



NOTICE OF MEETING OF THE WOODBURY COUNTY BOARD OF SUPERVISORS
(AUGUST 6) (WEEK 32 OF 2024)

Live streaming at:
https://www.youtube.com/user/woodburycountyiowa

Agenda and Minutes available at:
www.woodburycountyiowa.gov

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Matthew A. Ung
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You are hereby notified a meeting of the Woodbury County Board of Supervisors will be held August 6, 2024, at 4:30 p.m. in the Basement of the Courthouse, 620 Douglas Street, Sioux City, Iowa for the purpose of taking official action on the agenda items shown hereinafter and for such other business that may properly come before the Board.

This is a formal meeting during which the Board may take official action on various items of business. Members of the public wishing to speak on an item must follow the participation rules adopted by the Board of Supervisors.

- 1. Please silence cell phones and other devices while in the Boardroom.
2. The Chair may recognize speakers on agenda items after initial discussion by the Board.
3. Speakers will approach the microphone one at a time and give their name and address before their statement.
4. Speakers will limit their remarks to three minutes on any one item and address their remarks to the Board.
5. At the beginning of discussion on any item, the Chair may request statements in favor of an action be heard first followed by statements in opposition to the action. The Chair may also request delegates provide statements on behalf of multiple speakers.
6. Any concerns or questions which do not relate to a scheduled item on the agenda will be heard under the item "Citizen Concerns." Please note the Board is legally prohibited from taking action on or engaging in deliberation on concerns not listed on the agenda, and in such cases the Chair will request further discussion take place after properly noticed.
7. Public comment by electronic or telephonic means is prohibited except for a particular agenda item when approved by the Chair 24 hours before a meeting or by a majority of the board during a meeting for a subsequent meeting.

AGENDA

4:30 p.m. Call Meeting to Order – Pledge of Allegiance to the Flag – Moment of Silence

- 1. Approval of the agenda Action

Consent Agenda

Items 2 through 7 constitute a Consent Agenda of routine action items to be considered by one motion. Items pass unanimously unless a separate vote is requested by a Board Member.

- 2. Approval of the minutes of the July 30, 2024 meeting
3. Approval of claims
4. Secondary Roads – Mark Nahra
a. Approval of the underground utility permit for Western Iowa Telephone
b. Approval of the underground utility permit for Long Lines except for the portion of the request involving the placement of fiber on 235th Street, Barker Avenue, and Banner Avenue in the vicinity of the new interchange project
5. County Auditor – Patrick Gill
Approval of Liquor License Application for Woodbury County Fair, Merville.

6. Human Resources – Melissa Thomas
 - a. Approval of Memorandum of Personnel Transactions
 - b. Authorization to Initiate Hiring Process
 - c. Approval of the 2024 annual Health and Wellness Fair
 - d. Approval to provide free flu shots to Woodbury County employees
 - e. Approval to provide wellness screenings and continued quarterly individual health coaching to eligible Woodbury County employees
 - f. Approve the renewal of Employee & Family Resources (EFR) as our employee assistance provider

7. Board of Supervisors – Mark Nelson

Approval to postpone the Salix Drainage District Hearing until December 2, 2024

End Consent Agenda

8. Planning/Zoning – Daniel Priestley
 - a. Receive the final report and the Zoning Commission’s recommendation from their 7/22/24 meeting to approve the final plat of Sandport Addition, a minor subdivision to Woodbury County, Iowa Action
 - b. Approval of the final plat of Sandport Addition, a minor subdivision to Woodbury County, Iowa Action

9. Secondary Road – Mark Nahra
 - a. Award the quotation for concrete patching to Subsurface, Inc. for \$165,116 Action

10. Board of Supervisors – Matthew Ung

Approval to direct Human Resources to draft a Memorandum of Understanding for the AFSCME Assistant County Attorney collective bargaining agreement to address understaffing Action

11. Reports on Committee Meetings Information

12. Citizen Concerns Information

13. Board Concerns Information

ADJOURNMENT

Subject to Additions/Deletions

CALENDAR OF EVENTS

- MON., AUG 5** **6:00 p.m.** Board of Adjustment meeting, Courthouse Basement Boardroom
- WED., AUG 7** **11:00 a.m.** Loess Hills Alliance Stewardship Meeting, Pisgah, Iowa
- 1:00 p.m.** Loess Hills Alliance Executive Meeting
- 4:45 p.m.** Veteran Affairs Meeting, Veteran Affairs Office, 1211 Tri-View Ave.
- THU., AUG 8** **4:00 p.m.** Conservation Board Meeting, Dorothy Pecaut Nature Center, Stone Park
- WED., AUG 14** **7:30 a.m.** SIMPCO Executive-Finance Committee Meeting, 6401 Gordan Dr.
- 8:05 a.m.** Woodbury County Information Communication Commission, First Floor Boardroom
- 12:00 p.m.** District Board of Health Meeting, 1014 Nebraska St.
- THU., AUG 15** **4:30 p.m.** Community Action Agency of Siouxland Board Meeting, 2700 Leech Avenue
- FRI., AUG 16** **12:00 p.m.** Siouxland Human Investment Partnership Board Meeting, 2540 Glenn Ave.
- WED., AUG 21** **12:00 p.m.** Siouxland Economic Development Corporation Meeting, 617 Pierce St., Ste. 202
- THU., AUG 29** **1:30 p.m.** SIMPCO Community and Economic Development Meeting, 6401 Gordan Dr.
- MON., SEP 2** **6:00 p.m.** Board of Adjustment Meeting, Courthouse Basement Boardroom
- WED., SEP 4** **10:00 a.m.** Loess Hills Alliance Stewardship Meeting, Pisgah, Iowa
- 11:00 a.m.** Loess Hills Alliance Executive Meeting
- 1:00 p.m.** Loess Hills Alliance Full Board Meeting
- 4:45 p.m.** Veteran Affairs Meeting, Veteran Affairs Office, 1211 Tri-View Ave.
- THU., SEP 5** **12:00p.m.** SIMPCO Regional Policy & Legislative Affairs Committee Meeting, 6401 Gordan Dr.

Woodbury County is an Equal Opportunity Employer. In compliance with the Americans with Disabilities Act, the County will consider reasonable accommodations for qualified individuals with disabilities and encourages prospective employees and incumbents to discuss potential accommodations with the Employer.

Federal and state laws prohibit employment and/or public accommodation discrimination on the basis of age, color, creed, disability, gender identity, national origin, pregnancy, race, religion, sex, sexual orientation or veteran's status. If you believe you have been discriminated against, please contact the Iowa Civil Rights Commission at 800-457-4416 or Iowa Department of Transportation's civil rights coordinator. If you need accommodations because of a disability to access the Iowa Department of Transportation's services, contact the agency's affirmative action officer at 800-262-0003.

JULY 30, 2024, THIRTY-FIRST MEETING OF THE WOODBURY COUNTY BOARD OF SUPERVISORS

The Board of Supervisors met on Tuesday, July 30, 2024, at 4:30 p.m. Board members present were Ung, Nelson, Radig, Bittinger II, and Taylor. Staff members present were Karen James, Board Administrative Assistant, Melissa Thomas, Human Resources Director, and Patrick Gill, Auditor/Clerk to the Board.

The regular meeting was called to order with the Pledge of Allegiance to the Flag and a Moment of Silence.

1. Motion by Ung second by Taylor to approve the agenda for July 30, 2024. Carried 5-0. Copy filed.

Motion by Ung second by Nelson to approve the following items by consent:
2. To approve minutes of the July 16, 2024, meeting. Copy filed.
3. To approve the claims totaling \$569,485.38. Copy filed.
- 4a. To approve the appointment of Steven Holst, Equipment Operator (Hornick), Secondary Roads Dept., effective 7-31-2024, \$27.04/hour. Job Vacancy Posted 5/6/24. Entry Level Salary: \$27.04/hour.; the appointment of Anna Kern, Clerk II, County Treasurer Dept., effective 8-1-2024, \$19.24/hour. Posted Vacancy Posted 5/29/24. Entry Level Salary: \$19.24/hour.; the reclassification of Tayea Kilbride, Youth Worker, Juvenile Detention Dept., effective 8-5-24, \$27.74/hour, 17%=\$4.02/hr. Per AFSCME Juvenile; From Step 3 to Step 4. Anniversary Date: 8/5/2024.; the reclassification of Bradley Larson, Equipment Operator, Secondary Roads Dept., effective 8-5-2024, \$28.18/hour, 1%=\$0.30/hr. Per CWA SR: From Step 1 to Step 2. Anniversary Date: 8/10/2024.; the reclassification of Brandon Chapple, Civilian Jailer, County Sheriff Dept., effective 8-5-2024, \$29.78/hour, 11%=\$2.92/hr. Per CWA Civilian: From 1st Class to Senior. Anniversary Date: 8/12/24.; the transfer of Carlos Lucero, Civilian Jailer, County Sheriff Dept, effective 7-19-24, \$33.24/hour, -11%=-\$3.52/hr. Position Transfer from Sergeant to Master.; and the reclassification of Charli Weaver, % Deputy, County Treasurer Dept., effective 8-5-2024, \$94,858.54/year, 6%=\$5,579.92/yr. Increase from 80% to 85% Deputy. Copy filed.
- 4b. To approve and authorize the Chairperson to sign the Authorization to initiate the hiring process for % Deputy Bookkeeper, County Treasurer Dept. Salary: \$66,958.79/Year. Copy filed.
- 4c. To approve professional services agreement with Teunis (Tom) De Bondt, Medical Examiner Investigator. Copy filed.
5. To receive the Auditor’s Quarterly Report from April 1, 2024 through June 30, 2024. Copy filed.
6. To approve the permit to work in the right of way for Mitch Parker. Copy filed.

Carried 5-0.
7. Motion by Radig second by Nelson to receive for signatures a Resolution honoring Andrew Pearson and his family for their positive contributions to our community. Carried 5-0.

**WOODBURY COUNTY RESOLUTION HONORING ANDREW PEARSON
RESOLUTION #13,784**

WHEREAS, Andrew Pearson recently retired in July of 2024 from a lifelong career of service, education, ministry, and justice in Sioux City; and

WHEREAS, Andrew overcame a childhood and diversity in which his faith and resiliency helped him overcome trial and discrimination succeeding at age 13 to be a “Boy of the Year” finalist, the only youth selected nationally from a five-state region of the Midwest; and

WHEREAS, Andrew served Woodbury County Sheriff’s Office for 7 years with honor and justice as a jailer in the Woodbury County Law Enforcement Center Jail; and

WHEREAS, Andrew served as a Juvenile Court Officer helping troubled youth to overcome their own adversity with his experiences of resiliency and faith; and

WHEREAS, alongside with principals in positional leadership such as Dr. Mike Rogers, Tom McGuire, and Erica Somsy, Andrew exemplified volitional leadership for over 27 years in the Sioux City School District by counseling kids from every walk of life, engaging them in office visits, on the playground, and in the afterschool weight room and earning Staff Member of the Month in February of 2024; and

WHEREAS, Andrew is the husband to Sandra Pearson who leads the Martin Luther King, Jr. choir and the Pearsons together have been a grace through music, prayer, song, and love; and

WHEREAS, Andrew continues to be a dedicated husband, father, son, brother, and friend as well as a pastoral presence by being the church in the lives of those walking through difficulties who in the darkest of times are graced by the light of the Pearson family; therefore, be it further

RESOLVED, that the Woodbury County Board of Supervisors wishes Andrew Pearson, his wife Sandra, and their entire family all the best in a well-deserved retirement from service in Woodbury County, the Juvenile Court System, and from the Sioux City School District as he continues to affect the lives of so many in our community.

DATED this 30th day of July, 2024.

WOODBURY COUNTY BOARD OF SUPERVISORS

Copy filed.

8. Motion by Ung second by Nelson to approve the deauthorization of a part-time paramedic and the authorization of a full time paramedic. Carried 5-0. Copy filed.
- 9a. Motion by Radig second by Nelson to award the quotation for concrete patching to Concrete Plus for \$29,700.00. Carried 5-0. Copy filed.
- 9b. Motion by Taylor second by Nelson to approve the contract for overburden removal at the Little Sioux pit with Bedrock for \$108,000.00. Carried 5-0. Copy filed.
10. Reports on Committee meetings were heard.
11. There were no citizen concerns.
12. Board concerns were heard.

The Board adjourned the regular meeting until August 6, 2024.

Meeting sign in sheet. Copy filed.

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 8/01/2024 Weekly Agenda Date: 8/06/2024

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Mark J. Nahra, County Engineer

WORDING FOR AGENDA ITEM:

Consideration of utility permit for placement of new fiber optic cable in county rights of way

ACTION REQUIRED:

- | | | |
|--|---|--|
| Approve Ordinance <input type="checkbox"/> | Approve Resolution <input type="checkbox"/> | Approve Motion <input checked="" type="checkbox"/> |
| Public Hearing <input type="checkbox"/> | Other: Informational <input type="checkbox"/> | Attachments <input checked="" type="checkbox"/> |

EXECUTIVE SUMMARY:

Western Iowa Telephone has applied for a permit to install new underground fiber optic in the area east of Sioux City.

BACKGROUND:

Work in county ROW requires a permit approved by the Board of Supervisors per section 318.8 of the Code of Iowa. The county engineer has reviewed the location and recommends that the work be allowed.

FINANCIAL IMPACT:

No financial impact to the county.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Recommend approval of the permit for Western Iowa Telephone.

ACTION REQUIRED / PROPOSED MOTION:

Motion to approve the underground utility permit for Western Iowa Telephone.

**PERMIT FOR USE OF COUNTY ROAD/HIGHWAY RIGHT-OF-WAY
FOR OVERHEAD AND/OR BURIED UTILITIES ACCOMMODATION**

REQUEST BY APPLICANT:

Name Western Iowa Telephone Association

Highway _____

Address 202 Cedar St, Lawton, IA 51030

Township _____

City of _____

Office Phone 712-944-5711 Local Phone _____

Section: ¼ of ¼ Sec see attached maps

Type of Utility Installation Fiber Optic Cable

T N, R W see attached maps

Plans Prepared By Vantage Point Solutions Inc.

Copy Enclosed Yes No

Map Showing Location Enclosed Yes No

Utility Location is cross right-of-way
 overhead

parallel to right-of-way
 underground

Proposed Method of Installation

tunnel

suspend on poles

cased

jack & bore

suspend on towers

trench

open cut

plow

Estimated Starting Date 8/14/24

Estimated Restoration Date 12/31/24

The Applicant understands and agrees that the permitted work shall comply with all permit provisions and conditions listed on the reverse side hereof, and special provisions listed below or attached hereto, and any and all plans, details, or notes attached hereto and made a part thereof. Applicant is to complete in triplicate and send all copies including plans and maps to Woodbury County Engineer, 759 N. Frontage Road, Merville, IA 51039. One executed copy will be returned to the Applicant.

By *Heidi Wiley*
(Signature of Authorized Utility Representative)

Title CEO

Date 7-31-2024

PERMIT APPROVAL BY PERMITTING AUTHORITY

The forgoing application is hereby approved and permit issued by the Permitting Authority subject to full compliance by the Applicant with all provisions and conditions stated herein and on the reverse side hereof and all attachments hereto.

By _____
(Signature of Woodbury County Board Chairman)

Title _____

Date _____

By _____
(Signature of Woodbury County Engineer)

Title _____

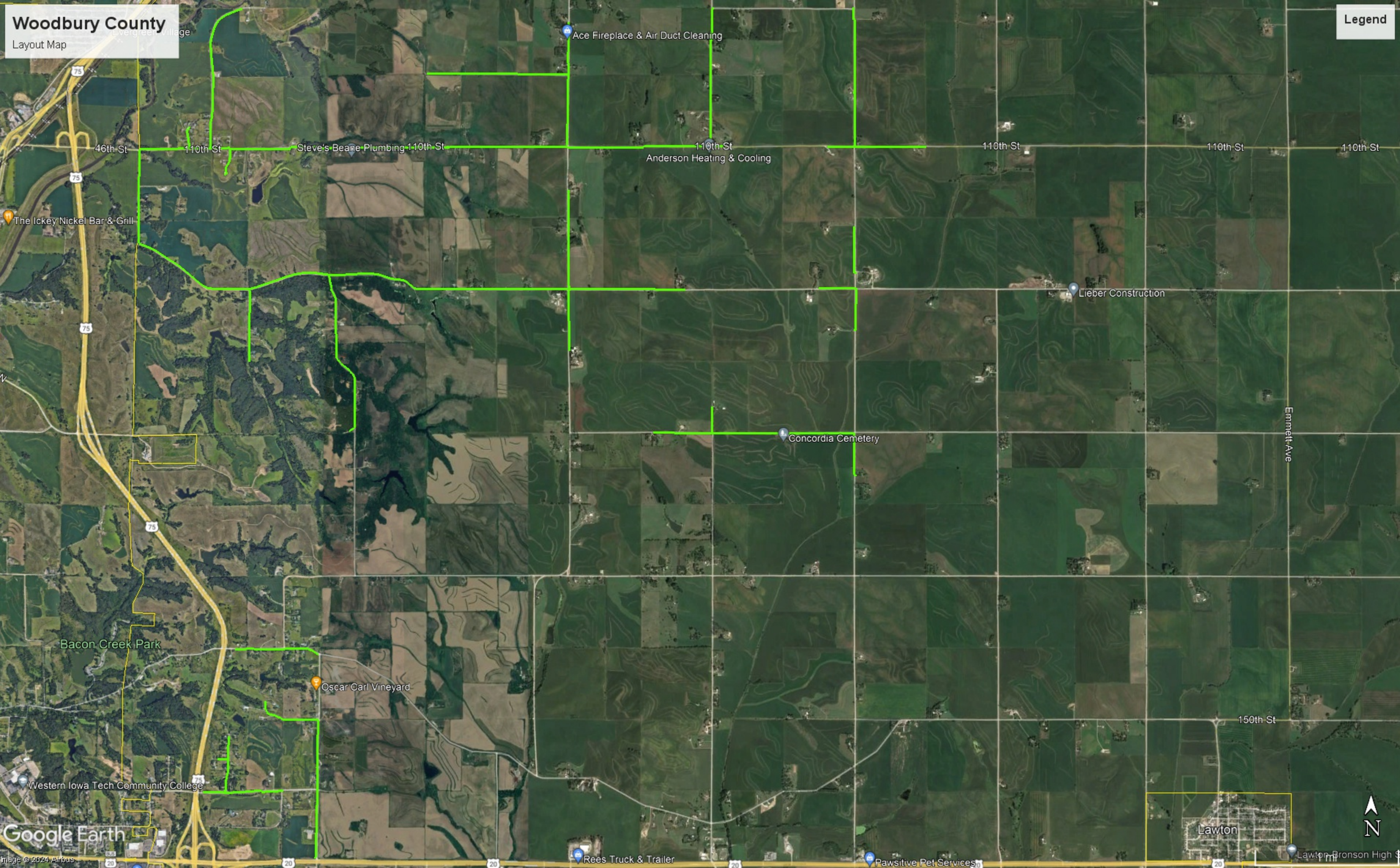
Date _____

Other Special Provisions:

Permit Provisions and Conditions of Issuance

- The County and/or the County Board of Supervisors will not be charged with any responsibility for damages to the Applicant's property occasioned by any construction or maintenance operations on said county roads, including new or additional right-of-way acquired in connection therewith, subsequent to the building of the Applicant's facilities. The Board will endeavor to give the Applicant sufficient notice of any proposed construction or maintenance work, on either existing or newly acquired right-of-way that is likely to expose, cover up, or disturb any facilities belonging to the Applicant, in order that the Applicant may arrange to protect the facilities. The Board will inform contractors, and others working on the job of the location of the facilities so that reasonable care may be taken to avoid damaging the facilities, however the County and the Board of Supervisors will assume no responsibility for failure to give such notice.

