



Committee: Directly to Council
Committee Review: N/A
Staff: Craig Howard, Deputy Director
Purpose: Receive briefing and have discussion – no vote expected
Keywords: Inspector General, Pay Differential, Hazard Pay

AGENDA ITEM #3.5
November 10, 2020
Discussion

SUBJECT

Office of Inspector General Report of Investigation: *DPS Inspectors Were Overpaid COVID Differential Pay*, OIG Publication #OIG-21-06

EXPECTED ATTENDEES

Megan Limarzi, Inspector General
Richard Madaleno, Chief Administrative Officer
Fariba Kassiri, Deputy Chief Administrative Officer
Mitra Pedoeem, Director, Department of Permitting Services
Dr. Earl Stoddard, Director, Office of Emergency Management and Homeland Security
William Broglie, Internal Audit, Office of the County Executive
David Gottesman, Office of Management and Budget
Michael Goldfarb, Office of Emergency Management and Homeland Security

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

None

DESCRIPTION/ISSUE

The Office of Inspector General (OIG) released Report of Investigation: *DPS Inspectors Were Overpaid COVID Differential Pay* on November 6, 2020. The Council will receive a briefing on the report from the Inspector General and hold an oversight discussion with OIG and Executive Branch Staff.

SUMMARY OF KEY DISCUSSION POINTS

- The OIG initiated this investigation based on allegations that the County Department of Permitting Services (DPS) inspectors were paid COVID-19 differential pay to which they were not entitled. The investigation found that DPS inspectors were wrongly paid COVID-19 related differential pay from approximately March 29 to August 29, 2020.
- OIG findings:
 1. DPS management did not follow County policy on the assignment of COVID differential pay.
 2. DPS inspectors received front facing COVID differential pay for hours to which they were not entitled.
 3. DPS inspection data is incomplete and not accurate of the DPS and Data Montgomery web sites.
 4. Other County departments may have also allowed employees to claim COVID differential hours to which they were not entitled.

- **OIG recommendations along with the response from the Chief Administrative Officer:**
 1. **DPS management review all COVID differential pay claims to determine how much was erroneously paid and seek reimbursement of any undeserved differential pay.**

CAO Response: DPS will review all claims for differential pay and follow the process as set forth in the collective bargaining agreement (CBA) with the Montgomery County Government Employees Organization (MCGEO) and Montgomery County Personnel Regulations regarding overpayments.
 2. **The Chief Administrative Officer review all County departments' differential pay expenditures to ensure they complied with policy and seek reimbursement of any undeserved differential pay.**

CAO Response: Individual departments will review their differential pay expenditures and follow the appropriate Collective Bargaining Agreement and Montgomery County Personnel Regulation regarding any overpayments.
 3. **The Chief Administrative Officer not seek reimbursement from the Federal Emergency Management Agency or use federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funds to pay for COVID differential payments until all such payments have been verified for compliance against County policy.**

CAO Response: FEMA reimbursement and application of Coronavirus Relief Fund (CRF) monies under the CARES Act are based upon money actually spent in responding to the COVID-19 pandemic. In the event that reimbursements are sought from individual employees for differential pay overpayments, the County will make all appropriate adjustments to any federal reimbursement requests or application of CRF monies.
 4. **DPS improve the completeness and accessibility of its inspection data.**

CAO Response: We understand that DPS provided information to the OIG in response to a series of separate and follow-up requests, and advised the OIG staff that the information being requested was not available fully from dataMontgomery, since dataMontgomery does not pull all the data sets from DPS systems that was needed for the OIG review. As noted in the report, DPS is in the process of overhauling its permitting system; this will provide easier and more comprehensive reports in real time.

This report contains:

Office of Inspector General Report of Investigation: *DPS Inspectors Were Overpaid COVID Differential Pay*, OIG Publication #OIG-21-06

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OFFICE OF THE INSPECTOR GENERAL
MONTGOMERY COUNTY MARYLAND

MEGAN DAVEY LIMARZI, ESQ.
INSPECTOR GENERAL

REPORT OF INVESTIGATION

DPS Inspectors Were Overpaid COVID Differential Pay

Department of Permitting Services

OIG Publication # OIG-21-06

OCTOBER 29, 2020

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Why We Did This Investigation

With the COVID-19 emergency, the Montgomery County Government instituted differential pay, widely referred to as hazard pay, for County employees required to work onsite. The \$10/hour front facing differential pay is for work with the public, and the \$3/hour Back Office differential pay is for work that cannot be performed by telework and does not involve regular physical interaction with the public. The Office of the Inspector General (OIG) received complaints that Department of Permitting Services (DPS) management allowed its inspectors to receive the \$10/hour front facing differential pay, not only for hours they were onsite, but also for hours that they were working at home, or otherwise not exposed to the public.

