2025 budget is approved, including anticipated spending by agency by year, FY 2026 through FY 2028, and be certain that the documents published by the OCFO contain that information.

Budget challenges: spending growth and budget execution

More broadly than the treatment of SPRFs and multi-year transparency, the District's FY 2025 budget presents you and colleagues with an increasingly difficult set of choices, some of which will have long-lasting effects. It is important to recognize that the District's spending has grown at a rate faster than revenue for years, as shown in the attached chart from the FY 2025 proposed budget, and forecasts of future economic activity provide no prospect of relief. Over the past five tumultuous years, the District has sustained a balanced budget by using the accumulated fund balance and transferring resources from external sources like enterprise funds including the ballpark fund, Universal Paid Leave fund, and excess convention center balances. These techniques may have a legitimate place in budgeting on occasion but dependance on them is not a reliable long-term strategy. When they, too, fail or reach exhaustion, there is no backup plan.

The District's future fiscal health will depend on its ability to achieve a sustainable match between revenues and operating expenditures. Solving that equation will require action on your part to significantly reduce the rate of expenditure growth—a point I have made repeatedly in these budget presentations.

Part of addressing the imbalance depends on improving budget execution. Year-end figures from FY 2023 published in the Annual Comprehensive Financial Report showed a massive gulf between the initial budget of specific agencies at the beginning of the year and the amount the agency had actually spent by the end of the year including year-end closing transfers. Together, five agencies accounted for $257 million of spending *that was not included in the FY 2023 budget approved by the Council*:

	FY23 – Local Funds only (thousands of dollars)			
Agency	Approved	Actual	Variance as %	Variance in $
DGS	380,773	425,210	11.7%	44,437
MPD	515,696	633,411	22.8%	117,715
OSSE	270,196	322,445	19.3%	52,249
DHCD	35,468	66,490	87.5%	31,022
DOES	71,458	83,688	17.1%	12,230
	1,273,591	1,531,244	20.2%	257,653

The Metropolitan Police Department's FY 2023 experience could have been skewed by implementation of a new collective bargaining agreement requiring substantial amounts of backpay, covered from the Workforce Investments Account. But it is not clear today whether sustaining the police department requires the $633 million in Local funds that it spent in FY 2023, the $486 million that it received in the approved FY 2024 budget (and MPD had spent $316 million halfway through the year), or the $563 million that has been proposed for FY 2025. For its part, the Department of Housing and Community Development threatened to double its approved budget through significant overspending in the HPAP program, not a choice made collectively by policymakers during the budget process. Such volatility across multiple agencies suggests serious flaws in budget development or execution or both and with responsibility shared across the government.

Next steps: an Expenditure Commission

Mr. Chairman, in 2019, you initiated a Budget Support Act subtitle establishing an Expenditure Commission to take a hard look at spending across District agencies and identify opportunities for cost savings and increased efficiency; I was pleased to be a named participant. But the other commission members were never appointed and the subtitle was repealed a year later. Had that commission begun its work in 2019, you might be further along in addressing today's fiscal challenges while minimizing harmful programmatic cuts or tax increases.

I recommend you revive the proposal for a commmission today and do so as a Council-initiative if there is not ready concurrence by the Executive, just as was done with the Police Reform Commission. An expenditure task force is also timely, in that its efforts could complement the ongoing work of the Tax Revision Commission. Proposals to further improve the fairness of the tax code should be considered along with proposals to improve the delivery of services funded with tax revenues. An Expenditure Commission could be part of the emergency version of budget legislation in order to begin work sooner rather than later.

This concludes my statement and I am happy to answer questions on these or other issues pending before the Council. Thank you.

****

Table 2-2

FY 2025 - FY 2028 GENERAL FUND - Local Funds Component

($ thousands)