2. The Applicant shall take all reasonable precaution during the construction of said facilities to protect and safeguard the lives and property of the adjacent property owners and the traveling public and shall save the County and the Board of Supervisors harmless of any damages or losses that may be sustained by adjacent property owners and the traveling public on account of such construction operations.
3. Operations in the construction and maintenance of said facilities shall be carried on in such a way as to not interfere with, or interrupt traffic on said roads. However, should the performance of work called for in this permit in any way interfere with or obstruct traffic on said roads, the Applicant shall provide the necessary flagmen as required by the Statutes when one-way traffic is involved and/or otherwise mark said work so as to protect the traveling public.
4. The Applicant shall hold the County and the Board of Supervisors harmless from any damages that may result to said highway because of the construction or maintenance of said facilities and shall reimburse the County or the Board of Supervisors for any expenditures that the County or the Board of Supervisors may have to make on said roads on account of replacement of surfacing gravel and bridge and culvert repairs.
5. Applicant shall lay, construct, operate and maintain said facilities so as not to interfere with natural drainage of the road and so as not to interfere with the construction or maintenance of said roads. When buried cable or wire lines are to be placed lengthwise with the roadway, they shall be placed in the County road shoulder or ditch near the toe of the fore-slope and parallel to centerline of roadbed at a depth of three (3) to four (4) feet by using specially designed plows or by trenching, whichever is appropriate. Plow slots and trenches shall be repacked as necessary to restore the disturbed area to its original condition. For buried line crossings of roadways not paved, an open trench may be dug and the lines placed therein, and the trench back-filled over the lines. Buried line crossings on paved roadways, lines may be placed through the sub-grade by jacking, or by boring a hole just large enough to take the lines; or if the County Engineer approves, a tunnel may be dug through and the cable or wire lines placed therein. All backfill of tunnels and trenches shall be thoroughly compacted in layers of 6" or less in depth. Back-filling of trenches within the right-of-way by not under the traveled roadway shall be tamped sufficiently to avoid settlement. When crossing an existing roadway, all buried facilities shall be placed a minimum of three (3) to four (4) below the bottom of the existing adjacent ditches. Overhead lines, where practical, shall be placed adjacent to and with two (2) feet of the Road/Highway Right-of-Way Line.
6. The Applicant will at any time subsequent to placing the facilities, and at the Applicant's expense, relay, replace, alter, change, reconstruct, or relocate its overhead and/or buried facilities and appurtenances thereto as may become necessary to conform to new grades, alignment, or widening right-of-way, resulting from maintenance or construction operations by the County Board of Supervisors irrespective of whether or not additional right-of-way is acquired in connection with such road improvements. The Applicant agrees to do this within ninety (90) days written notice from the Board of Supervisors, and without cost to the County. If the Applicant is unable to comply within said ninety (90) days, the Board of Supervisors may cause the work to be done and the Applicant will pay the cost thereof upon receipt of statement.
7. All work shall be done in a workmanlike manner; the surrounding ground, slopes, and ditch bottoms shall be reshaped to conform to the area and left in a neat condition satisfactory to the County Engineer. All areas where sod has been damaged or destroyed shall be re-seeded.
8. The Applicant shall notify the County Board of Supervisors at least forty-eight (48) hours in advance of the Applicant's intention of starting work covered by this permit on the road right-of-way. Said notice shall be in writing to the County Engineer.
9. Applicant, its' successors, grantees and assigns shall and hereby agrees to assume all responsibility, risks and liabilities for all accidents and damages that may occur to persons and/or property on account of the work done under this permit, and to this end, indemnify and hold the County and all authorized representatives thereof harmless from any and all claims, damages, losses, and expense including judgements, costs and including attorney's fees, for personal injuries (including death) or property damage arising or resulting from the activities of the Applicant in connection herewith, now and at all times in the future.
10. It is understood that this permit is issued only insofar as Woodbury County has jurisdiction and does not presume to release the Applicant from fulfilling any existing statutes relating to the installation, construction and operation of said facilities.
11. It is further understood that the facilities covered by this permit shall be constructed or installed within one (1) year after the date of approval of this permit, unless otherwise extended in writing by Woodbury County.
12. Engagement in the operations as herein applied for by the Applicant shall be considered and constitute an acceptance of all the terms and conditions herein set forth.



Emmett Ave

150th St

Lawton

Lawton Bronson High S

Ace Fireplace & Air Duct Cleaning

Anderson Heating & Cooling

Lieber Construction

Concordia Cemetery

Steve's Beane Plumbing 110th St

The Ickey Nickel Bar & Grill

Bacon Creek Park

Western Iowa Tech Community College

Oscar Carl Vineyard

Rees Truck & Trailer

Pawsitive Pet Services

46th St

110th St

110th St

110th St

110th St

110th St

75

75

75

75

20

20

20

83

20

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 8/01/2024 Weekly Agenda Date: 8/06/2024

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Mark J. Nahra, County Engineer

WORDING FOR AGENDA ITEM:

Consideration of utility permit for placement of new fiber optic cable in county rights of way

ACTION REQUIRED:

- | | | |
|--|---|--|
| Approve Ordinance <input type="checkbox"/> | Approve Resolution <input type="checkbox"/> | Approve Motion <input checked="" type="checkbox"/> |
| Public Hearing <input type="checkbox"/> | Other: Informational <input type="checkbox"/> | Attachments <input checked="" type="checkbox"/> |

EXECUTIVE SUMMARY:

Long Lines Broadband has applied for a permit to install new underground fiber optic in the area around Salix and the Port Neal area.

BACKGROUND:

Work in county ROW requires a permit approved by the Board of Supervisors per section 318.8 of the Code of Iowa. The county engineer has reviewed the location and recommends that the work be allowed. A portion of the requested work on 235th Street near the new interchange site is not to be approved as part of this permit application.

FINANCIAL IMPACT:

No financial impact to the county.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Recommend approval of the permit for Long Lines except for the portion of the request involving the placement of fiber on 235th Street, Barker Avenue, and Banner Avenue in the vicinity of the new interchange project.

ACTION REQUIRED / PROPOSED MOTION:

Motion to approve the underground utility permit for Long Lines except for the portion of the request involving the placement of fiber on 235th Street, Barker Avenue, and Banner Avenue in the vicinity of the new interchange project.

PERMIT FOR USE OF COUNTY ROAD/HIGHWAY RIGHT-OF-WAY
FOR OVERHEAD AND/OR BURIED UTILITIES ACCOMMODATION

REQUEST BY APPLICANT:

Name Long Lines Broadband

Highway Numerous as shown on construction sheets

Address 504 Fourth Street, Sergeant Bluff, IA 51054

Township Woodbury, Liberty

City of Sergeant Bluff

Office Phone (712) 271-2710

Local Phone _____

Section: 1/4 of 1/4 Sec

Type of Utility Installation Fiber Optic Communications

T N, R W

Plans Prepared By Oak Hill Consulting, Inc (952) 895-8851

Copy Enclosed X Yes No

Map Showing Location Enclosed X Yes No

Utility Location is cross right-of-way

 parallel to right-of-way

 overhead

X underground

Proposed Method of Installation

 tunnel

 suspend on poles

 cased

 jack & bore

 suspend on towers

 trench

 open cut

X plow

Estimated Starting Date August 19, 2024 Estimated Restoration Date Spring 2025

The Applicant understands and agrees that the permitted work shall comply with all permit provisions and conditions listed on the reverse side hereof, and special provisions listed below or attached hereto, and any and all plans, details, or notes attached hereto and made a part thereof. Applicant is to complete in triplicate and send all copies including plans and maps to Woodbury County Engineer, 759 E. Frontage Road, Merville, IA 51039. One executed copy will be returned to the Applicant.

By [Signature]
(Signature of Authorized Utility Representative)

Title Oak Hill Consulting, Inc,
Consultant Date July 16, 2024

PERMIT APPROVAL BY PERMITTING AUTHORITY

The forgoing application is hereby approved and permit issued by the Permitting Authority subject to full compliance by the Applicant with all provisions and conditions stated herein and on the reverse side hereof and all attachments hereto.

By _____
(Signature of Woodbury County Board Chairman)

Title _____

Date _____

By _____
(Signature of Woodbury County Engineer)

Title _____

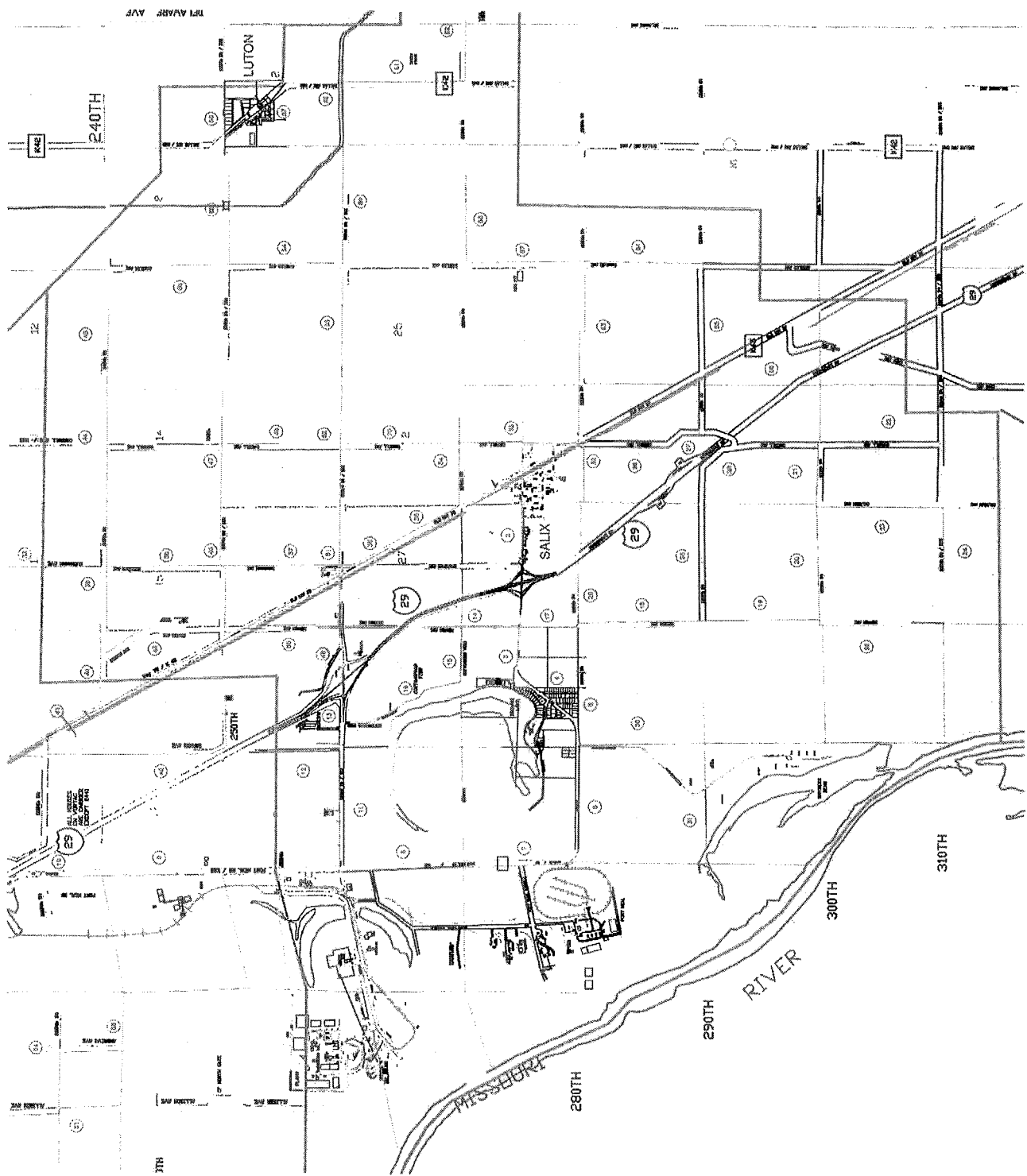
Date _____

Other Special Provisions:

Permit Provisions and Conditions of Issuance

- The County and/or the County Board of Supervisors will not be charged with any responsibility for damages to the Applicant's property occasioned by any construction or maintenance operations on said county roads, including new or additional right-of-way acquired in connection therewith, subsequent to the building of the Applicant's facilities. The Board will endeavor to give the Applicant sufficient notice of any proposed construction or maintenance work, on either existing or newly acquired right-of-way that is likely to expose, cover up, or disturb any facilities belonging to the Applicant, in order that the Applicant may arrange to protect the facilities. The Board will inform contractors, and others working on the job of the location of the facilities so that reasonable care may be taken to avoid damaging the facilities, however the County and the Board of Supervisors will assume no responsibility for failure to give such notice.

2. The Applicant shall take all reasonable precaution during the construction of said facilities to protect and safeguard the lives and property of the adjacent property owners and the traveling public and shall save the County and the Board of Supervisors harmless of any damages or losses that may be sustained by adjacent property owners and the traveling public on account of such construction operations.
3. Operations in the construction and maintenance of said facilities shall be carried on in such a way as to not interfere with, or interrupt traffic on said roads. However, should the performance of work called for in this permit in any way interfere with or obstruct traffic on said roads, the Applicant shall provide the necessary flagmen as required by the Statutes when one-way traffic is involved and/or otherwise mark said work so as to protect the traveling public.
4. The Applicant shall hold the County and the Board of Supervisors harmless from any damages that may result to said highway because of the construction or maintenance of said facilities and shall reimburse the County or the Board of Supervisors for any expenditures that the County or the Board of Supervisors may have to make on said roads on account of replacement of surfacing gravel and bridge and culvert repairs.
5. Applicant shall lay, construct, operate and maintain said facilities so as not to interfere with natural drainage of the road and so as not to interfere with the construction or maintenance of said roads. When buried cable or wire lines are to be placed lengthwise with the roadway, they shall be placed in the County road shoulder or ditch near the toe of the fore-slope and parallel to centerline of roadbed at a depth of three (3) to four (4) feet by using specially designed plows or by trenching, whichever is appropriate. Plow slots and trenches shall be repacked as necessary to restore the disturbed area to its original condition. For buried line crossings of roadways not paved, an open trench may be dug and the lines placed therein, and the trench back-filled over the lines. Buried line crossings on paved roadways, lines may be placed through the sub-grade by jacking, or by boring a hole just large enough to take the lines; or if the County Engineer approves, a tunnel may be dug through and the cable or wire lines placed therein. All backfill of tunnels and trenches shall be thoroughly compacted in layers of 6" or less in depth. Back-filling of trenches within the right-of-way by not under the traveled roadway shall be tamped sufficiently to avoid settlement. When crossing an existing roadway, all buried facilities shall be placed a minimum of three (3) to four (4) below the bottom of the existing adjacent ditches. Overhead lines, where practical, shall be placed adjacent to and with two (2) feet of the Road/Highway Right-of-Way Line.
6. The Applicant will at any time subsequent to placing the facilities, and at the Applicant's expense, relay, replace, alter, change, reconstruct, or relocate its overhead and/or buried facilities and appurtenances thereto as may become necessary to conform to new grades, alignment, or widening right-of-way, resulting from maintenance or construction operations by the County Board of Supervisors irrespective of whether or not additional right-of-way is acquired in connection with such road improvements. The Applicant agrees to do this within ninety (90) days written notice from the Board of Supervisors, and without cost to the County. If the Applicant is unable to comply within said ninety (90) days, the Board of Supervisors may cause the work to be done and the Applicant will pay the cost thereof upon receipt of statement.
7. All work shall be done in a workmanlike manner; the surrounding ground, slopes, and ditch bottoms shall be reshaped to conform to the area and left in a neat condition satisfactory to the County Engineer. All areas where sod has been damaged or destroyed shall be re-seeded.
8. The Applicant shall notify the County Board of Supervisors at least forty-eight (48) hours in advance of the Applicant's intention of starting work covered by this permit on the road right-of-way. Said notice shall be in writing to the County Engineer.
9. Applicant, its' successors, grantees and assigns shall and hereby agrees to assume all responsibility, risks and liabilities for all accidents and damages that may occur to persons and/or property on account of the work done under this permit, and to this end, indemnify and hold the County and all authorized representatives thereof harmless from any and all claims, damages, losses, and expense including judgements, costs and including attorney's fees, for personal injuries (including death) or property damage arising or resulting from the activities of the Applicant in connection herewith, now and at all times in the future.
10. It is understood that this permit is issued only insofar as Woodbury County has jurisdiction and does not presume to release the Applicant from fulfilling any existing statutes relating to the installation, construction and operation of said facilities.
11. It is further understood that the facilities covered by this permit shall be constructed or installed within one (1) year after the date of approval of this permit, unless otherwise extended in writing by Woodbury County.
12. Engagement in the operations as herein applied for by the Applicant shall be considered and constitute an acceptance of all the terms and conditions herein set forth.



WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 6/24/24 Weekly Agenda Date: 7/2/24

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: <u>County Auditor - Pat Gill</u>		
WORDING FOR AGENDA ITEM:		
<u>Consideration and approval for liquor license for Woodbury County Fair, Merville, Iowa</u>		
ACTION REQUIRED:		
Approve Ordinance <input type="checkbox"/>	Approve Resolution <input type="checkbox"/>	Approve Motion <input checked="" type="checkbox"/>
Public Hearing <input type="checkbox"/>	Other: Informational <input type="checkbox"/>	Attachments <input checked="" type="checkbox"/>

EXECUTIVE SUMMARY:

n/a

BACKGROUND:

n/a

FINANCIAL IMPACT:

Unknown at this time

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Approve Motion

ACTION REQUIRED / PROPOSED MOTION:

Motion to approve an application for a 5-day Class C Retail Alcohol License, with Outdoor Service Sales privileges, for Woodbury County Fair, effective 09/12/24 through 09/16/24.

**Office Of The
AUDITOR/RECORDER
Of Woodbury County**

PATRICK F. GILL
Auditor/Recorder



Court House – Rooms 103
620 Douglas
Sioux City, Iowa 51101

Phone (712) 279-6702
Fax (712) 279-6629

To: Board of Supervisors

From: Patrick F. Gill, Auditor & Recorder

Date: July 29, 2024

Subject: Liquor License Application for the Woodbury County Fair, Merville, Iowa.