The OIG initiated this investigation to determine if DPS employees were obtaining a benefit to which they were not entitled. We were additionally concerned that misapplications of policy were leading to improper payments and further adding to the County's COVID-19 debt burden. As of September 26, 2020, the County spent more than \$49 million on COVID-19 differential pay across all Departments.

What We Found

1. DPS management did not follow County policy on the assignment of COVID differential pay.
2. DPS inspectors received front facing COVID differential pay for hours to which they were not entitled.
3. DPS inspection data is incomplete and not accurate on the DPS and Data Montgomery web sites.
4. Other County departments may have also allowed employees to claim COVID differential hours to which they were not entitled.

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BACKGROUND

On March 5, 2020, the Governor of Maryland proclaimed that a state of emergency and catastrophic health emergency existed within the state of Maryland due to the outbreak of COVID-19. On March 20, 2020, Montgomery County's Chief Administrative Officer issued a memorandum to all Department and Office Directors stating that "all work that can be performed via telework must be performed that way." The Governor ordered non-essential businesses to close on March 23. The Governor's Office of Legal Counsel published a list of critical infrastructure activities that could remain in operation, including building and construction activities.

As a result, the County closed many government offices to the public, including the Department of Permitting Services (DPS). All DPS employees, except for inspectors, were instructed to work remotely, either full-time or a majority of the time. The County determined that inspections were an essential service for building and construction, and DPS inspectors continued to perform many onsite inspections of buildings, land, and rights-of-way.

DPS issued a moratorium on all inspections into existing spaces where people were living and limited complaint response activity to only those involving life and safety issues. DPS devised alternative methods to conduct inspections, such as using video in place of in person inspection. As a result of the changes implemented, inspections decreased by 26% for the pay period spanning April 26 through May 9, 2020 as compared to the corresponding pay period in 2019.

In early April, the County reached an agreement with the three labor unions¹ representing County employees to compensate employees for "the unusual risks employees now face in leaving their homes and delivering vital services to the public."² The union agreement explained that two differential pay categories would be created, front facing and back office. It defined them as follows:

- Front Facing Onsite: work that cannot be performed by telework, involves physical interaction with the public, and cannot be performed with appropriate social distancing.
- Back Office Onsite: work that cannot be performed by telework and does not involve regular physical interaction with the public.

Employees performing work categorized as front facing would receive an additional \$10 per hour, and employees performing work categorized as back office would receive an additional \$3 per hour, retroactive to March 29, 2020.

¹ The three County employee unions are (1) the International Association of Fire Fighters, Local 1664 (IAFF); (2) the Fraternal Order of Police, Lodge 35 (FOP); and (3) the United Food and Commercial Workers, Local 1994 (MCGEO). DPS employees are represented by MCGEO.

² County press release on April 10, 2020.

BACKGROUND

In May of 2020, the Office of the Inspector General received complaints alleging that DPS management was allowing inspectors to receive front facing differential pay while they were working from home. One complaint referred to DPS employees' actions as "defrauding the system" and "taking advantage of undeserved hazard pay."

Figure 1 summarizes the functions of the five DPS Divisions, based on the descriptions on the DPS website.

Figure 1: Department of Permitting Services Divisions

DPS Divisions	Functions
Commercial Building Construction	Processes commercial building, mechanical and electrical permit applications and corrects code violations through a complaints program
Fire Prevention & Code Compliance	Manages, inspects, and licenses all fire and life safety aspects of new construction
Land Development	Regulates land improvement, including stormwater management, sediment control, well and septic, soils testing, and construction related to the public right of way
Residential Construction & Intake	Processes permit applications and enforces residential building, structural, electrical, mechanical, and energy conservation codes
Zoning and Site Plan Enforcement	Regulates the form, size, shape, height, and mass of structures. It also regulates the uses of property

Figure 2 shows the County's COVID related hazard pay³ expenditures as of September 26, 2020.⁴ The costs are shown for each of the three County unions and for non-represented County employees.