		FY 2022 Actual	FY 2023 Actual	FY 2024 Approved	FY 2024 Revised	FY 2025 Proposed	FY 2026 Projected	FY 2027 Projected	FY 2028 Projected
1	**Revenues**								
2	Taxes	9,222,560	9,163,409	9,070,589	9,173,733	9,378,217	9,629,620	9,892,690	10,144,747
4	General Purpose Non-Tax Revenues	624,067	773,416	575,915	761,779	834,048	782,602	741,991	727,175
6	Transfer from Lottery	40,670	33,450	41,458	41,457	41,757	42,982	42,982	42,982
7	**Subtotal, Local Fund Revenues**	**9,887,298**	**9,970,275**	**9,687,962**	**9,976,969**	**10,254,022**	**10,455,204**	**10,677,663**	**10,914,904**
8	Bond Proceeds for Issuance Costs	4,009	4,149	11,000	11,000	11,000	11,000	11,000	11,000
9	Fund Balance Use	258,041	725,051	733,491	1,073,201	683,922	438,235	345,970	167,611
10	Fund Balance Use from FY 2024	0	0	0	0	149,969	149,740	143,128	185,364
11a	Central Services Cost Allocation from Federal Funds	0	0	954	954	954	954	954	954
11b	Federal Reimbursement for Prior Year Match	165,988	226,525	0	85,700	0	0	0	0
12a	Transfer from TIF/PILOT/Other	228,857	467,234	28,482	38,931	110,148	37,672	35,403	36,565
12b	Transfer from Capital Fund Paygo	18,273	17,841	0	6,951	0	0	0	0
13a	Revenue Proposals	0	0	52,705	7,943	327,661	401,142	481,981	586,019
13b	ARPA - Federal Funds - Local Revenue Replacement	457,086	399,191	174,139	621,170	0	0	0	0
13c	ARPA - Federal Funds - Conformity Revenue	0	0	0	0	0	0	0	0
14	**Total Local Fund Resources**	**11,019,552**	**11,810,265**	**10,688,734**	**11,822,820**	**11,537,676**	**11,493,948**	**11,696,100**	**11,902,418**
15									
16	**Expenditures (by Appropriation Title)**								
17	Governmental Direction and Support	1,066,669	1,021,777	1,038,714	1,056,250	1,036,162	1,041,224	1,061,408	1,081,985
18	Economic Development and Regulation	487,216	703,348	306,983	541,058	325,094	300,381	299,278	303,107
19	Public Safety and Justice	1,306,080	1,518,474	1,342,926	1,365,052	1,550,341	1,513,445	1,551,632	1,604,365
20	Public Education System	2,760,879	3,278,999	3,202,278	3,206,686	3,506,941	3,492,789	3,518,352	3,550,568
21	Human Support Services	2,031,001	2,343,790	2,336,763	2,565,249	2,475,132	2,415,833	2,447,644	2,494,114
22	Operations and Infrastructure	797,217	878,082	890,328	887,048	1,070,092	1,047,028	1,055,113	1,063,359
23	Financing and Other - Selected Agencies (DO0, EP0, UJ0, UP0, ZH0, ZZ0)	43,435	23,434	249,222	387,409	137,289	167,354	191,399	218,962
24	Bond Issuance Costs (ZB0)	5,475	6,306	11,000	11,000	11,000	11,000	11,000	11,000
25	Debt Service (DS0, ZA0, SM0, ZC0, EL0)	812,080	964,047	1,118,429	1,030,141	1,236,874	1,372,034	1,415,413	1,487,058
26	**Subtotal, Operating Expenditures**	**9,310,052**	**10,738,257**	**10,496,643**	**11,049,892**	**11,348,925**	**11,361,087**	**11,551,239**	**11,814,518**
27	Paygo Capital (PA0)	102,563	216,728	118,891	25,568	24,351	1,500	1,500	1,000
28	Transfer to Trust Fund for Post-Employment Benefits (RH0)	53,000	41,500	72,700	72,700	63,900	71,900	83,900	86,400
29	Repay Contingency Reserve Fund (SV0)	0	16,986	0	22,657	0	0	0	0
30b	Transfer to Convention Center (EZ0)	32,069	5,010	0	23,300	0	0	0	0
31	**Total Local Fund Expenditures and Transfers**	**9,497,683**	**11,018,481**	**10,688,234**	**11,194,118**	**11,437,176**	**11,434,487**	**11,636,639**	**11,901,918**
32	**Operating Margin Before Reservations**	**1,521,868**	**791,784**	**500**	**628,702**	**100,500**	**59,461**	**59,461**	**500**
33	Set-Aside for Replenishment for Fiscal Stabilization	0	0	0	0	100,000	58,961	58,961	0
34	Reserved for Subsequent Years' Expenditures	0	0	0	628,202	0	0	0	0
35	Operating Margins After Reservations	1,521,868	791,784	500	500	500	500	500	500

(Numbers may not add due to rounding)

Note: Effective in FY 2025 Proposed, the agency JS0-Office for Deaf, Deafblind, and Hard of Hearing, moved from the Human Support Services appropriation title to the Governmental Direction and Support.