Please approve and receive for signature, an applicaton for a 5-Day, Class C Retail Alcohol, with Outdoor Service privileges, for the Woodbury County Fair, Merville, Iowa. The license would be effective 09/12/24 through 09/16/24.



State of Iowa

Alcoholic Beverages Division

Applicant

NAME OF LEGAL ENTITY	NAME OF BUSINESS(DBA)	BUSINESS		
WOODBURY COUNTY FAIR ASSOCIATION, INC.	WOODBURY COUNTY FAIR ASSOCIATION	(712) 256-6823		
ADDRESS OF PREMISES	PREMISES SUITE/APT NUMBER	CITY	COUNTY	ZIP
206 Fair Street		Moville	Woodbury	51039
MAILING ADDRESS	CITY	STATE	ZIP	
206 Fair Street	Moville	Iowa	51039	

Contact Person

NAME	PHONE	EMAIL
NICOLE L. BADGEROW	(712) 873-3707	woodburycountyfair@outlook.com

License Information

LICENSE NUMBER	LICENSE/PERMIT TYPE	TERM	STATUS
	Class C Retail Alcohol License	5 Day	Submitted to Local Authority
TENTATIVE EFFECTIVE DATE	TENTATIVE EXPIRATION DATE	LAST DAY OF BUSINESS	
Sep 12, 2024	Sep 16, 2024		
SUB-PERMITS			
Class C Retail Alcohol License			



State of Iowa

Alcoholic Beverages Division

PRIVILEGES

Outdoor Service

Status of Business

BUSINESS TYPE

Non-Profit Association

Ownership

• Individual Owners

NAME	CITY	STATE	ZIP	POSITION	% OF OWNERSHIP	U.S. CITIZEN
Nicole Badgerow	Moville	Iowa	51039	OFFICE ADMINISTRATOR	0.00	Yes

• Companies

COMPANY NAME	FEDERAL ID	CITY	STATE	ZIP	% OF OWNERSHIP
WOODBURY COUNTY FAIR ASSOCIATION	42-0608215	Moville	Iowa	51039	100.00

Insurance Company Information

INSURANCE COMPANY

POLICY EFFECTIVE DATE

POLICY EXPIRATION DATE

Iowa Communities Assurance Pool

Apr 1, 2024

Apr 1, 2025



State of Iowa

Alcoholic Beverages Division

DRAM CANCEL DATE

OUTDOOR SERVICE EFFECTIVE
DATE

OUTDOOR SERVICE EXPIRATION
DATE

BOND EFFECTIVE DATE

TEMP TRANSFER EFFECTIVE
DATE

TEMP TRANSFER EXPIRATION
DATE

HUMAN RESOURCES DEPARTMENT

MEMORANDUM OF PERSONNEL TRANSACTIONS

DATE: August 6th, 2024

*** PERSONNEL ACTION CODE:**

A - Appointment	R - Reclassification
T - Transfer	E - End of Probation
P - Promotion	S - Separation
D - Demotion	O - Other

TO: WOODBURY COUNTY BOARD OF SUPERVISORS

NAME	DEPARTMENT	EFFECTIVE DATE	JOB TITLE	SALARY REQUESTED	% INCREASE	*	REMARKS
Perez, Mark	Sheriff's Office	8-19-2024	Courthouse Safety & Security Officer	\$22.30/hour	5%=\$1.16/hr	R	Per AFSCME: From Step 3 to Step 4. Anniversary Date: 8/24/2024.
Uhl, Randi	Treasurer-MV	8-19-2024	Clerk II	\$24.67/hour	11%=\$2.37/hr	R	Per AFSCME: From Step 4 to Step 5. Anniversary Date: 8/26/2024.
Hinrickson, Blake	Secondary Roads	8-19-2024	Motor Grader Operator	\$28.48/hour	1%=\$0.30/hr	R	Per CWA: From Step 1 to Step 2. Anniversary Date: 8/31/2024.
Vanroekel, Mackenzie	Secondary Roads	8-9-2024	Temporary Engineering Aide			S	End of Temp Work.
Palsma, Kurtus	Secondary Roads	8-16-2024	Temporary Engineering Aide			S	End of Temp Work.
Kelley, Gerald	Emergency Services	8-5-2024	Paramedic	\$26.84/hour	0%	T	Transfer From Part Time to Full Time.
Punke, Justin	Emergency Services	7-30-2024	Operations Officer			S	Resignation

APPROVED BY BOARD DATE:

MELISSA THOMAS, HR DIRECTOR:

Melissa Thomas

HUMAN RESOURCES DEPARTMENT

WOODBURY COUNTY, IOWA

DATE: August 6, 2024

AUTHORIZATION TO INITIATE HIRING PROCESS

DEPARTMENT	POSITION	ENTRY LEVEL	APPROVED	DISAPPROVED
Emergency Services	PT Operations Officer	\$23.90/hour		

Chairman, Board of Supervisors

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 08/01/2024 Weekly Agenda Date: 08/06/2024

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Melissa Thomas HR Director

WORDING FOR AGENDA ITEM:

Approval of the 2024 annual Health and Wellness Fair

ACTION REQUIRED:

- | | | |
|--|---|--|
| Approve Ordinance <input type="checkbox"/> | Approve Resolution <input type="checkbox"/> | Approve Motion <input checked="" type="checkbox"/> |
| Public Hearing <input type="checkbox"/> | Other: Informational <input type="checkbox"/> | Attachments <input type="checkbox"/> |

EXECUTIVE SUMMARY:

The annual Health and Wellness Fair is scheduled for October 2, 2024 and will include benefit information, health and wellness vendors, lunch and door prizes.

BACKGROUND:

This event has been approved in the past for the benefit of the employees and to further County goals of keeping our health care costs low.

FINANCIAL IMPACT:

Lunch will be served at an approximate cost of \$1,600.00 and will be paid from the health fund. The remainder of the health fair is at no cost to the County.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Approve the motion

ACTION REQUIRED / PROPOSED MOTION:

Motion to approve the annual Health and Wellness Fair

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 08/01/2024 Weekly Agenda Date: 08/06/2024

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Melissa Thomas HR Director

WORDING FOR AGENDA ITEM:

Approval to provide free flu shots to Woodbury County employees

ACTION REQUIRED:

- Approve Ordinance Approve Resolution Approve Motion
Public Hearing Other: Informational Attachments

EXECUTIVE SUMMARY:

This is an annual request and Mercy Occupational Health will be offering these at the Health Fair.

BACKGROUND:

Last year 93 employees participated at a cost of \$2,976.00

FINANCIAL IMPACT:

This year the cost has decreased from \$32.00 to \$31.00 per flu shot.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Approve the motion

ACTION REQUIRED / PROPOSED MOTION:

Motion to approve providing flu shots for Woodbury County employees.

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 08/01/2024 Weekly Agenda Date: 08/06/2024

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Melissa Thomas HR Director

WORDING FOR AGENDA ITEM:

Approval to provide wellness screenings and continued quarterly individual health coaching to eligible Woodbury County employees

ACTION REQUIRED:

Approve Ordinance

Approve Resolution

Approve Motion

Public Hearing

Other: Informational

Attachments

EXECUTIVE SUMMARY:

Wellness screenings will include 4 different types of tests: Wellness Blood Profile, PSA, TSH and AC1. Also included are health coaching, other educational programs and quarterly testing.

BACKGROUND:

Woodbury County has provided these screenings and other health services for eligible employees and spouses since 2014. The program has been successful with employees overall wellness and we continue to make improvements to fit our employees needs and make it more convenient to participate.

FINANCIAL IMPACT:

Please see attached schedule. Last year approximately 260 employees and spouses participated in the wellness program at a cost of approximately \$43,000.00. This year the prices for each test have remained the same.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Approve the wellness screenings and quarterly health coaching.

ACTION REQUIRED / PROPOSED MOTION:

Motion to approve the employee wellness screenings and quarterly health coaching.

Woodbury County	Program Design Biometric Screening & Results Review + Flu Vaccine Clinic
<p>Goal:</p> <p>To continue our Partnership with Woodbury County and their wellness program.</p> <p>Timeline:</p> <p>To be determined</p>	<p><u>Wellness Screening & Results Review:</u></p> <ul style="list-style-type: none"> Wellness Blood Profile/ \$55 per person + onsite administration fee Includes height, weight, BMI, body fat and waist measurement. Over 25 blood chemistry components are included in this profile. This includes total cholesterol, HDL, LDL, triglycerides, glucose, a complete blood count (white and red blood cell counts) as well as kidney and liver function components. The results can be used to help identify health problems such as diabetes, heart disease, as well as kidney and liver disease. This blood profile requires a 9-12 hour fast prior to your appointment. Water is recommended as it helpful to be well-hydrated for this venous blood draw. You are advised to avoid alcohol 24 hours prior to your appointment. Wellness Coaching, Group Coaching, Group Fitness Class, Body Fat Testing = \$60 per hour <u>Additional Screening Opportunities Available during Wellness Screening</u> TSH = \$39 PSA Screening (men over age 50) = \$39 Hemoglobin A1C (HbA1C) = \$30 Schedule Biometric Screening Event to be held at various locations based on schedule and availability. <p><u>Flu Vaccine Clinic:</u></p> <ul style="list-style-type: none"> Flu Vaccine/ \$31 per person + onsite hourly fee Vouchers may be available/ yet to be determined for 2025 flu season Date/Time to be scheduled at Woodbury County Health Fair. <p><u>Program Components:</u></p> <ul style="list-style-type: none"> To Be determined based on aggregate screening data.

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 08/01/2024 Weekly Agenda Date: 08/06/2024

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Melissa Thomas HR Director

WORDING FOR AGENDA ITEM:

Approve the renewal of Employee & Family Resources (EFR) as our employee assistance provider.

ACTION REQUIRED:

Approve Ordinance

Approve Resolution

Approve Motion

Public Hearing

Other: Informational

Attachments

EXECUTIVE SUMMARY:

The EFR annual renewal is being presented.

BACKGROUND:

Woodbury County provides EAP services to it's employees and reservists. EFR offers 6 in person sessions per incident and managerial referral services.

FINANCIAL IMPACT:

The cost of this service has gone up slightly from \$24.00 to \$25.50 per employee for a total of \$11,475.00

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Pass the motion

ACTION REQUIRED / PROPOSED MOTION:

Motion to approve EFR as Woodbury County's EAP provider.



EFR EMPLOYEE & FAMILY RESOURCES

RENEWAL

PROPOSED FOR **Woodbury County**

RENEWAL DATE 10/01/2024

TOTAL NUMBER OF EMPLOYEES UPON RENEWAL

Renew at Current Benefit 6 Session Core

Per Employee Per Year \$25.50

Total Number of Employees Upon Renewal 450

N/A Flat fee \$ 0.00

Investment Upon Renewal \$11,475.00

Other Options Select Benefit

Select Unit Cost

Total Number of Employees Upon Renewal

Flat fee

Investment Upon Renewal \$0.00

Pricing is based on one annual payment for a 12-month contract. Pricing is subject to change if the renewal date or the employee count changes.

Additional Services are available should you need them throughout the year. Those include Workplace Trainings, Mediation and Leadership Coaching. Please contact your Account Manager for more information.

SIGNATURE _____ DATE _____

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 8/1/2024 Weekly Agenda Date: 8/6/2024

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Supervisor Nelson

WORDING FOR AGENDA ITEM:

Postpone the Salix Drainage District Hearing Until December 2 2024

ACTION REQUIRED:

Approve Ordinance

Approve Resolution

Approve Motion

Public Hearing

Other: Informational

Attachments

EXECUTIVE SUMMARY:

The city of Salix is requesting the hearing date for their proposed drainage district be postponed until December to allow for potential grants that could help fund the project to be filed.

BACKGROUND:

FINANCIAL IMPACT:

None

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Approve postponing public hearing

ACTION REQUIRED / PROPOSED MOTION:

Pass Motion to postpone the public hearing slated for August 20 2024 to December 2 2024

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 8/1/24

Weekly Agenda Date: 8/6/24

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Daniel J. Priestley

WORDING FOR AGENDA ITEM:

A) Motion to receive the final report and the Zoning Commission's recommendation from their 7/22/24 meeting to approve the final plat of Sandport Addition, a minor subdivision to Woodbury County, Iowa.
B) Motion to accept and approve the final plat of Sandport Addition, a minor subdivision to Woodbury County, Iowa.

ACTION REQUIRED:

Approve Ordinance

Approve Resolution

Approve Motion

Public Hearing

Other: Informational

Attachments

EXECUTIVE SUMMARY:

The Supervisors will receive the Woodbury County Planning and Zoning (P&Z) Commission's recommendation and final staff report on said plat and shall approve, approve with conditions, or disapprove the plat. The Board may table the matter with the consent of the subdivider. Approval shall be in the form of a resolution to be certified as part of the final plat.

BACKGROUND:

Sandra J. Heilman has filed for a one (1) lot minor subdivision on the property identified as Parcel #874730400007 and referenced below. This subdivision is being completed to establish a lot for the potential use as a contractor yard. The property is presently zoned General Industrial (GI) which allows for construction contractor yards. This minor subdivision proposal has been properly noticed in the Sioux City Journal legals section on July 11, 2024. The neighbors within 1000 FT have been duly notified via a July 8, 2024 letter about the July 22, 2024 Zoning Commission public hearing. Appropriate stakeholders including government agencies, utilities, and organizations have been notified and have been requested to comment. The Woodbury County Engineer found the proposal in compliance with Iowa Code closure requirements and found that the lot(s) have adequate access for a future driveway. The area of the property to be subdivided is not located within the floodplain. The City of Salix waived their extraterritorial review authority with the approval of Resolution No. 2024-05. Based on the information received and the requirements set forth in the Zoning and Subdivision Ordinance, the proposal meets appropriate criteria for approval. On July 22, 2024, the Woodbury County Zoning Commission voted 4-0 to recommend the approval of the Sandport Addition, a Minor Subdivision.

PROPERTY DETAILS

Parcel(s): 874730400007
Township/Range: T87N R47W (Liberty)
Section: 30
Quarter: SE ¼ of the SE ¼
Zoning District: General Industrial
Floodplain: Zone X (Not in Floodplain)
Property Address: 2683 Port Neal Road, Salix, IA 51052

FINANCIAL IMPACT:

0

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

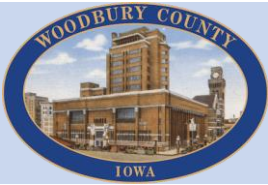
Receive the final report and P&Z Commission's recommendation from their 7/22/24 meeting.

Approve the final plat and authorize the Chairman to sign the resolution.

ACTION REQUIRED / PROPOSED MOTION:

A) Motion to receive the final report and the Zoning Commission's recommendation from their 7/22/24 meeting to approve the final plat of Sandport Addition, a minor subdivision to Woodbury County, Iowa.

B) Motion to accept and approve the final plat of Sandport Addition, a minor subdivision to Woodbury County, Iowa.



WOODBURY COUNTY PLANNING & ZONING

620 Douglas Street, Sixth Floor, Sioux City, Iowa 51101
712.279.6609 – 712.279.6530 (Fax)

Daniel J. Priestley, MPA – Zoning Coordinator
dpriestley@woodburycountyiowa.gov

Dawn Norton – Senior Clerk
dnorton@woodburycountyiowa.gov

FINAL REPORT – AUGUST 1, 2024

SANDPORT ADDITION – MINOR SUBDIVISION PROPOSAL

APPLICATION DETAILS		PROPERTY DETAILS		CONTENTS	
Applicant(s)/Owner(s):	Sandra J. Heilman	Parcel(s):	874730400007	Summary, Aerial Map, Plat Excerpt, Recommendation	
Application Type:	Minor Subdivision	Township/Range:	T87N R47W (Liberty)	Legal Notification	
Name of Subdivision:	Sandport Addition	Section:	30	Neighbor(s) Notification	
Application Date:	July 1, 2024	Quarter:	SE ¼ of the SE ¼	Stakeholder(s) Comments	
Number of Lots:	1	Zoning District:	General Industrial	Review Criteria / Applicant Responses	
Total Acres:	9.66	Floodplain:	Zone X (Not in Floodplain)	Application	
Extraterritorial Review:	Waived by Salix Resolution #2024-05	Property Address:	2683 Port Neal Road, Salix, IA 51052	Supporting Documentation	
Legal Notice Date:	July 11, 2024				
Neighbor(s) Notice Date:	July 8, 2024				
Stakeholder(s) Notice Date:	TBD				
ZC Public Hearing Date:	July 22, 2024				
BOS Agenda Date:	August 6, 2024				
Attorney:	Gregg Stroschein				
Surveyor:	Dale Smith				

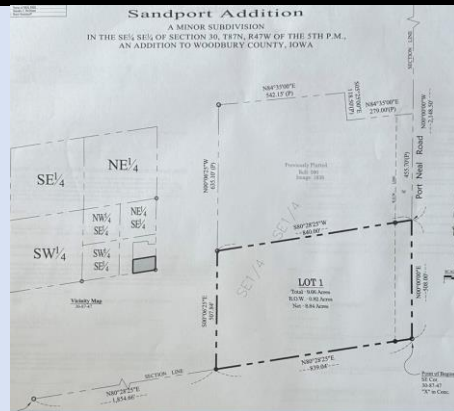
SUMMARY

Sandra J. Heilman has filed for a one (1) lot minor subdivision on the property identified as Parcel #874730400007 and referenced above. This subdivision is being completed to establish a lot for the potential use as a contractor yard. The property is presently zoned General Industrial (GI) which allows for construction contractor yards. This minor subdivision proposal has been properly noticed in the Sioux City Journal legal section on July 11, 2024. The neighbors within 1000 FT have been duly notified via a July 8, 2024 letter about the July 22, 2024 Zoning Commission public hearing. Appropriate stakeholders including government agencies, utilities, and organizations have been notified and have been requested to comment. The Woodbury County Engineer found the proposal in compliance with Iowa Code closure requirements and found that the lot(s) have adequate access for a future driveway. The area of the property to be subdivided is not located within the floodplain. The City of Salix waived their extraterritorial review authority with the approval of Resolution No. 2024-05. Based on the information received and the requirements set forth in the Zoning and Subdivision Ordinance, the proposal meets appropriate criteria for approval. On July 22, 2024, the Woodbury County Zoning Commission voted 4-0 to recommend the approval of the Sandport Addition, a Minor Subdivision.

AERIAL MAP



PLAT EXCEPT



RESOLUTION & CERTIFICATE OF WOODBURY COUNTY ZONING COMMISSION OF WOODBURY COUNTY

I, Christine Zellmer-Zant do hereby certify that I am the Chairman of the Woodbury County Zoning Commission of Woodbury County, Iowa and do further certify that said commission has heretofore taken under advisement the Final Plat of Sandport Addition, to Woodbury County, Iowa and that said Woodbury County Zoning Commission of Woodbury County, Iowa, did on the 22nd Day of July, 2024 approve the same and does further recommend to the Woodbury County Board of Supervisors, Woodbury County, Iowa, the acceptance and approval of said plat.