Figure 2: The Cost of Hazard Pay through Sept. 26, 2020

Bargaining Unit	Hazard Pay	% of Total
MCGEO	\$21,970,851	45%
Fire	\$14,979,858	30%
Police	\$9,830,704	20%
Non-represented	\$2,452,405	5%
Total	\$49,233,818	100%

According to Executive Branch estimates, the total cost of COVID-19 related hazard pay will increase to approximately \$72 million if the differential pay continues through December 31 without any changes.

³ The term "hazard pay" is used interchangeably with "differential pay" by County government.

⁴ Reported by the Executive Branch to the County Council on October 13, 2020.

INVESTIGATIVE FINDINGS

Our investigation uncovered that DPS management enacted a COVID differential pay policy that was contrary to the Administration's policy, resulting in overpayment of front facing COVID differential pay to DPS inspectors from approximately March 29 to August 29, 2020. We also found that DPS inspection data on its website, the Data Montgomery website, and in internal records is incomplete and not entirely accurate.

Additionally, we found that other County departments may also be misapplying the COVID differential pay policy and possibly paying undeserving employees COVID differential pay.

DPS Inspection Data is Incomplete and Not Accurate

During the course of this investigation, we attempted to compare data on the number of inspections conducted by individual inspectors to the number of COVID hazard pay hours claimed for the three pay periods covering March 29 through May 9. We initially obtained inspections data through the County's Data Montgomery website but after attempting to validate it with data on DPS's website, we quickly discovered that the data did not match. We then asked DPS to provide inspection data, but it did not match the other datasets either. After several attempts to obtain more accurate data through DPS we learned that the data is not readily available and needed to be aggregated manually. When we discussed these issues with the Director, she told us that she was working on designing a new system that would enable better inspection tracking and reporting.

Overpayment of COVID Differential Pay

In analyzing the timekeeping data for the three pay periods covering March 29 through May 9, we found that approximately half of inspectors consistently claimed 80 hours of front facing COVID differential pay. We discussed our observation with the current DPS⁵ Director, the former Acting DPS Director and subsequently with DPS Division Chiefs. We learned that in early April 2020, the former Acting DPS Director implemented policy allowing for all DPS inspectors to claim front facing differential for all inspection-related work. However, not all inspection-related work meets the criteria for front facing differential pay.

Based on interviews with DPS managers, we learned that in addition to conducting physical inspections while interacting with members of the public, such as applicants and contractors, DPS inspectors also conducted preliminary research of plans and approvals, had discussions over the phone and over email with applicants and others, wrote notes about their inspections, and conducted virtual inspections using cell phones.

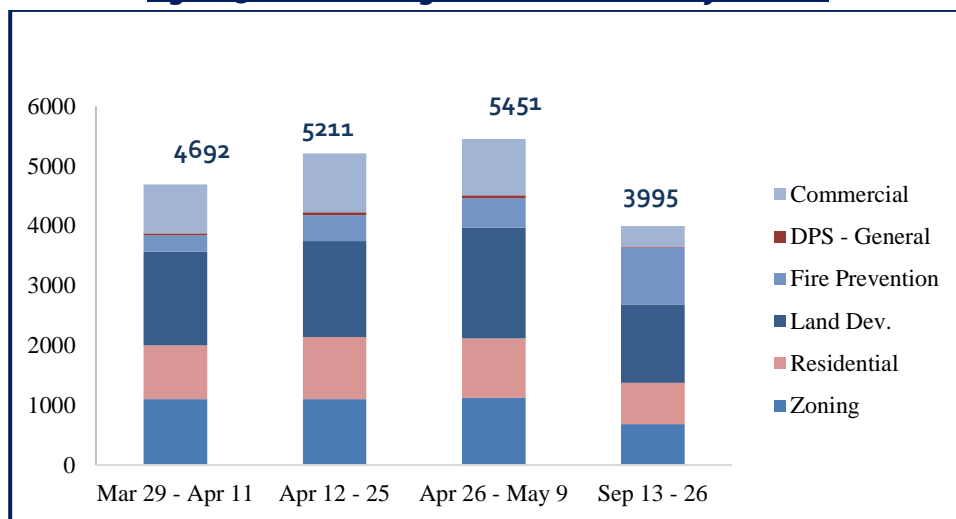
⁵ The current Director of DPS began working at the County on April 21, 2020.

INVESTIGATIVE FINDINGS

As a result of DPS's faulty decision to allow inspectors to broadly claim front facing differential pay, DPS inspectors were paid COVID differential pay that they were not entitled to receive. We were not able to calculate the extent of over payments, because we were not able to obtain accurate information on the number of inspections conducted by DPS inspectors, how inspections were conducted, and their duration.