Dated this 31st Day of July, 2024


Christine Zellmer-Zant, Chairman
Woodbury County Zoning Commission of Woodbury County, Iowa



WOODBURY COUNTY
ZONING COMMISSION

WOODBURY COUNTY COURTHOUSE
620 DOUGLAS STREET
SIOUX CITY, IA 51101

Woodbury County Board of Supervisors
620 Douglas Street
Sioux City, Iowa 51101

RE: Recommendation: Sandport Addition, Minor Subdivision Proposal

PROPERTY DETAILS

Parcel(s): 874730400007
Township/Range: T87N R47W (Liberty)
Section: 30
Quarter: SE ¼ of the SE ¼
Zoning District: General Industrial
Floodplain: Zone X
Property Address: 2683 Port Neal Road, Salix, IA 51052

Dear Board of Supervisors:

This letter is to inform you that the Woodbury County Zoning Commission reviewed the **Sandport Addition**, final plat minor subdivision proposal following the scheduled public hearing that occurred at the regular meeting of the Woodbury County Zoning Commission on July 22, 2024.


Following the public hearing, the Zoning Commission voted 4 to 0 recommend the acceptance and approval of the said final plat to the Woodbury County Board of Supervisors.

Please refer to the draft copy of the Zoning Commission minutes for details about the Commission's recommendation.

Dated this 22 day of July, 2024.


Christine Zellmer Zant, Chair
Woodbury County Zoning Commission

ATTEST:


Daniel Priestley, MPA - Zoning Coordinator
Woodbury County Community & Economic Development

Minutes - Woodbury County Zoning Commission – July 22, 2024

The Zoning Commission (ZC) meeting convened on the 22nd of July, at 5:00 PM in the Board of Supervisors' meeting room in the Basement of the Woodbury County Courthouse, 620 Douglas Street, Sioux City, IA. The meeting was also made available via teleconference.

Meeting Audio:

For specific content of this meeting, refer to the recorded video on the Woodbury County Zoning Commission "Committee Page" on the Woodbury County website:

- County Website Link:
 - o https://www.woodburycountyia.gov/committees/zoning_commission/
- YouTube Direct Link:
 - o <https://www.youtube.com/watch?v=6Qu3SXAs-io>

ZC Members Present:	Barb Parker, Jeff Hanson, Corey Meister, Chris Zant
County Staff Present:	Dan Priestley, Dawn Norton
Public Present:	Jeremy Lane, Jared Barnes, Sandy Heilman, Huey Heilman

CALL TO ORDER:

Chair Chris Zellmer Zant called the meeting to order at 5:00 p.m. Tom Bride was absent.

PUBLIC COMMENT ON MATTERS NOT ON THE AGENDA:

None

APPROVAL OF MINUTES: June 24, 2024 minutes – Motion by Hanson to approve. Second by Paker. Zellmer Zant abstained. Approved 3-0.

PUBLIC HEARING (ACTION ITEM) FOR PROPOSED MINOR SUBDIVISION – SANDPORT ADDITION.

Priestley read the preliminary staff report into the record. Sandra J. Heilman has filed for a one (1) lot minor subdivision on the property identified as Parcel #874730400007. This subdivision is being completed to establish a lot for the potential use as a contractor yard. The property is presently zoned General Industrial (GI) which allows for construction contractor yards. This minor subdivision proposal has been properly noticed in the Sioux City Journal legals section on July 11, 2024. The neighbors within 1000 FT have been duly notified via a July 8, 2024 letter about the July 22, 2024 Zoning Commission public hearing. Appropriate stakeholders including government agencies, utilities, and organizations have been notified and have been requested to comment. Priestley requested for the commission to receive the Woodbury County Engineer's review memo into the record. Motion to receive: Parker. Second: Hanson. Carried: 4-0. (Memo available in the Appendix.) The Woodbury County Engineer found the proposal in compliance with Iowa Code closure requirements and found that the lot(s) have adequate access. The property owner should contact the County Engineer's office to obtain a permit for a future driveway. As noted, this property is located in the General Industrial (GI) Zoning District and portions were located in the Zone X 0.2 percent floodplain but were removed on July 17, 2024 when the new Flood Insurance Rate Map (FIRM) went into effect. The City of Salix waived their extraterritorial review authority with the approval of Resolution No. 2024-05. Based on the information received and the requirements set forth in the Zoning and Subdivision Ordinance, the proposal meets appropriate criteria for approval. No questions or comments from public or board members. Motion to close public hearing: Meister. Second: Hanson. Carried 4-0. Motion to recommend approval of the Sandport Addition to the Woodbury County Board of Supervisors: Hanson. Second: Meister. Carried 4-0.

REVIEW OF CONDITIONAL USE PERMIT APPLICATION FOR A DATA PROCESSING BUSINESS ON PARCEL #884403400009 (ACTION ITEM).

Priestley read the preliminary staff report into the record. AUR Correctionville LLC (Applicant) and property owners Ashley Acres Family Limited Partnership have filed for a Conditional Use Permit application "to place a demand response load resource next to the substation in conjunction with local electric utility to support grid resiliency" for the proposed use to operate a data processing business. The proposed site is on Parcel #884403400009. The parcel is located in the Agricultural Preservation (AP) Zoning District and is not located in the floodplain. The Land Use Summary Table (Section 3.03.4) of the Woodbury County Zoning Ordinance does not reference data processing or this specific request by the applicant. However, this can be interpreted under Section 3.03.3 of the Woodbury County Zoning Ordinance as a comparable utility use or comparable to the industrial use of research and development laboratories in the sense of data analysis. Therefore, for the purposes of this request, data processing can be interpreted as a conditional use under section 3.03.3 in the Agricultural Preservation (AP) Zoning District. Hence, based on the information received and the requirements set forth in the Zoning and Subdivision Ordinance, the proposal could meet the appropriate criteria for approval. Priestley stated a precedence

was set with the approval of a data processing center last year along Calhoun Avenue. He reminded the board this was a review session to look at criteria and make a recommendation to the Board of Adjustment for their August 5th meeting. Jeremy Lane from AUR Correctionville LLC submitted a slide presentation to be added to the record. Motion to accept: Parker. Second: Hanson. Carried: 4-0. Lane gave a brief overview of project. Board members expressed concerns of noise affecting neighboring homeowners. Lane stated noise emitted from a site is approximately 45 decibels, less than conversational decibels, which are around 60 decibels. The site would be air cooled, noise emitted comes from cooling fans. Newer sites can have water cooling with less noise. There would be 2 on-site employees Monday thru Friday. Lane stated local contractors will be used to complete project. The landowners contributed to the design of this site plan to allow planter access. Zellmer Zant asked who the customers are for this type of project. Lane stated anyone who is wanting to invest. Hanson asked if it was Cryptocurrency mining? Lane answered yes. Hanson asked if there are any plans to use wind or solar to power site? Lane stated those resources are used in other counties but wouldn't be used in Woodbury County. He also explained the system is similar to a battery. It uses and gives back power. There is the ability to lower power during peak energy usage to prevent drain on grid. Mesiter brought up concerns of taking ag land out of production for sites, which was one of the reasons the public was against wind and solar. Hanson asked if there have been any complaints regarding site approved last year? Lane stated no. Staff recommends the applicants and property owners provide for the mitigation of any noise generated by the facility that could adversely impact the neighboring properties. Staff also recommends security fencing and lighting. Motion to recommend approval to the Board of Adjustment with the condition that the applicants and property owners mitigate noise generated from the facility and provide adequate security for the facility including the use of fencing and lighting by Parker. Second: Hanson. Carried: 4-0.

NUCLEAR ENERGY DIRECTION FROM THE BOARD OF SUPERVISORS (INFORMATION / DISCUSSION ITEM) SUMMARY:

The Woodbury County Board of Supervisors at their meeting on July 2, 2024 voted to direct the Zoning Commission to begin the process of exploring nuclear energy as a potential energy option in Woodbury County. This information item is only preliminary discussion on how to proceed with future work sessions and public hearings. Supervisor Radig stated wind and solar sources have been explored and would like research for nuclear as an option for the County. Priestley stated nuclear is heavily regulated by the federal government and if it were to be an option, it would be several years of planning and permitting by the developer(s) before it would even be built. Priestley stated permitting could be similar to current communication tower permitting, the federal government would be the main agency involved. Woodbury County's Land Use Summary Table line items would need to be reviewed by the Zoning Commission and Board of Adjustment to decide where and how nuclear could be placed. If a site were to be considered, it would most likely be located near a water source and in a General Industrial (GI) Zoning District. After communicating with other Iowa counties, Priestley found a conditional use permit could be required, but that could be the extent of permitting the county would be involved in. It would be imperative to have input from county citizens, the City of Sioux City, MidAmerican Energy, and other stakeholders. Zellmer Zant suggested an informational work session in August for board members to bring information and comments gathered from public and stakeholders.

HOME OCCUPATION SIGNS ZONING REGULATIONS REVIEW (INFORMATION / DISCUSSION ITEM) SUMMARY:

This information item is for a preliminary discussion on how to proceed with addressing the permitting of home occupation signs. The Zoning Ordinance allows for one home occupation sign that is 25 square foot or less. This initial discussion will look at potential ways to address the permitting of different types of signs and sizes for home occupation purposes. Consideration might entail a potential conditional use permit process for signs that exceed 25 SF. For example, if a property owner operates a home occupation business out in a rural area and wishes to have a sign greater than 25 SF, a process could be considered to enable the Zoning Commission and Board of Adjustment to evaluate whether a sign greater than the allowed maximum size could fit with the neighborhood. The ordinance could possibly include a range such as 25 SF or below is allowed outright and 26 to 100 SF requires Zoning Commission review and Board of Adjustment approval. Consideration could also be given to the types of signs including free-standing signs and building signs. Hanson is open to look at changes to ordinance, but not just for one person. Zellmer Zant researched other Iowa counties, most have more restrictive size specifications.

PUBLIC COMMENT ON MATTERS NOT ON THE AGENDA:

None.

Staff Update:

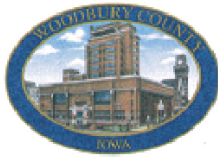
Priestley spoke of the flood recovery efforts and procedures moving forward. Before repairs can begin, a floodplain development permit must be applied for, and damage must be assessed. Property owners must present a damage estimate if the repairs are estimated over 50% or more of the structures pre-flood market value. Structures will then need to be flood-proofed or elevated to reduce potential future flood damage. Woodbury County has received a Presidential declaration making some potential federal funds available to landowners to help with the flood recovery efforts. Woodbury County Emergency Management Coordinator, Michael Montino has done a great job coordinating efforts.

Commissioner Comment or Inquiry

Parker appreciates the mention of consideration of agriculture land being used for data centers and suggests limits on the number of data centers. Meister also suggested limits as data centers may have a negative effect for possible housing sites.

Motion to Adjourn:

Meister. Second: Hanson. Carried 4-0. Meeting ended 6:26 PM.



Woodbury County Secondary Roads Department

759 E. Frontage Road • Merville, Iowa 51039
Telephone (712) 279-6484 • (712) 873-3215 • Fax (712) 873-3235

COUNTY ENGINEER
Mark J. Nahra, P.E.
mnahra@woodburycountyiowa.gov

ASSISTANT TO THE COUNTY ENGINEER
Benjamin T. Kusler, E.I.T.
bkusler@woodburycountyiowa.gov

SECRETARY
Tish Brice
tbrice@woodburycountyiowa.gov

To: Dan Priestley, Woodbury County Zoning Coordinator
From: Mark J. Nahra, County Engineer
Date: July 17, 2024
Subject: Sandpoint Addition – a minor subdivision application

The Secondary Road Department has reviewed the information provided for the above referenced subdivision forwarded with your memo dated July 3, 2024.

I am offering the following comments for your consideration.

- We checked the closure on the plat and found it in compliance with the requirements for the full subdivision of 1 in 10,000 and 1 in 5,000 for lot 2 as required by Section 355.8 of the Code of Iowa.
- There is no driveway accessing the proposed Lot 1 exclusively. It appears the driveway at the SE corner of the lot is shared with the neighbor and may be on the neighboring property. There is good sight distance on the road and a driveway serving Lot 1 would be easy to site. The landowner should contact my office to obtain a permit for a driveway.
- I have no other concerns or issues with this minor subdivision application.

If there are any more questions or issues that arise later, please contact this office.

Cc: File

**Aurum Capital Ventures
Data Processing Facility**

About Aurum Capital Ventures Inc.

Aurum has been operating in Iowa since 2018 and has 26MW of active operations across:

- Energy Center #2:** 8 MW (installed in 2018 and 2020) in the center of 2022
- Customers Energy:** 200 MW (installed in 2022 and 2020) in the center of 2022
- Energy Center #3:** 100 MW (installed in 2022)
- Woodbury County #2:** 100 MW (installed in 2022)
- Woodbury County #3:** 100 MW (installed in 2022)

What if local electric grids could...

Improve efficiency Upgrade infrastructure without CAPEX Lower risk

The most noticeable benefit: Adding more solar sites

Existing Air Cooled Data Processing Facilities

Site Layout 1.5 Acres of Land

Closest Home is 1,296 FT away

Site Sound Readings

Proposed: 170 dB on the opposite side of the building from the noise control wall from the closest. 170 dB on the side and noise control wall to back property.

NOISE LEVELS

< 50	50-55	55-60	60-65	65-70	70-75	75-80	80-85	85-90	> 90
Very Quiet	Quiet	Slightly Noisy	Noisy	Moderately Noisy	Noisy	Very Noisy	Very Loud	Very Loud	Very Loud

Topography

Project Lifespan: Minimum of 10 Years

The project will operate for a minimum of 10 years in the location, increasing utilization of renewable energy capacity.

With the potential to decrease CAPEX for all participating community members, equipping the community with more.

Key Metrics:

- 1.5 acres of land
- 200 MW of capacity
- 10-year lifespan
- 100% renewable energy

Impact on the Community

New Local Employees

- The 200 MW project will hire 200 technicians, making an average of \$37 per hour
- Technicians receive health care benefits, gym membership, and company housing

Construction

- We invest in the community by using local contractors to help build and maintain the site.
- County Sales Tax on Energy 1%
- Most counties charge a 1% sales tax on energy around 10% a year.

Demand Side Management (DSM)

Energy Electrification (EE)	Distributed Energy Resources (DER)	Energy Code Enforcement
Electrification	Demand Response (DR)	Energy Use Incentives
Account Management Consultants	Grid Enhancements	RES
Landfill Income LMS	Tax Exemption Programs	Analysis & Modeling

Program Considerations

Grid Electric Consumption

Firm Load, FF Positer, Renewable Curtailment

Add Expensive Battery Storage

Add Fast-Acting Flexible Load

Increase Renewable Energy Capacity

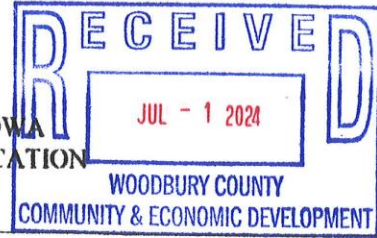
Transition to Sustainable Peaking Plants

Curtailment Example

Curtailment Example

2021 Theory vs 2022 Reality

Thank You for your interest in working with us.



WOODBURY COUNTY, IOWA
MINOR SUBDIVISION APPLICATION

Applicant: Sandra J. Heilman
Name of Owner

Mailing Address: 2683 Port Neal Road Salix Iowa 51052
Street City or Town State and Zip + 4

Property Address: Port Neal Road Salix Iowa 51052
Street City or Town State and Zip + 4

Ph Cell #: 712-943-7123 E-mail Address: hugh.heilman@midamerican.com

To subdivide land located in the SE Quarter of Section 30

Civil Township Liberty GIS Parcel # 874730400007

Name of Subdivision: Sandport Addition

Subdivision Area in Acres 9.66 Number of Lots 1

Attachments:

1. Eight (8) copies of grading plans; if required.
2. Eight (8) copies of final plats (Complete per Section 4.01 of the Subdivision Ordinance).
3. An attorney's opinion of the abstract.
4. A Certified abstractor's certificate to include:
 - a. Legal description of proposed subdivision.
 - b. Plat showing clearly the boundaries of the subdivision.
 - c. A list of names, mailing addresses (including the ZIP + 4), and legal descriptions of all property owners within 1000'.

Surveyor: Gregg Stroschein Ph/Cell: (712) 259-0483

Attorney: Dale Smith Ph/Cell: (712) 428-3822

I hereby grant permission to the Woodbury County Zoning Staff and elected or appointed officials to conduct on-site inspections.

Owner's Signature: Sandra J. Heilman

Zoning Director: [Signature]

For Office Use Only:

Zoning District G1 Flood District X Date 7/1/24 No. 6998

Application Fee 4 Lots or less (\$300* + Additional Fees) \$300^{pd} #4285

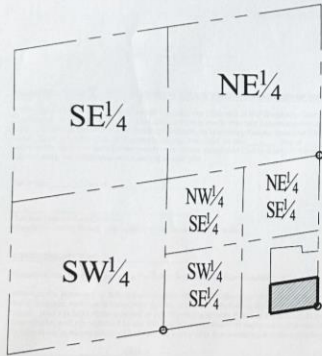
5 Lots or more (\$300* plus \$5 per lot + Additional Fees) _____

*Owner(s)/applicant(s) shall pay the additional costs associated with the processing, printing, and the mailing of notifications of the public hearings when the number of mailings required exceeds 30. The owner(s) applicant(s) shall pay the additional costs of the legal publication notice(s) in newspaper(s) when the fees exceed \$100.00.

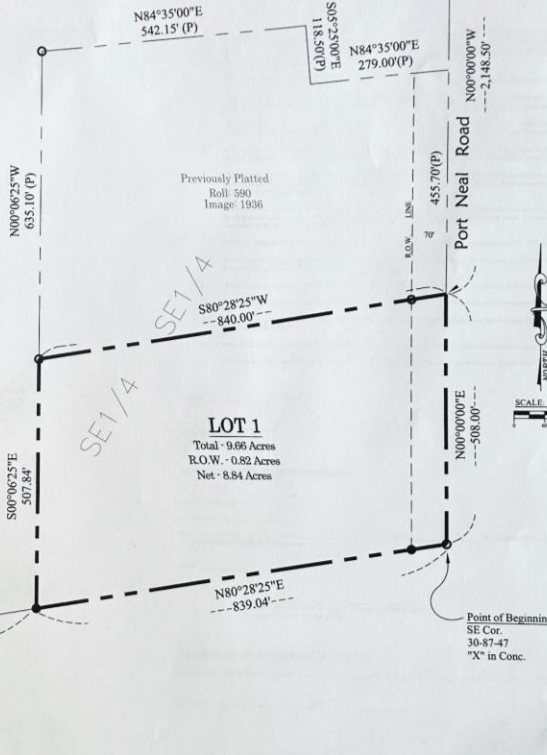
Surveyor: Gregg A. Stroschein, 112-228-0481
 Map To: 121 Howard Rd., Moline, IA 51059
 County: Woodbury
 Subdivision: 30-87-47, R. 47W
 Allotment Part: Part of SE1/4, NE1/4
 Property: Sandra J. Heilman
 Requested by: Steve Stroscheff

FINAL PLAT OF Sandport Addition

A MINOR SUBDIVISION
 IN THE SE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 30, T87N, R47W OF THE 5TH P.M.,
 AN ADDITION TO WOODBURY COUNTY, IOWA



Vicinity Map
30-87-47



LOT 1
 Total - 9.66 Acres
 R.O.W. - 0.82 Acres
 Net - 8.84 Acres

LEGEND

- PIN FINDING & PIN W/ CAP #1561, UNLESS OTHERWISE INDICATED
- SET 1/2" REBAR W/ CAP #10902

NOTES:

- All Bearings and Distances are Measured Unless Otherwise Indicated

Zoning: G1, General Industrial
 Building Setback Lines:
 Front: 50'
 Rear: 10'
 Side: 10'
 Corner Side: 50'

Statistical Data:
 Area of Subdivision = 9.66 Acres
 Street Right-of-way = 0.82 Acres
 Lots: 1

Owners/Subdividers:
 Sandra J. Heilman
 2683 Port Neal Road
 Salix, IA 51052

Engineer/Surveyor:
 Scott L. Gernhart, P.E.
 Gregg A. Stroschein, P.L.S.
 True Engineering & Land Surveying, LLC
 325 Howard Road
 Moline, Iowa 51039



Boundary Description

Part of the SE $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 30, T87N, R47W of the 5th P.M., Woodbury County, Iowa. Said parcel being more particularly described as follows:

Beginning at the SE corner of said SE $\frac{1}{2}$ SE $\frac{1}{4}$; thence northerly along the east line of the SE $\frac{1}{2}$ SE $\frac{1}{4}$ on an assumed bearing of N00°00'00"E (with all subsequent bearings referenced herefrom) for a distance of 508.00 feet; thence S80°28'25"W for a distance of 840.00 feet; thence S00°06'25"E for a distance of 507.84 feet to a point on the southerly line of Section 30; thence N80°28'25"E along said section line for a distance of 839.04 feet to the SE corner of said SE $\frac{1}{2}$ SE $\frac{1}{4}$ and the Point of Beginning.

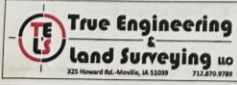
Said described parcel of land contains 9.66 acres and is subject to all easements and right-of-ways of record.

Certification

I, Gregg A. Stroschein, a duly Licensed Land Surveyor under the laws of the State of Iowa, do hereby certify that there are contained in said description, the lots described in the subdivision as platted, that the lots, blocks, streets and easements are of the dimensions, numbers, names and locations as shown on said plat; and that iron stakes are set at each corner of every lot of said subdivision as indicated hereon.

Gregg A. Stroschein PLS #10902
 License renewal date: 12-31-25

Date _____
 Pages covered by seal _____



FINAL PLAT
OF
Sandport Addition

A MINOR SUBDIVISION
IN THE SE¼ SE¼ OF SECTION 30, T87N, R47W OF THE 5TH P.M.,
AN ADDITION TO WOODBURY COUNTY, IOWA

TITLE OPINION

_____, 2024

County Auditor and Recorder
Woodbury County, Iowa

Dear Sir/Madam:

We have this date examined a complete abstract to Title, pursuant to Iowa Code Section 354.1(1)(c) to property which includes in its entirety, property described in the surveyor's certificate on the plat of Sandport Addition, a Minor Subdivision in the SE¼ SE¼ of Section 30, T87N, R47W of the 5th P.M., an Addition to Woodbury County, Iowa last certified by Englewood Abstract Co., Inc. dated _____, 2024 at 8:59 a.m. and from said abstract find good and merchantable title to said premises vested in Sandra J. Heilman, subject to the following, liens, limitations and exceptions:

- Entry #13 shows the real estate taxes for 2023/24 payable in two installments on CUS 487473060007 in the amount of \$1,602.00 payable in two installments, as all paid.
- Entry #14 shows Ordinance No. 74 for Woodbury County, Iowa filed August 18, 2023 as Instrument #2023-07999 to amend portions of the table of contents, Section 3.03.4 entitled: Land use summary table of allowed uses in each zoning district; portions of 6.02 entitled: definitions and renumbering of definitions and page numbers.
- Entry #15 shows Ordinance No. 61 for Woodbury County, Iowa filed for record on Feb. 28, 2022 as Inst. #2022-02325 in the office of Woodbury County Recorder to repeal and replace the Planning and Zoning Commission with the "Board of Adjustment" with new procedures and duties of the Planning and Zoning Commission.
- Entry #12 shows Resolution #18.456 adopted by the Woodbury County Board of Supervisors and filed August 29, 2008 as Roll 699, Image 7113 which creates new subdivision ordinances in unincorporated areas of Woodbury County. For more complete details please contact the Woodbury County Zoning Office in the County Courthouse.
- The examination is aware of Resolution #18.453 adopted by the Woodbury County Board of Supervisors and filed on August 29, 2008 as Roll 699, Image 7213 which adopted new comprehensive zoning ordinances for unincorporated areas of Woodbury County and repeals previous zoning ordinances. For maps and further particulars you are directed to the Office of the Woodbury County Zoning Administrator in the Woodbury County Courthouse.
- Entry #11 shows Resolutions #6332 and #6333 adopted by the Woodbury County Board of Supervisors on May 12, 1977 and filed on Roll 42, Image 2118 to 2121 which regulate the use, issuance of new building permits, new construction or substantial improvements to land designated as Flood Hazard Areas. For maps and further particulars you are directed to the Office of the Woodbury County Zoning Administrator in the Woodbury County Courthouse.
- Entry #10 shows Zoning Regulations adopted by Woodbury County Board of Supervisors dated January 11, 1971 and filed March 5, 1971 in Book 1263, page 9 to 78.
- Entry #7 shows a Plat of Survey by Jack D. Votaw, L.S. #1961 filed on Roll 596, Image 1937 on May 14, 2003 for 10.74 acres in the SE¼ SE¼ of Sec. 30, T87N, R47W. Entry #8 shows the conveyance of the property surveyed as Entry #7 to Hugh Brian Heilman and Stacy Lynn Heilman, husband and wife.
- Entry #9 shows a Center Certificate filed Jan. 27, 1992 on Roll 236, Image 899 in the Office of the Recorder of Woodbury County.
- Entry #6 shows an Easement on Woodbury County dated October 15, 1968 and filed the same date on Book 1194, Page 179 for road purposes of the East 10 feet of the SE¼ SE¼ of Sec. 30, T87N, R47W. Entry #5 shows a Easement on the United States of America dated May 10, 1839 and filed in Original Entry, page 144 for the SE ¼ of the SE ¼ of Section 30, Township 87 N, Range 47 W.
- A Special Certificate shows that there are no unaffiliated judgments, liens or unpaid personal taxes against Hugh B. Heilman.

Dated _____, 2024.

Dale B. Smith
ATTORNEY AT LAW

AUDITOR AND RECORDER'S CERTIFICATE OF RECORDING

STATE OF IOWA

COUNTY OF WOODBURY

Doc# No _____

Filed for record, this _____ day of _____, 2024, at _____ o'clock _____ M. recorded in Plat Envelope _____ indexed and delivered to the County Auditor of Woodbury County, Iowa

Dated _____, 2024

Patrick F. Gill, Auditor and Recorder, Woodbury County, Iowa
By Diane Swoboda Peterson, Deputy

AUDITOR'S APPROVAL OF SUBDIVISION NAME OR TITLE

The County Auditor hereby accepts and approves the name or title of the attached Subdivision Plat as required by Iowa Code Section 354.6(2).

Dated _____, 2024

Patrick F. Gill, Auditor and Recorder, Woodbury County, Iowa
By Diane Swoboda Peterson, Deputy

CERTIFICATE OF COUNTY ASSESSOR

I, Tyler Mogensen, hereby certify that on the _____ day of _____, 20____, a copy of this plat was filed in the County Assessor's Office.

Dated _____, 2024

Tyler Mogensen,
County Assessor

TREASURER'S CERTIFICATE OF TAXES AND SPECIAL ASSESSMENTS

I, Tina M. Bertrand, Treasurer of Woodbury County, Iowa, do hereby certify that the land described in the attached and foregoing Surveyor's Certificate is free from certified taxes and certified special assessments.

Dated _____, 2024

Tina M. Bertrand, Treasurer Woodbury County, Iowa

CONSENT OF OWNER

Sandra J. Heilman, is the Owner of the real estate described in the attached Surveyor's Certificate, has in the pursuance of the law, caused said described real estate to be surveyed, staked and platted into lots, cutoffs and streets, as is particularly shown and set forth in the attached Plat and said Certificate of Original Surveyor, a Licensed Surveyor who surveyed and platted the real estate to be known as Sandport Addition, an addition to Woodbury County, Iowa, and that the same is prepared with the free consent and in accordance with the desires of owners and proprietors thereof.

Sandra J. Heilman _____ Date _____

STATE OF IOWA _____ COUNTY OF WOODBURY _____

On this _____ day of _____, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Sandra J. Heilman, to me personally known.

Notary Public _____

RESOLUTION & CERTIFICATE OF WOODBURY COUNTY ZONING COMMISSION OF WOODBURY COUNTY

I, Christine Zellmer-Zant do hereby certify that I am the Chairman of the Woodbury County Zoning Commission of Woodbury County, Iowa and do further certify that said commission has heretofore taken under advisement the Final Plat of Sandport Addition, to Woodbury County, Iowa and that said Woodbury County Zoning Commission of Woodbury County, Iowa, did on the _____ Day of _____, 20____, approve the same and does further recommend to the Woodbury County Board of Supervisors, Woodbury County, Iowa, the acceptance and approval of said plat.

Dated this _____ Day of _____, 20____

Christine Zellmer-Zant, Chairman
Woodbury County Zoning Commission of Woodbury County, Iowa

BOARD RESOLUTION NO. _____

Resolution accepting and approving the Plat of Sandport Addition an addition to Woodbury County, Iowa

Whereas, the Planning and Zoning Commission and the Woodbury County Board of Supervisors have reviewed and approved the Final Plat of Sandport Addition to Woodbury County, Iowa, and whereas approval of the Final Plat of Sandport Addition to Woodbury County, Iowa has been recommended to the Woodbury County Board of Supervisors by the Planning and Zoning Commission. Now, therefore be, and it is, resolved by the Woodbury County Board of Supervisors, that said Final Plat of Sandport Addition to Woodbury County, Iowa, as hereto attached and forming part of this Resolution be, and the same hereby is, accepted and approved.

Dated _____, 2024

ATTEST: WOODBURY COUNTY BOARD OF SUPERVISORS

Patrick F. Gill, Woodbury County Auditor and Recorder Matthew Ung, Chairperson

STATE OF IOWA _____

COUNTY OF WOODBURY _____

I, Patrick F. Gill, Woodbury County Auditor and Recorder, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution accepting and approving the Final Plat of Sandport Addition to Woodbury County, Iowa, which said Resolution was adopted by the Woodbury County Board of Supervisors on the _____ day of _____, 2024 and approved on said date as full, true and complete as the same appears of record in the Office of said Auditor and Recorder.

Dated _____, 2024

Patrick F. Gill, Woodbury County Auditor and Recorder

COUNTY ENGINEER'S CERTIFICATE

I, Mark J. Nahra, P.E., County Engineer for Woodbury County, Iowa, do hereby certify that the boundary lines of the plat and lots therein were mathematically checked and conform with the requirements as provided for in the Subdivision Ordinance and that all dimensions both linear and angular necessary for the location of lots, tracts, streets, and easements, are shown.

Dated _____, 2024

Mark Nahra, P.E., County Engineer for Woodbury County, Iowa

NOTICE

The City Council of Sells, Iowa, pursuant to Authority Granted in Iowa Code Section 354.9 Waived the City's Review and Approval of the Final Plat of the Sandport Addition, as would otherwise be required by the City's Code of Ordinances, with the Adoption of Resolution No. 2024-09 on the 12th day of June, 2024.

PLANNING AND ZONING STAFF – REVIEW CRITERIA (SUBDIVISION ORDINANCE)

The County’s Zoning and Subdivision Ordinances require certain actions from County staff and the Planning and Zoning Commission. Per these requirements, Planning and Zoning staff:

	<p>shall review a subdivision application for completeness and for approval of a final plat by ensuring it is submitted in accordance with the standards for a subdivision plat per Iowa Code.</p>
	<p>Staff reviewed the subdivision application, deemed it complete, and verified the final plat’s conformance to the County’s Zoning Ordinance, Subdivision Ordinance, and the Code of Iowa, all as required by law.</p>
	<p>shall accept payment of applicable fees, and distribute copies of the final plat to the Planning & Zoning Commission, the appropriate county departments and public utilities; and</p>
	<p>Staff received the application fee and the account is paid-in-full. Staff also distributed copies of the application, final plat, and other materials to all relevant stakeholders as required.</p>
	<p>shall coordinate with the County Engineer who shall review the final plat to determine conformance with the engineering design standards of these regulations and to verify accuracy of the legal descriptions and survey data; and</p>
	<p>The County Engineer’s review memo is expected to be available at or before the meeting. The proposal will meet the appropriate criteria for approval pending confirmed compliance with closure and access as per the Woodbury County Engineer’s review memo.</p>
	<p>shall review the final plat to determine conformance with the design standards of these regulations and with the required form of the plat and related documents; and</p>
	<p>Staff verified that the final plat conforms to the design standards of these regulations, as well as the required form of the final plat.</p>
	<p>shall assure conformance with the goals and objectives of the County’s General Plan, the CED staff may make recommendations for conditions for approval including use restrictions required to preserve and improve the peace, safety, health, welfare, comfort, and convenience of the future residents of the subdivision and neighboring properties.</p>
	<p>Staff attest to the final plat conforming to the goals and objectives of the county plan. Staff recommends approval contingent on the contents of the Count Engineer’s review memo stating compliance with closure, access, etc.</p>

ZONING COMMISSION – REVIEW CRITERIA (SUBDIVISION ORDINANCE)

The County’s Zoning and Subdivision Ordinances require certain actions from County staff and the Planning and Zoning Commission. Per these requirements, the Planning and Zoning Commission:

	<p>shall conduct a public hearing on a final plat for a minor subdivision. Notice of the date, time and location of the hearing will be mailed to the owners of all property within 1,000 feet for the subject property not less than four nor more than twenty days prior to the date of the hearing; and</p>
	<p>Staff have ensured that the legal requirements have been met for publicly noticing this public hearing, all as required by law. Staff have also ensured the notice requirement for adjacent landowners within 1000 FT have also been met.</p>
	<p>shall review the final plat and the staff reports and other information presented to determine whether the plat conforms to the ordinances, general plan and other policies of the county; and</p>
	<p>Staff have compiled, reviewed, and analyzed all relevant materials to determine whether the plat conforms to the ordinances, general plan, and other policies of the County, or not. Staff provided this information in a “Staff Report” format and made them available to the Commission well in advance of the required public hearing. The Commission also held a public hearing to review, analyze, and discuss the final plat and other relevant information.</p>
	<p>may recommend specific conditions for approval including use restrictions required to preserve and improve the peace, safety, health, welfare, comfort, and convenience of the future residents of the subdivision and neighboring properties; and</p>
	<p>Staff does not recommend any specific conditions for this final plat. However, specific conditions (if any) may be recommended by the Commission.</p>
	<p>shall forward a report of its finding and a recommendation to the Board of Supervisors. The recommendation shall be in the form of a resolution to be certified as part of the final plat materials. A copy of the report and the resolution shall also be forwarded to the property owner, the subdivider and the land surveyor for the subdivision.</p>
	<p>During its required public hearing on the final plat, the Board of Supervisors will receive the final staff report and the Commission’s recommendation on said plat and shall approve, approve with conditions, or disapprove the plat. The Supervisors may table the matter with the consent of the subdivider. Approval shall be in the form of a resolution to be certified as part of the final plat. Staff will coordinate with the subdivider and land surveyor to ensure all copies and recordings are submitted and received, all as required by law.</p>

CITY OF SALIX
COUNCIL MEETING MINUTES 2023

REGULAR MEETING – June 12, 2024

Mayor Pro Tem Burkhart opened the regular meeting of the Salix City Council at 7:00pm on Wednesday, June 12th, 2024. Mayor Nelson was absent. Council members present: Karen Allen, Nick Black, Denise Burkhart, Emily Clayton, and Cindy VanAuken. Others present: Kathy Brouillette, Dty Butler, Sam and Deb Knight, Nick Novotny, Kent Carper.

- The Woodbury County Sheriff Report was reviewed by the council.
- Resolution 2024-4, a resolution to approve end of fiscal year transfers for FY24 was approved on motion from VanAuken, seconded by Allen. Roll call vote: Allen (aye), Black (aye), Burkhart (aye), Clayton (aye), VanAuken (aye).
- Resolution 2024-5, a resolution waiving the Salix City Council right to review and approve a minor subdivision to be known as Sandport Addition located outside the city limits was approved on motion from Burkhart, seconded by Allen. Roll call vote: Allen (aye), Black (aye), Burkhart (aye), Clayton (aye), VanAuken (aye).
- Resolution 2024-6, a resolution approving the final plat of Aspen Estates Addition was approved on motion from Burkhart, seconded by VanAuken. Roll call vote: Allen (aye), Black (aye), Burkhart (aye), Clayton (aye), VanAuken (aye).
- The City of Salix will be receiving an insurance settlement due to damage to the city's electronic sign. Resolution 2024-7 was created to borrow money from the utility fund to purchase a new sign and then immediately pay it back when the insurance check was received. Brouillette believed that since we were near the end of the fiscal year, we should just pay for the sign out of next year's budget. Therefore, Resolution 2024-7, a resolution to borrow against utility fund was dismissed. The council wishes to purchase a higher resolution sign which will be around \$4,000 more than the insurance check settlement.
- May financial reports were approved on motion from Burkhart. Clayton seconded. All ayes, motion carried.
- Colyer was absent due to alarms at the East Lift Station. Water and Wastewater reports were provided for council review.
- Minutes from the May 8th council meeting was approved on motion from Black. VanAuken seconded the motion. All ayes, motion carried.
- VanAuken and Allen expressed that they would review nuisance ordinances and propose a change to the City's ordinance at the next council meeting to address junk and junk vehicles.
- Walker's Cigarette Permit Application was approved on motion from VanAuken and seconded by Black. All ayes, motion carried.
- A tax abatement application for Larry Brockshus was declined on motion from Burkhart and seconded by VanAuken. The reason for denial was because the building will not be used for commercial or residential purpose at this time.
- The council reviewed a proposed 5-year pumping agreement with the Farmer's Drainage District. There were a few unanswered questions that the council would like to research before giving a final answer. Approval tabled until July's council meeting.
- Sam Knight (406 Oak Street) is interested in purchasing a sliver of land owned by the city

**CITY OF SALIX
COUNCIL MEETING MINUTES 2023**

behind her house to extend her backyard. The council, unclear of future development needs of the 5-acre plat behind Oak Street, decided to table the decision until the plat for development is determined. Allen motioned to consider declining offer for the time being, seconded by VanAuken. All ayes, motion carried.