After the OIG began inquiring about DPS policy on COVID differential pay, DPS revisited its interpretation and ultimately adjusted its policy to be in-line with the Administration's. We note that this change resulted in a 27% decrease⁶ (1,456 hours) in front facing differential hours claimed, representing a per pay period savings of \$14,560 at \$10/hour⁷. Additionally, the number of DPS staff charging 80 hours of front facing time per pay period declined 90%, from 51 employees to 5 employees. Figure 3 displays a comparison of front facing time⁸ claimed by DPS during the early pay periods of the COVID-19 emergency against a recent pay period in September.

Figure 3: Front Facing Hours in 2-Week Pay Periods



The Front Facing hours declined in all DPS divisions except Fire Prevention, where they increased. As we discuss later, the chief of the Fire Prevention Division did not follow DPS's original interpretation of the COVID differential pay policy.

Faulty DPS Guidance on COVID Differential Pay

The Departments of Finance and Human Resources have published relatively the same timekeeping guidance to Department and Office Directors every pay period since April 11. In

⁶ Pay period ending September 26 compared to pay period ending May 9.

⁷ The OIG did not calculate other payroll related costs to the County, such as FICA.

⁸ Front Facing time shown in this chart does not include overtime.

pertinent part, the guidance states that “all on-site work by FOP and IAFF employees is considered ‘Front Facing.’ GSS, MCGEO, and FOP employees will record time hourly, based upon the service or program designation by Directors.”⁹ As MCGEO is the union representing DPS inspectors, this indicates that DPS inspectors were to record front facing time hourly, unlike police and firefighters, for whom all on-site work is Front Facing.

MCTime, which is part of the Department of Finance, confirmed to the OIG that employees should record their actual hours of front facing work. MCTime also confirmed that employees should record time spent writing notes and emails at home as telework.

The former Acting DPS Director and the four Division Chiefs stated that collectively they decided to allow inspectors to claim front facing differential for their entire workday rather than “nickel and dime” them by asking that they account for individual hours.

Notably, Fire Prevention and Code Enforcement inspectors correctly followed County policy and did not claim front facing differential for their entire workday. The Division Chief told us that he did not know that the former Acting Director interpreted the policy differently. He also did not know that the other divisions were allowing their inspectors to claim all their workhours as qualifying for front facing differential.

One DPS manager explained that he followed an example in a Department of Finance memorandum that showed eight (8) hours of front facing time being charged per day. The manager, however, did not follow additional guidance on the same memorandum that stated, “employees may work different combinations of the examples below, depending on the circumstances of each day.”

The current DPS Director and Division Chiefs acknowledged to the OIG that DPS’s original policy was inconsistent with County policy on COVID differential pay. The current Director, the former Acting Director, and the five Division Chiefs expressed strong concern for the health and safety of DPS employees, and they continue to support the front facing differential pay as compensation for employees putting themselves at risk.

Other County Employees May Have Wrongly Received COVID Differential Pay

Early in the planning stages, the County Executive asked County Department Directors to identify services and programs that needed to be maintained and whether they could be done by telework, by interacting with the public (front facing), or at a location away from the public (back office). Figure 4 displays the departments who reported needing to conduct inspection work and where the work was to be conducted.

⁹ GSS refers to the General Salary Schedule.

Figure 4: County Services That Must Be Maintained: Inspections

Department	Service/Program	Front-Facing Onsite	Back-Office Onsite	Telework
Alcohol Beverage Services	Inspections/Monitoring of all restaurants/ license holders	X		X
Environmental Protection	Inspection of Construction of SWM Facilities		X	
Environmental Protection	Inspection of stormwater management facilities		X	X
Housing & Community Affairs	Housing Code enforcement on complaints - life/safety	X		
Permitting Services	Inspections (all programs/divisions)	X		
Transportation	Bridge Inspections (Cyclical and Storm)		X	X

Figure 4 shows that DPS and the Department of Housing and Community Affairs are the only two departments that decided all of their inspection work was done while interacting with the public. As we learned in this investigation, some elements of inspection work, such as administrative tasks, do not require interacting with the public. This observation raises questions about whether other County departments may have allowed employees to erroneously claim COVID differential pay.

RECOMMENDATIONS

As a result of DPS management's flawed policy, DPS inspectors were wrongly paid front facing COVID differential pay from approximately March 29 to August 29, 2020. We observed that other County Departments may also have incorrectly allowed employees to claim COVID differential pay over the same period.