- The council discussed several nuisances and advised Brouillette to send letters to offenders.
- Disaster Preparedness Training will take place in the Salix Community Center on Tuesday, June 18th from 7pm - 9pm.
- The following claims were approved on motion from Burkhart, seconded by Black. All ayes, motion carried. AC'S PC'S...network issues...\$500.00, CHN...garbage...\$2759.16, CINDY VANAUKEN...reimburse plants and supplies for park...\$128.01, CRARY HUFF...legal services...\$306.00, D&H PLUMBING...hydrant repair...\$1742.00, D.J. GONGOL & ASSOCIATES...east lift station parts...\$192.58, DORSEY & WHITNEY...legal help with new tax abatement...\$5000.00, EFTPS...taxes...\$1319.23, FLOYD RIVER MATERIALS...gravel on Benton...\$3200.16, FOUNDATION ANALYTICAL LAB...testing...\$24.00, IA DEPT OF REVENUE...sales tax...\$500.85, IMWCA...workers comp...\$1307.00, INTELLIPRO SECURITY...door lock software...\$500.00, IA FINANCE AUTHORITY...\$40,330.00...principal and interest payments, IA LEAGUE OF CITIES...DUES...\$386.00, IOWA ONE CALL...locates...\$18.00, IPERS...retirement...\$822.88, JBE LLC...water help...\$800.00, JDH SERVICES...spraying at park...\$800.00, LONGLINES...phone...\$34.65, MENARDS...dehumidifiers and shop supplies...\$967.98, MIDAMERICAN...electric...\$1349.22, MIKE'S MINI MART...fuel...\$157.50, MIRACLE RECREATION...playground equipment...\$10,306.00, MITCHEL CONTRACTING...building permits/inspections...\$250.00, RICHARDSON TRUCKING...riprap for lagoon...\$4000.00, SALIX FIRE DEPT...city hall electric, gas/diesel...\$307.74, SGT. BLUFF ADVOCATE...publication...\$243.61, SIOUXLAND DISTRICT HEALTH...testing...\$14.00, SIOUXLAND WELL CO...lift station pump out...\$250.00, SLOAN STATE BANK...loan payment...\$24,156.00, SOOLAND BOBCAT...bobcat maintenance...\$954.97, TREE HEALTH SERVICES...trees for park...\$2,642.00, TRIPLE C PEST CONTROL...fogging...\$131.25, USA BLUEBOOK...chemical supplies and pump...\$1369.80, UTILITY EQUIPMENT CO...parts for fire hydrant...\$52.44, VERIZON...cellphones...\$126.28, VISA...street signs, stamps, mower belts and tire, office supplies...\$1379.05. PAYROLL...\$4824.80 FUND TOTALS: GEN: \$26,724.20, HISTORY CENTER: \$949.00, VETS MEMORIAL: \$4,000.00, ROAD USE: \$4,444.83, WATER: \$7,321.98, WATER SINKING: \$59,619.75, SEWER: \$5,926.03, SEWER SINKING: \$4,866.25

Revenues received by fund for May 2024:

General: \$15,062.80, History Center: \$35.00, Road Use: \$2,544.78, Employee Benefits: \$749.51, Emergency: \$138.50, Local Option Sales Tax: \$5,064.43, Debt Service: \$5,141.73, Water: \$8,050.50, Water Sinking: \$3,541.67, Sewer: \$2,143.55, Sewer Sinking: \$461.67. Total Revenues: \$42,934.14

The meeting was adjourned at 8:39pm on motion from Burkhart and seconded by Allen.

Kevin Nelson, Mayor

Attest: _____

Kathy Brouillette, Clerk

Sioux City Journal

AFFIDAVIT OF PUBLICATION

Sioux City Journal
2802 Castles Gate Drive
Sioux City 51106
(712) 293-4250

State of New Jersey, County of Hudson, ss:

Hayden Lipsky, being first duly sworn, deposes and says: That (s)he is a duly authorized signatory of Column Software, PBC, duly authorized agent of Sioux City Journal, printed and published by Journal Communications, in Sioux City in Woodbury County and issued daily and Sunday and that this affidavit is Page 1 of 1 with the full text of the sworn-to notice set forth on the pages that follow, and the hereto attached:

PUBLICATION DATES:

Jul. 11, 2024

NOTICE ID: Mdn08LGeUPN9jxCYwE53

PUBLISHER ID: COL-IA-500599

NOTICE NAME: ZC-Sandport_Addition_7-22-24

Publication Fee: \$32.44

(Signed) Hayden Lipsky

SHANNEA H HOLMES
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires August 1, 2026

VERIFICATION

State of New Jersey
County of Hudson

Subscribed in my presence and sworn to before me on this: 07/15/2024

Shanea H. Holmes
Notary Public

Notarized remotely online using communication technology via Proof.

**NOTICE OF PUBLIC HEARING
REGARDING A PROPOSED MINOR
SUBDIVISION BEFORE THE
WOODBURY COUNTY ZONING
COMMISSION**

The Woodbury County Zoning Commission will have a meeting and will hold a public hearing on the following item hereafter described in detail on July 22, 2024 at 5:00 PM or as soon thereafter as the matter may be considered.

Said public hearing will be held in the Board of Supervisors' meeting room in the basement of the Woodbury County Courthouse, 620 Douglas Street, Sioux City, Iowa. Copies of said item may now be examined at the office of the Woodbury County Community and Economic Development, on the 6th Floor of said courthouse by any interested persons. All persons who wish to be heard in respect to this matter should appear at the aforesaid public hearing in person or call: 712-454-1133 and enter the Conference ID: 688 086 587# during the meeting to listen or comment. However, it is recommended to attend in person as there is the possibility for technical difficulties with phone and computer systems. You may forward your written comments by mail or email to: Woodbury County Community and Economic Development, 6th Floor, Woodbury County Courthouse, 620 Douglas St., Sioux City, IA 51101; Emails should be sent to Daniel Priestley at: dpriestley@woodburycountyiowa.gov. Only signed comments will be considered and should be received no later than 10:00 AM on Mon., July 22, 2024.

Item One (1)

MINOR SUBDIVISION

PROPOSED MINOR SUBDIVISION: To be known as Sandport Addition, A Minor Subdivision to Woodbury County, Iowa, a one-lot minor subdivision in a 9.66-acre portion of T87N R47W (Liberty Township) in Section 30 in the SE 1/4 of the SE 1/4 on Parcel #874790400007. The property is approximately 1.4 miles west of the City of Salix. The property is located in the General Industrial (GI) Zoning District. Property Address: 2683 Port Neal Road., Salix, IA 51052. Owner/Applicant: Sandra J. Heilman. COL-IA-500599

PROPERTY OWNER(S) NOTIFICATION

Total Property Owners within 1000 FT via Certified Abstractor's Listing:	8
Notification Letter Date:	July 8, 2024
Public Hearing Board:	Zoning Commission
Public Hearing Date:	July 22, 2024
Phone Inquiries:	0
Written Inquiries:	0
The names of the property owners are listed below.	
When more comments are received after the printing of this packet, they will be provided at the meeting.	



PROPERTY OWNER(S)	MAILING ADDRESS				COMMENTS
Sandra J. Heilman	2683 Port Neal Road	Salix	IA	51052-8111	No comments.
Hugh Brian Heilman	2695 Port Neal Road	Salix	IA	51052	No comments.
Mark W. Maupin	705 Winfield Circle	Sergeant Bluff	IA	51054	No comments.
Kimmel Family Farms, LLC and Kent W. Ivener and Michell B. Ivener of the Kent W. Ivener Living Trust	111 Doral Lane	Dakota Dunes	SD	57049	No comments.
MidAmerican Energy Company	PO Box 657	Des Moines	IA	50303-0657	No comments.
Iowa Conservation	502 E. 9th St. - Floor 4	Des Moines	IA	50319-5005	No comments.
D & H Kimmel Farms, LLC and ML Kimmel Farms, LLC	4110 Floyd Boulevard	Sioux City	IA	51108	No comments.
State of Iowa Property Management Section	800 Lincoln Way	Ames	IA	50010	No comments.

STAKEHOLDER COMMENTS

911 COMMUNICATIONS CENTER:	No comments.
CONCORD TOWNSHIP:	No comments.
FIBERCOMM:	No comments.
IOWA DEPARTMENT OF NATURAL RESOURCES (IDNR):	No comments.
IOWA DEPARTMENT OF TRANSPORTATION (IDOT):	No comments.
LIBERTY TOWNSHIP:	I and the other two Liberty Township trustees give our approval for the Sandport Addition that is being proposed by Sandy Heilman. We have no concerns at this time. – Wade Brown, 7/8/24.
LOESS HILLS NATIONAL SCENIC BYWAY:	No comments.
LOESS HILLS PROGRAM:	No comments.
LONGLINES:	No comments.
LUMEN:	No comments.
MAGELLAN PIPELINE:	No comments.
MIDAMERICAN ENERGY COMPANY (Electrical Division):	I have reviewed the following proposed minor subdivision for MEC electric and we have, no conflicts. – Casey Meinen, 7/3/24.
MIDAMERICAN ENERGY COMPANY (Gas Division):	No comments.
NATURAL RESOURCES CONSERVATION SERVICES (NRCS):	No comments.
NORTHERN NATURAL GAS:	No comments.
NORTHWEST IOWA POWER COOPERATIVE (NIPCO):	Have reviewed this zoning request. NIPCO has no issues with this request. – Jeff Zettel, 7/15/24.
NUSTAR PIPELINE:	No comments.
SIOUXLAND DISTRICT HEALTH DEPARTMENT:	No comments.
WIATEL:	No comments.
WINNEBAGO TRIBE:	No comments.
WOODBURY COUNTY ASSESSOR:	No comments.
WOODBURY COUNTY CONSERVATION:	No comments.
WOODBURY COUNTY EMERGENCY MANAGEMENT:	No comments.
WOODBURY COUNTY EMERGENCY SERVICES:	No comments.
WOODBURY COUNTY ENGINEER:	SEE REVIEW MEMO BELOW
WOODBURY COUNTY RECORDER:	No comments. – Diane Swoboda Peterson, 7/3/24.
WOODBURY COUNTY RURAL ELECTRIC COOPERATIVE (REC):	No comments.
WOODBURY COUNTY SHERIFF:	No comments.
WOODBURY COUNTY SOIL AND WATER CONSERVATION DISTRICT:	The WCSWCD has no comments regarding this proposal. – Neil Stockfleth, 7/3/24.
WOODBURY COUNTY TREASURER:	The Treasurer's Office has the following comments: 1. 2022 certified taxes are paid in full. 2. If the subdivision / plat is not finalized prior to the certification of the 2023 taxes, these taxes would need to be paid in full prior to Treasurer's certification. – Tina Bertrand, 7/5/24.



Woodbury County Secondary Roads Department

759 E. Frontage Road • Merville, Iowa 51039
Telephone (712) 279-6484 • (712) 873-3215 • Fax (712) 873-3235

COUNTY ENGINEER

Mark J. Naha, P.E.
mnaha@woodburycountyiowa.gov

ASSISTANT TO THE COUNTY ENGINEER

Benjamin T. Kusler, E.I.T.
bkusler@woodburycountyiowa.gov

SECRETARY

Tish Brice
tbrice@woodburycountyiowa.gov

To: Dan Priestley, Woodbury County Zoning Coordinator

From: Mark J. Naha, County Engineer

Date: July 17, 2024

Subject: Sandport Addition – a minor subdivision application

The Secondary Road Department has reviewed the information provided for the above referenced subdivision forwarded with your memo dated July 3, 2024.

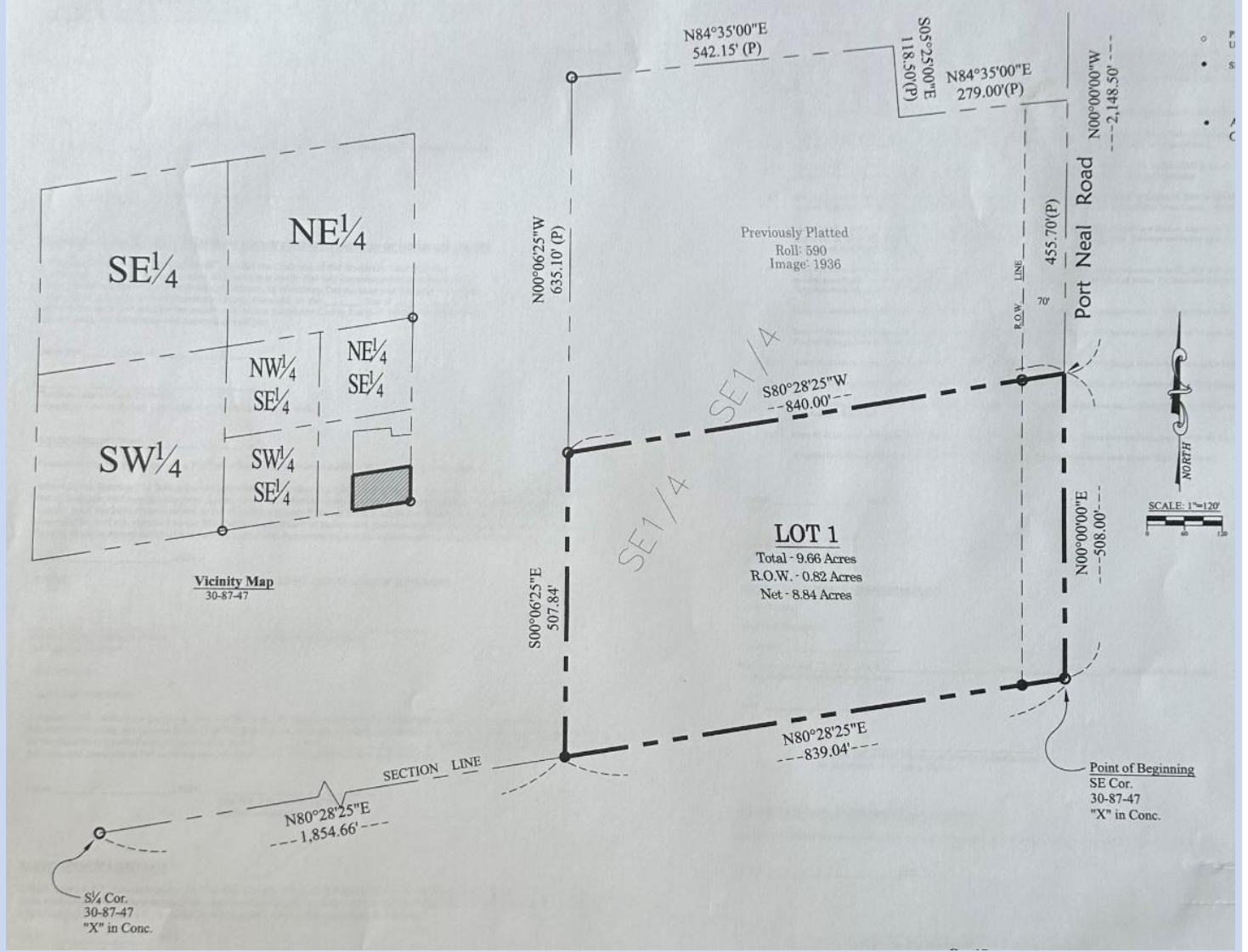
I am offering the following comments for your consideration.

- We checked the closure on the plat and found it in compliance with the requirements for the full subdivision of 1 in 10,000 and 1 in 5,000 for lot 2 as required by Section 355.8 of the Code of Iowa.
- There is no driveway accessing the proposed Lot 1 exclusively. It appears the driveway at the SE corner of the lot is shared with the neighbor and may be on the neighboring property. There is good sight distance on the road and a driveway serving Lot 1 would be easy to site. The landowner should contact my office to obtain a permit for a driveway.
- I have no other concerns or issues with this minor subdivision application.

If there are any more questions or issues that arise later, please contact this office.

Cc: File

PLAT MAP EXCERPT



TITLE OPINION

Dear Sir/Madam:

We have this date examined a complete abstract to Title, pursuant to Iowa Code Section 354.11(1)(c) to property which includes in its entirety, property described in the surveyor's certificate on the plat of: Sandport Addition, a Minor Subdivision in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T87N, R47W of the 5th P.M., an Addition to Woodbury County, Iowa last certified by Engleson Abstract Co., Inc., dated _____, 2024 at 8:59 a.m. and from said abstract find good and merchantable title to said premises vested in Sandra J. Heilman, subject to the following, liens, limitations and exceptions:

1. Entry #15 shows the real estate taxes for 2022/23 payable in two installments on GIS #874730400007 in the amount of \$1,602.00 payable in two installments, as all paid.
2. Entry #14 shows Ordinance No. 74 for Woodbury County, Iowa filed August 18, 2023 as Instrument #2023-07899 to amend portions of the table of contents, Section 3.03.4 entitled: Land use summary table of allowed uses in each zoning district; portions of 6.02 entitled definitions and renumbering of definitions and page numbers.
3. Entry #13 shows Ordinance No. 61 for Woodbury County, Iowa filed for record on Feb. 28, 2022 as Inst. #2022-02525 in the office of Woodbury County Recorder to repeal and replace the Planning and Zoning Commission with the "Board of Adjustment" with new procedures and duties of the Planning and Zoning Commission.
4. Entry #12 shows Resolution #10,456 adopted by the Woodbury County Board of Supervisors and filed August 29, 2008 in Roll 699, Image 7313 which creates new subdivision ordinances in unincorporated areas of Woodbury County. For more complete details please contact the Woodbury County Zoning Office in the County Courthouse.
5. The examiner is aware of Resolution #10,455 adopted by the Woodbury County Board of Supervisors and filed on August 29, 2008 on Roll 699, Image 7213 which adopted new comprehensive zoning ordinances for unincorporated areas of Woodbury County and repeals previous zoning ordinances. For maps and further particulars you are directed to the Office of the Woodbury County Zoning Administrator in the Woodbury County Courthouse.
6. Entry #11 shows Resolutions #6332 and #6333 adopted by the Woodbury County Board of Supervisors on May 12, 1977 and filed on Roll 62, Images 2118 to 2121 which regulates the use, issuance of new building permits, new construction or substantial improvements to land designated as Flood Hazard Areas. For maps and further particulars you are directed to the Office of the Woodbury County Zoning Administrator in the Woodbury County Courthouse.
7. Entry #10 shows Zoning Regulations adopted by Woodbury County Board of Supervisors dated January 11, 1971 and filed March 5, 1971 in Book 1263, pages 9 to 78.
8. Entry #7 shows a Plat of Survey by Jack D. Virtue, L.S. #3561 filed on Roll 590, Image 1937 on May 14, 2003 for 10.74 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$. Entry #8 shows the conveyance of the property surveyed at Entry #7 to Hugh Brian Heilman and Stacy Linac Heilman, husband and wife.
9. Entry #6 shows a Corner Certificate dated May 12, 2003 and filed May 14, 2003 in Roll 590, Image 1934 in the Office of the Recorder of Woodbury County.
10. Entry #10 shows a Corner Certificate filed Jan. 27, 1992 in Roll 256, Image 898 in the Office of the Recorder of Woodbury County.
11. Entry #4 shows an Easement to Woodbury County dated October 15, 1968 and filed the same date on Book 1194, Page 179 for road purposes of the East 70 feet of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 30, T87N, R47W Woodbury County, Iowa.
12. Entry #2 shows a Patent from the United States of America dated May 10, 1859 and filed in Original Entry, page 144 for the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 30, Township 87, Range 47.
13. A Special Certificate shows that there are no unsatisfied judgments, liens or unpaid personal taxes against Hugh B. Heilman.

Dated: _____, 2024.

Dale B. Smith
ATTORNEY AT LAW

Woodbury County, IA / Sioux City

Summary

Parcel ID 874730400007
Alternate ID 763726
Property Address 2683 PORT NEAL RD
 SALIX IA 51052
Sec/Twp/Rng 30-87-47
Brief SESE(EX A TCT COM SE COR THEC N 508' TO POB;THEC W 840' N 635.1' E
Tax Description 542.15' S 118.5' E 279.9' & S 455.7')
(Note: Not to be used on legal documents)
Deed Book/Page 704-2776 (6/11/2009)
Gross Acres 27.87
Net Acres 27.87
Adjusted CSR Pts 1631.1
Zoning GI - GENERAL INDUSTRIAL
District 0043 LIBERTY/WESTWOOD
School District WESTWOOD COMM
Neighborhood N/A



Owner

Deed Holder
 HEILMAN SANDRA J
 2683 PORT NEAL RD
 SALIX IA 51052-8111
Contract Holder
 HEILMAN SANDRA J
 2683 PORT NEAL RD
 SALIX IA 51052-8111

Land

Lot Area 27.87 Acres ;1,214,017 SF

Residential Dwellings

Residential Dwelling
Occupancy Single-Family / Owner Occupied
Style 1 Story Frame
Architectural Style N/A
Year Built 1947
Condition Normal
Roof Mtl / Gable
Flooring
Foundation C Blk
Exterior Material Vinyl
Interior Material Plis
Brick or Stone Veneer
Total Gross Living Area 1,296 SF
Main Area Square Feet 1296
Attic Type None;
Number of Rooms 6 above; 2 below
Number of Bedrooms 3 above; 0 below
Basement Area Type 1/2
Basement Area 648
Basement Finished Area
Plumbing 1 Standard Bath - 3 Fi; 1 Sink;
Appliances 1 Range Unit;
Central Air Yes
Heat Yes
Fireplaces
Porches 1S Frame Open (144 SF); 1S Frame Enclosed (288 SF);
Decks
Additions
Garages

Agricultural Buildings

Plot #	Type	Description	Width	Length	Year Built	Building Count
0	Steel Utility Building		40	100	1967	1

Sales

Date	Seller	Buyer	Recording	Sale Condition - NUTC	Type	Multi Parcel	Amount
6/11/2009	HEILMAN GEORGE A & SANDRA J	HEILMAN SANDRA J	704/2776	No consideration	Deed		\$0.00

Valuation

	2024	2023	2022	2021	2020
Classification	Ag Dwelling / Agriculture	Ag Dwelling / Agriculture	Ag Dwelling / Agriculture	Ag Dwelling / Agriculture	Ag Dwelling / Agriculture
+ Assessed Land Value	\$53,160	\$53,160	\$41,290	\$41,290	\$39,030
+ Assessed Building Value	\$6,940	\$6,940	\$3,930	\$3,930	\$3,590
+ Assessed Dwelling Value	\$95,310	\$95,310	\$73,580	\$73,580	\$66,780
= Gross Assessed Value	\$155,410	\$155,410	\$118,800	\$118,800	\$109,400
- Exempt Value	\$0	\$0	\$0	\$0	\$0
= Net Assessed Value	\$155,410	\$155,410	\$118,800	\$118,800	\$109,400

Sioux City Special Assessments and Fees

[Click here to view special assessment information for this parcel.](#)

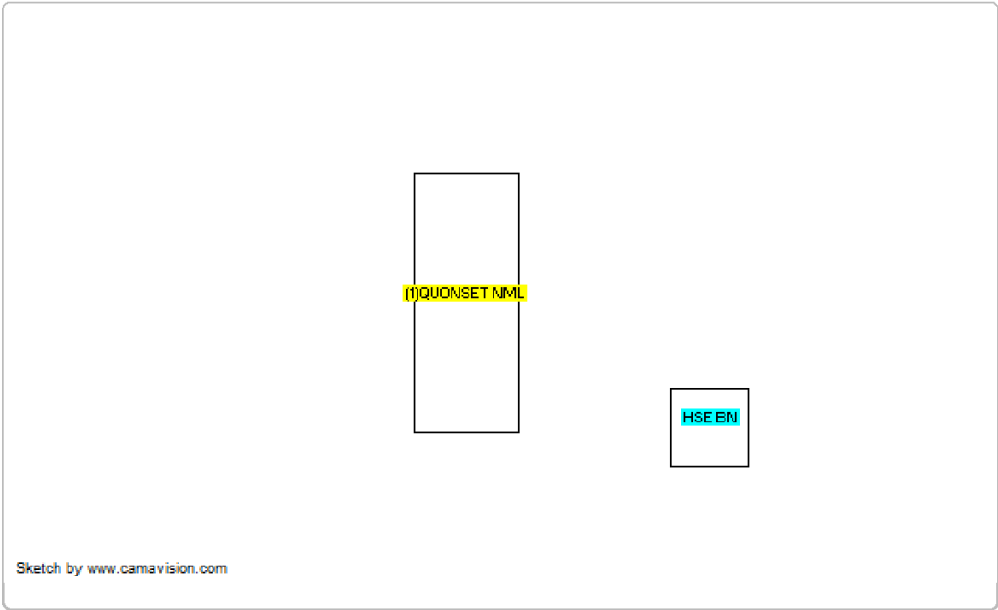
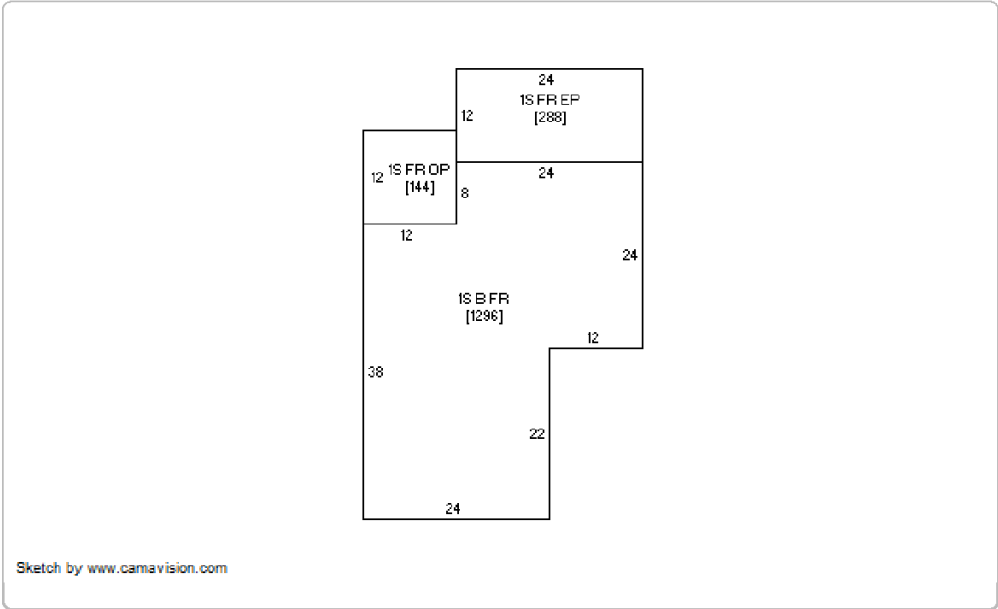
Woodbury County Tax Credit Applications

Apply for Homestead, Military or Business Property Tax Credits

Photos



Sketches



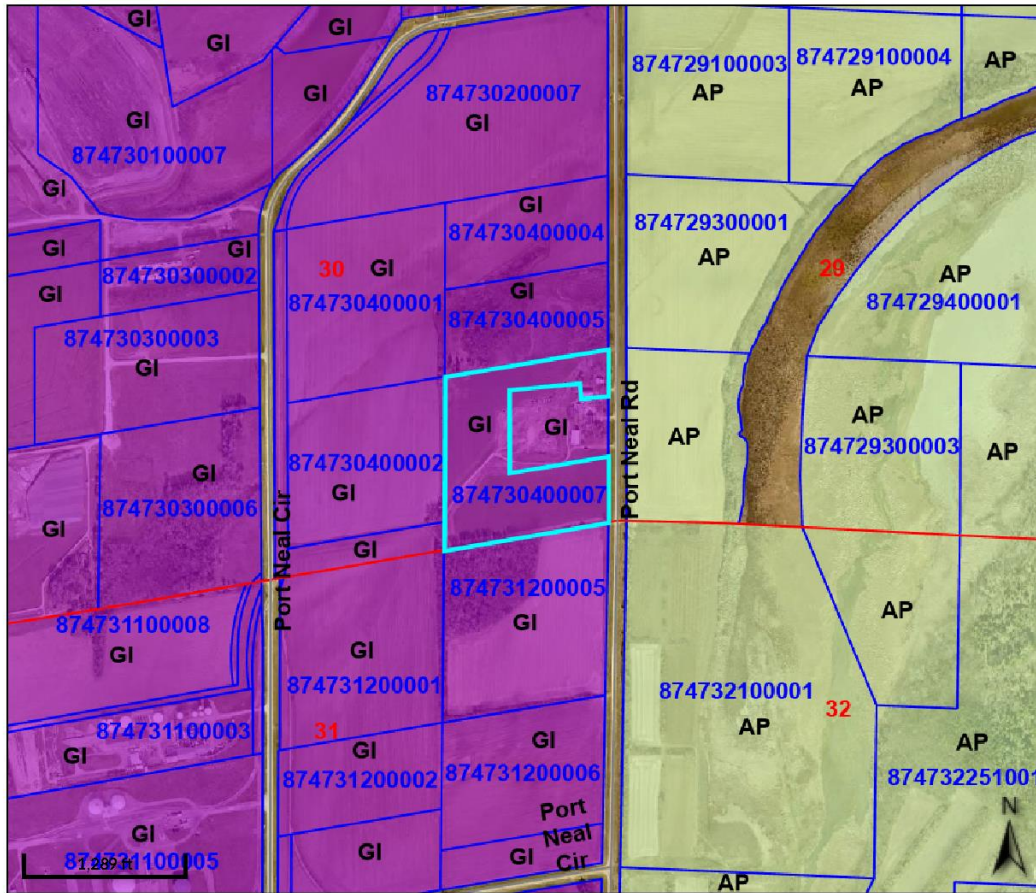
No data available for the following modules: Commercial Buildings, Yard Extras, Permits, Sioux City Tax Credit Applications, Sioux City Board of Review Petition.

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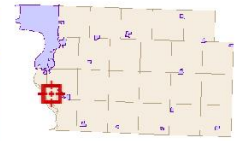
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Overview



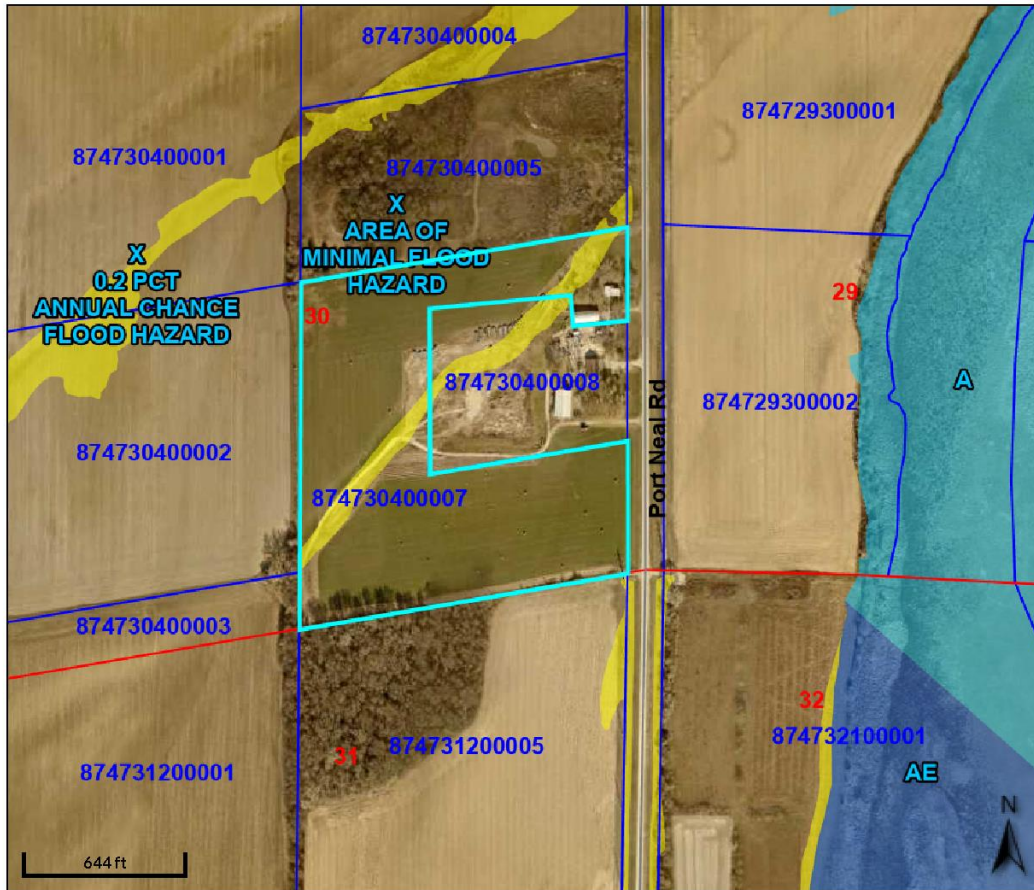
Legend

- Roads
- ▭ Corp Boundaries
- ▭ Townships
- ▭ Parcels
- County Zoning**
- AE
- AP
- GC
- GC-PD
- GI
- LI
- LI-PD
- SR
- WR

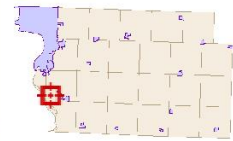
Parcel ID	874730400007	Alternate ID	763726	Owner Address	HEILMAN SANDRA J
Sec/Twp/Rng	30-87-47	Class	AD		2683 PORT NEAL RD
Property Address	2683 PORT NEAL RD	Acreage	27.87		SALIX, IA 51052-8111
	SALIX				
District	0043				
Brief Tax Description	SESE(EX A TCT COM SE COR THEC N 508' TO POB;THEC W 840' N 635.1' E 542.15' S 118.5' E 279.9' & S 455.7')				
	(Note: Not to be used on legal documents)				

Date created: 7/3/2024
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 GEOSPATIAL



Overview



Legend

- Roads
-  Corp Boundaries
-  Townships
-  Parcels
- FEMA Flood Map (Preliminary)**
-  A,
-  AE,
-  AE, FLOODWAY
-  AH,
-  AO,
-  X, 0.2 PCT ANNUAL CHANCE FLOOD HAZARD
-  X, AREA WITH REDUCED FLOOD RISK DUE TO LEVEE

Parcel ID	874730400007	Alternate ID	763726	Owner Address	HEILMAN SANDRA J
Sec/Twp/Rng	30-87-47	Class	AD		2683 PORT NEAL RD
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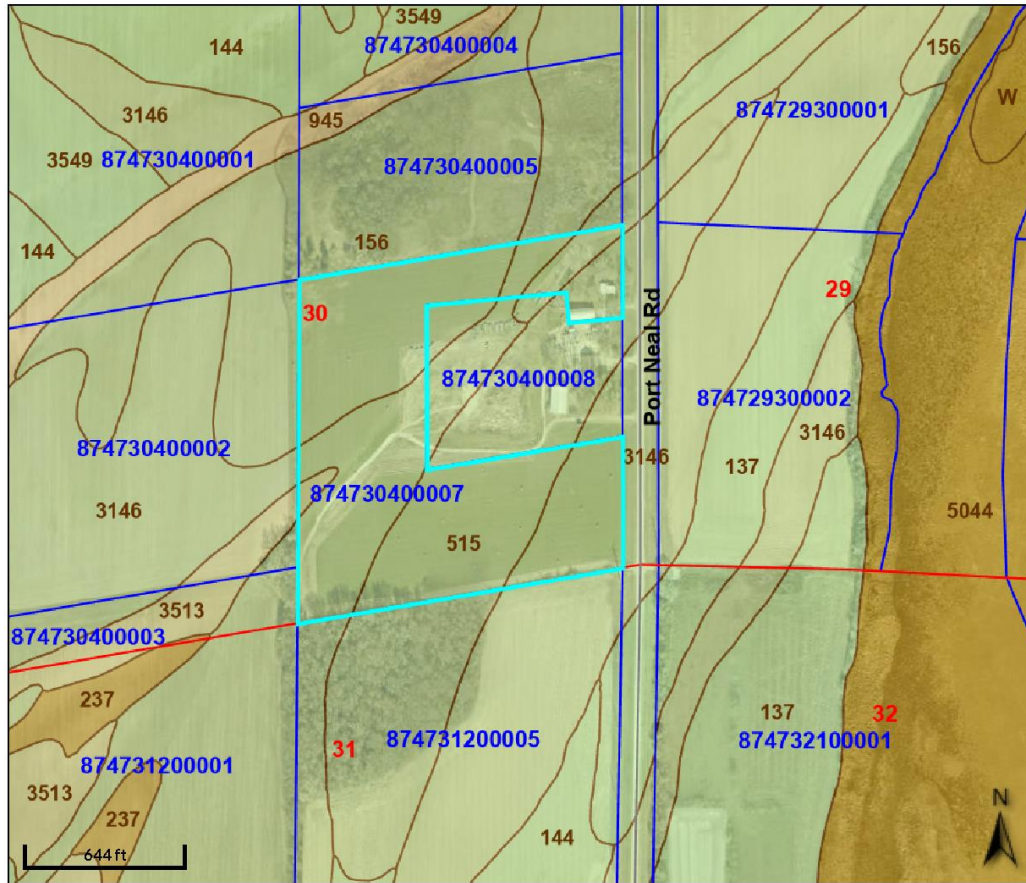
BASE FLOOD ELEVATION DATA

Base Flood Elevation Data (BFE) is not required as the area requested to be subdivided is not within the Special Flood Hazard Area.