As a result of our findings, we recommend:

1. DPS management review all COVID differential pay claims to determine how much was erroneously paid and seek reimbursement of any undeserved differential pay.
2. The Chief Administrative Officer review all County departments' differential pay expenditures to ensure they complied with policy and seek reimbursement of any undeserved differential pay.
3. The Chief Administrative Officer not seek reimbursement from the Federal Emergency Management Agency or use federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funds to pay for COVID differential payments until all such payments have been verified for compliance against County policy.
4. DPS improve the completeness and accessibility of its inspection data.

OIG COMMENTS TO CAO RESPONSE

The County Chief Administrative Officer's response to our report is included in its entirety in Appendix A. The response notes concurrence with each of the OIG's recommendations. Nothing in the response caused us to alter our report.

Additionally, there are aspects of the response that we believe will require further monitoring and detail. We expect specifics of stated actions and plans to be included in the Internal Auditor's fiscal year 2021 annual report in accordance with County Code §2-25A (Council Bill 11-19).

APPENDIX A: CHIEF ADMINISTRATIVE OFFICER (CAO) RESPONSE



OFFICE OF THE COUNTY EXECUTIVE


Marc Elrich
County Executive

Richard S. Madaleno
Chief Administrative Officer

MEMORANDUM

November 4, 2020

TO: Megan Davey Limarzi
Inspector General

FROM: Richard S. Madaleno 
Chief Administrative Officer

SUBJECT: Report of Investigation - DPS Inspectors Were Overpaid COVID Differential Pay, OIG Publication Number 21-006

Thank you for the opportunity to respond to your October 29, 2020, memorandum and draft report. The County has established and issued policies, following negotiations with the Unions, concerning when COVID differential pay is authorized because of duties associated with designated positions in departments being considered “front-facing” in nature. The policies require employees to accurately reflect on their time reports hours when an employee is engaged in the performance of these front-facing duties (which would be eligible for differential pay for such hours), and when the employee is performing duties – e.g., at the County worksite or a remote teleworking site – that are not front-facing in nature (which would not be eligible for the differential pay). Your report identified situations in the Department of Permitting Services (DPS) where these established policies appear not to have been applied consistently. We concur that the County needs to take appropriate action to ensure appropriate controls are in place to ensure the policies are being consistently followed by employees and supervisors.

Recommendation 1: DPS management review all COVID differential pay claims to determine how much was erroneously paid and seek reimbursement of any undeserved differential pay.

CAO Response: DPS will review all claims for differential pay and follow the process as set forth in the collective bargaining agreement (CBA) with the Montgomery County Government Employees Organization (MCGEO) and Montgomery County Personnel Regulations regarding overpayments.

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Recommendation 2: The Chief Administrative Officer review all County departments' differential pay expenditures to ensure they complied with policy and seek reimbursement of any undeserved differential pay.

CAO Response: Individual departments will review their differential pay expenditures and follow the appropriate Collective Bargaining Agreement and Montgomery County Personnel Regulation regarding any overpayments.

Recommendation 3: The Chief Administrative Officer not seek reimbursement from the Federal Emergency Management Agency or use federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funds to pay for COVID differential payments until all such payments have been verified for compliance against County policy.

CAO Response: FEMA reimbursement and application of Coronavirus Relief Fund (CRF) monies under the CARES Act are based upon money actually spent in responding to the COVID-19 pandemic. In the event that reimbursements are sought from individual employees for differential pay overpayments, the County will make all appropriate adjustments to any federal reimbursement requests or application of CRF monies.

Recommendation 4: DPS improve the completeness and accessibility of its inspection data.

CAO Response: We understand that DPS provided information to the OIG in response to a series of separate and follow-up requests, and advised the OIG staff that the information being requested was not available fully from dataMontgomery, since dataMontgomery does not pull all the data sets from DPS systems that was needed for the OIG review. As noted in the report, DPS is in the process of overhauling its permitting system; this will provide easier and more comprehensive reports in real time.

Again, we appreciate your bringing this matter to our attention, and will ensure appropriate steps are taken to address the matter.

cc: Fariba Kassiri, Deputy Chief Administrative Officer
Mitra Pedoeem, Director, Department of Permitting Services
Berke Attila, Director, Office of Human Resources
Marc Hanssen, County Attorney
Steve Blivess, Acting Chief Labor Relations Officer
Earl Stoddard, Director, Office of Emergency Management and Homeland Security
Silvia Kinch, Office of the County Attorney
Bill Broglie, Internal Audit Manager