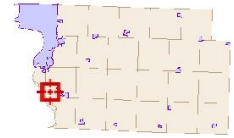
ELEVATION MAP



BeaconTM Woodbury County, IA / Sioux City



Overview



Legend

- Roads
- Soils**
- 0.000000 - 5.000000
- 5.000001 - 20.000000
- 20.000001 - 30.000000
- 30.000001 - 40.000000
- 40.000001 - 50.000000
- 50.000001 - 60.000000
- 60.000001 - 70.000000
- 70.000001 - 80.000000
- 80.000001 - 90.000000
- 90.000001 - 100.000000
- Corp Boundaries
- Townships
- Parcels

Parcel ID	874730400007	Alternate ID	763726	Owner Address	HEILMAN SANDRA J
Sec/Twp/Rng	30-87-47	Class	AD		2683 PORT NEAL RD
Property Address	2683 PORT NEAL RD	Acreeage	27.87		SALIX, IA 51052-8111
	SALIX				
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Woodbury County, IA / Sioux City

Summary

Parcel ID	874730400007	
Gross Acres	27.87	
ROW Acres	0.00	
Gross Taxable Acres	27.87	
Exempt Acres	0.00	
Net Taxable Acres	27.87	(Gross Taxable Acres - Exempt Land)
Average Unadjusted CSR2	59.73	(1664.56 CSR2 Points / 27.87 Gross Taxable Acres)

Agland Active Config 2017 CSR2

Sub Parcel Summary

Description	Acres	CSR2	Unadjusted CSR2 Points	Adjusted CSR2 Points
100% Value	25.73	60.36	1,553.00	1,553.00
Non-Crop	2.14	52.13	111.56	78.10
Total	27.87		1,664.56	1,631.10

Soil Summary

Description	SMS	Soil Name	CSR2	Adjusted Acres	Unadjusted CSR2 Points	Adjusted CSR2 Points
100% Value	3146	ONAWA-ALBATON COMPLEX, 0 TO 2 PERCENT SLOPES, RARELY FLOODED	72.00	11.00	792.00	792.00
100% Value	156	ALBATON SILTY CLAY, 0 TO 2 PERCENT SLOPES, RARELY FLOODED	58.00	7.55	437.90	437.90
100% Value	3513	GRABLE-MORCONICK COMPLEX, 0 TO 2 PERCENT SLOPES, RARELY FLOO	45.00	0.29	13.05	13.05
100% Value	515	PERCIVAL SILTY CLAY, 0 TO 2 PERCENT SLOPES, RARELY FLOODED	45.00	6.89	310.05	310.05
Non-Crop	3146	ONAWA-ALBATON COMPLEX, 0 TO 2 PERCENT SLOPES, RARELY FLOODED	72.00	0.18	12.96	7.50
Non-Crop	156	ALBATON SILTY CLAY, 0 TO 2 PERCENT SLOPES, RARELY FLOODED	58.00	0.80	46.40	30.42
Non-Crop	515	PERCIVAL SILTY CLAY, 0 TO 2 PERCENT SLOPES, RARELY FLOODED	45.00	1.16	52.20	40.18
Total				27.87	1,664.56	1,631.10

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WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 08/01/2024 Weekly Agenda Date: 08/06/2024

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: <u>Mark J. Nahra, Woodbury County Engineer</u>
WORDING FOR AGENDA ITEM: <div style="border: 1px solid black; padding: 5px; margin-top: 5px;">Consider award of quotations for culvert lining on D38 and K45</div>
ACTION REQUIRED:
Approve Ordinance <input type="checkbox"/> Approve Resolution <input type="checkbox"/> Approve Motion <input checked="" type="checkbox"/>
Public Hearing <input type="checkbox"/> Other: Informational <input type="checkbox"/> Attachments <input checked="" type="checkbox"/>

EXECUTIVE SUMMARY:

The county engineer requested quotes for culvert lining on D38 and K45 in advance of planned HMA and PCC overlay projects on the roads.

BACKGROUND:

The county engineer requested quotations for UV culvert lining at 9 locations on county roads planned for paving improvements in FY 2025. The locations have had their end sections tied, but have gaps between pipe sections that allow dirt to be eroded, creating voids under the pavement and settlement in the paved surface. Culvert lining is much less costly than culvert replacement options.

FINANCIAL IMPACT:

The bridge replacement project is paid for with local secondary road funds.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Recommend that the board award the quotation to Subsurface, Inc.

ACTION REQUIRED / PROPOSED MOTION:

Motion to the board to award the quotation for concrete patching to Subsurface, Inc for \$165,116.

P.O. Box 37
Moorhead, MN 56561-0037



Phone (701) 997-5040
Email: gary@subsurface-inc.com

July 24, 2024

Mark Nahra
Woodbury County Engineer
759 E. Frontage Road
Merville, Iowa 51039
Office- (712) 279-6484
Cell –
mnahra@woodburycounty.iowa.gov

RE: UVCIPP

GPS Site Location

ID 1 CR D38 (24") 42.38600, -96.05272, ID-2 CR D 38 (24") 42.38586, -96.01497
ID 3 CR D38 (30") 42.38576, -95.99101, ID-4 CR D 38 (24") 42.38575, -95.98796
ID 5 CR D 38 (24") 42.38548, -95.92512, ID-6 CR D 38 (24") 42.38546, -95.92054
ID- 7 CR D38 (24") 42.38547, -95.90443, ID- 8 CR K 45 (30") 42.23691, -96.23210
ID- 9 CR K45 (30") 42.28198, -96.26567

Dear Mark

Subsurface, Inc. is pleased to provide you with a Quote with 9 locations, 7 on D 38 and 2 on K 45. Prices include Dewatering, Culvert cleaning, Pre- Liner televising, and post- liner televising. All according to IOWA DOT specifications.

Mobilization		Lump Sum	= \$8,000.00
Lining Culvert Pipe (24")		374LF @ \$262.00	= \$97,988.00
Lining Culvert Pipe (30")		144LF @ \$362.00	= \$52,128.00
Dewatering		Lump Sum	= \$3,500.00
Traffic Control	Per Day	@	= \$3,500.00
Total Estimate			= \$165,116.00

Final quantity for UV CIPP shall be field measured, Woodbury County to secure landowner access agreements if access is needed outside of the right of way. Woodbury County to provide traffic control for a single lane closure consisting of approved signing and flag men, at a minimum of 12 hrs.' a day, Monday through Friday. If Woodbury County cannot provide traffic control, add \$3,500.00/ day as seen in the estimate. If Woodbury County agrees to provide traffic control, the fee will be removed. Woodbury County to complete any grubbing within a 10' radius of inlet and outlet side of pipe and a 10' wide runway from top of roadway in a straight line to inlet and outlet ends. Woodbury County to provide clean water and a dump site for the cleaning of the pipe.

Approved By _____

Sincerely,
Chad Bendickson
Sales and Business Development Specialist Subsurface, Inc (507) 402-1730

P.O. Box 37
Moorhead, MN 56561-0037



Phone (701) 997-5040
Email: gary@subsurface-inc.com

July 24, 2024

Mark Nahra
Woodbury County Engineer
759 E. Frontage Road
Merville, Iowa 51039
Office- (712) 279-6484
Cell –
mnahra@woodburycounty.iowa.gov

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Approved By _____

Sincerely,
Chad Bendickson
Sales and Business Development Specialist Subsurface, Inc (507) 402-1730

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 07/31/2024

Weekly Agenda Date: 08/06/2024

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Chairman Matthew Ung

WORDING FOR AGENDA ITEM:

Approval to draft a Memorandum of Understanding for the AFSCME Assistant County Attorney collective bargaining agreement to address understaffing

ACTION REQUIRED:

Approve Ordinance

Approve Resolution

Approve Motion

Public Hearing

Other: Informational

Attachments

EXECUTIVE SUMMARY:

Woodbury County currently has 8 open Assistant County Attorney positions. This lack of staffing is a nationwide problem which also leads to greater competition for recruitment and retention. Woodbury County needs to be creative with their compensation package, including wages and benefits.

Fully staffed, the office would have 18 attorneys (which includes the county attorney).

An academic article explaining the scope and consequences of this national issue is explained for the public in the attachment. This article was originally shared by County Attorney James Loomis to the Board of Supervisors in December 2023, and it would be good for anyone in the public curious of this issue to read.

BACKGROUND:

After a roundtable meeting with AFSCME, attorneys from the department, and Human Resources, the following changes to the current contract through an MOU have been suggested:

1. Remove steps 1 and 2 from the wage matrix, making our current step 3 the starting point for compensation. This would also give the County Attorney discretion to start a new attorney at step 10 instead of the current step 8.
2. Changing the intervals in steps from 1 year to 6 months to increase compensation more quickly.
3. Provide each attorney with 5 "Attorney Days". These days will be used as personal days or forfeited at the end of the fiscal year.
4. Each 6 months (based on hire anniversary date) the attorneys will have the option of "cashing in" any vacation that has accrued but are unable to use. The payout amount will be any time accrued over the maximum allowable amount.
5. Allow up to one day per week of remote work at the County Attorney's discretion.
6. Extend the \$3,000 sign on bonus until June 30, 2025.

It is further recommended that #4 and #5 "sunset" if/when the office reaches a staffing level of 17 total attorneys (of 18 budgeted).

FINANCIAL IMPACT:

The financial impact are as follows:

1. The difference between the current 1st step of the contract and 3rd step of the contract is \$7,785.00. The financial impact of removing the bottom 2 steps for 8 new attorneys would be \$62,280.00 (wages only), which will be covered by the current staffing budget.
2. The cost of changing the amount of time in between steps for (3) current employees is \$11,970.00 (wages only). The County Attorney's current budget has the funds to cover this cost and any other step increase before next fiscal year. Going forward this will be figured into the budget for BOS approval.
3. The Attorney Days would be at no additional cost since their positions are not backfilled when someone is absent, this time is already budgeted.
4. Cashing in vacation will be covered by the current staffing budget.
5. There will be no additional cost to allowing the remote work since attorneys are all supplied a laptop with a secure connection (utilized during Covid closures).
6. The bonus extension will be covered by the current staffing budget.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Pass the motion

ACTION REQUIRED / PROPOSED MOTION:

Motion to direct the Human Resources Director to draft a Memorandum of Understanding for the AFSCME Assistant County Attorney collective bargaining agreement to address understaffing



WILLIAM & MARY
LAW SCHOOL

**THE PROSECUTOR VACANCY
CRISIS**

Adam M. Gershowitz

William & Mary Law School

William & Mary Law School Research Paper No. 09-480
(FORTHCOMING)

This paper can be downloaded without charge from
the Social Science Research Network Electronic Paper Collection:

<http://ssrn.com/abstract=4666047>

The Prosecutor Vacancy Crisis

Adam M. Gershowitz*

There is a prosecutor vacancy crisis in the United States. Prosecutors are quitting in droves and there are few applicants to replace them. In Houston and Los Angeles, more than 15% of prosecutor positions are open. In Detroit, the vacancy rate exceeds 20%. In Alameda, 25% of prosecutor positions are empty. And in Miami, a staggering 33% of prosecutor positions are unfilled. The situation is equally dire in many large and small counties across the nation.

Drawing on data and interviews from more than two-dozen district attorney's offices, this article documents how low salaries, massive caseloads, the lack of remote work options, and crushing discovery burdens have caused an exodus from prosecutors' offices. Worse yet, many young lawyers no longer perceive prosecutor jobs as admirable public service. Following the murder of George Floyd, law students are more likely to believe that public defenders, rather than prosecutors, are on the side of justice.

Prosecutor vacancies are dangerous to public safety and, counter-intuitively, to criminal defendants as well. Vacancies lead to junior prosecutors having massive caseloads that they cannot handle. In turn, busy prosecutors fail to dismiss weak cases, leaving innocent defendants to languish in jail. Vacancies also result in junior prosecutors being promoted to senior positions before they are ready. And vacancies cause Brady violations because busy offices fail to provide adequate training, and individual prosecutors lack the time review their casefiles and recognize Brady material.

Many prosecutors' offices across the United States are in a state of crisis. Prosecutors are quitting in droves and there are few applicants to replace them.¹ In Houston² and Los Angeles,³ more than 15% of prosecutor positions are open. In Detroit, the vacancy rate exceeds 20%.⁴ In Alameda, 25% of prosecutor positions are empty.⁵ And in Miami, a staggering 33% of prosecutor positions are unfilled.⁶ The

* James D. & Pamela J. Penny Research Professor and Hugh & Nolie Haynes Professor of Law, William & Mary Law School.

¹ See *infra* Part III.

² See Email and accompanying chart from Elizabeth Stevens, Human Resources Director, Harris County District Attorney's Office, to Adam Gershowitz, Nov. 13, 2023.

³ See Letter from Kathryn Albracht, Los Angeles County District Attorney's Office, to Adam Gershowitz, Nov. 30, 2023.

⁴ See Kara Berg, *Michigan Prosecutors Face Staffing Crisis With Repercussions for Justice System*, THE DETROIT NEWS, Oct. 13, 2023.

⁵ See Telephone Interview with Desmond Jeffries, Alameda County District Attorney's Office, Nov. 15, 2023.

⁶ See Interview with Stephen Talpins, Chief Deputy Assistant State's Attorney, Miami-Dade County, Sept. 22, 2023.

vacancy problem is not just in large cities. In some smaller counties, more than half of the lawyers in the office have resigned.⁷

Prosecutor vacancies cause a downward spiral. The remaining prosecutors must pick up the cases of those who quit, resulting in astronomical caseloads. Prosecutors can try to mitigate the problem by dropping low-level drug cases and other quality-of-life offenses. But prosecutors' offices cannot ignore most crimes. Murders, robberies, and other violent crime must be prosecuted,⁸ regardless of whether the district attorney's office is fully staffed or 30% vacant.

With massive caseloads, prosecutors are forced to work nights and weekends to try to keep up. But this "overtime" typically does not translate into additional pay because prosecutors are salaried employees. Increased workloads for the same low pay hurts morale.⁹ In turn, more prosecutors quit their jobs and matters become even worse for those who stay. Entry-level lawyers look at this situation and decide to begin their careers elsewhere. The downward spiral feeds on itself and vacancies grow.

The prosecutor vacancy crisis is a very new problem.¹⁰ Just a few years ago, entry-level jobs in prosecution were considered desirable. While the salary for prosecutors has always been low, the tradeoff -- exceptional training and courtroom experience¹¹ -- has been worth it for many entry-level lawyers. Within a few years, many prosecutors have more trial experience than they would get in a lifetime at a civil law firm. Additionally, the frequent plea bargaining in criminal courthouses teaches prosecutors negotiation skills.¹² Entry-level prosecutors also get to know the judges, senior prosecutors and defense attorneys who make the courthouse run. With all of that valuable experience, prosecutors have long had two attractive options after a few years in the trenches: they can stay with the office and quickly be promoted to important positions, or they can take their trial skills and newfound reputation and transition into a successful criminal defense practice.

⁷ See *infra* notes Part III.D.

⁸ See Jeffrey Bellin, *Theories of Prosecution*, 108 CAL. L. REV. 1203 (2020); Daniel C. Richman & William J. Stuntz, *Al Capone's Revenge: An Essay on the Political Economy of Pretextual Prosecution*, 105 COLUM. L. REV. 583, 600 (2005).

⁹ See Mark Hayward, *Hillsborough County Loses Two of Its Special Victims Unit Prosecutors*, THE NEW HAMPSHIRE UNION LEADER, Oct. 19, 2022 (noting that caseloads and low pay caused prosecutors to quit and noting that "[a]s workload increases, you expect to be paid more.").

¹⁰ A search of the Westlaw news database from 2017 to 2020 for "prosecutor /10 shortage or vacancy" turns up almost no relevant documents. The same search for the years 2020 to 2023 turns up many dire stories.

¹¹ Ronald F. Wright & Kay L. Levine, *Career Motivations of State Prosecutors*, 86 GEO. WASH. L. REV. 1667, 1685 (2018) ("[P]rosecutors think of themselves as trial lawyers because they are in court regularly for adversarial proceedings, and gaining courtroom experience was a common motivation voiced by our interviewees who had joined their offices straight from law school."). Professors Wright and Levine did note however that most of the prosecutors they interviewed had "only a handful of trials each year." *Id.*

¹² Professors Jenny Roberts and Ron Wright have documented that entry-level public defenders receive little-to-no plea bargaining and negotiating training. See Jenny Roberts & Ronald F. Wright, *Training for Bargaining*, 57 WM. & MARY L. REV. 1445 (2016). There is no reason to think matters are different for entry-level prosecutors.

The benefits of working in prosecution have not changed in the last few years. Indeed, with short-staffing, prosecutors are now getting even more trial experience and being promoted even more quickly than before. With these high upsides, one would expect hungry, junior lawyers to jump at the chance to join the prosecutor's office. But exactly the opposite has happened.

Prosecutors' offices are receiving a fraction of the applications that they have in the past.¹³ Rather than waiting for hundreds of applications to roll in, prosecutors' offices now have to get on the road and recruit applicants. Some offices are even spending time recruiting college students in the hopes of creating a pipeline of future lawyers.¹⁴

To combat the vacancies, district attorneys' offices have pushed their appropriating bodies for salary increases. In Houston, the elected district attorney recently managed to raise starting salaries by roughly 33%.¹⁵ In Detroit, the prosecutor's union recently procured a 25% raise.¹⁶ In Miami, the elected State's Attorney also successfully lobbied for a large salary increase for prosecutors and staff.¹⁷ Yet, even with big raises, there are still large vacancies in all of those offices and many more. Prosecutor positions, it seems, are no longer desirable.

The reasons for large prosecutor vacancies vary from office to office, but there are some recurring themes. Most significantly, prosecutor salaries across the country remain comparatively low. With rapid inflation, law school loans, and a huge jump in housing prices, a salary of \$70,000 or \$75,000 does not go very far, especially in expensive cities.¹⁸

Low salaries would be tolerable for many applicants if the job came with reasonable hours and a good quality of life. But in many prosecutors' offices, the workload has skyrocketed. Some prosecutors' offices had huge caseloads before the Covid pandemic.¹⁹ And lockdowns that shuttered courthouses exacerbated the caseload problem by creating years of backlogged cases that now render dockets even bigger than before. And each time a prosecutor quits, the caseloads of the remaining prosecutors grow larger.

Discovery obligations have also exploded for prosecutors in recent years. New technology (including police body cameras; dashboard cameras; Ring doorbell footage; and, of course, cell phones) have increased the amount of discovery prosecutors must sift through. In response to *Brady* violations and wrongful convictions, multiple

¹³ See *infra* Part II.

¹⁴ See Interview with Gray Collins, Elected Commonwealth's Attorney, Colonial Heights, Virginia, Nov. 29, 2023.

¹⁵ See Interview with Kim Ogg, Elected District Attorney, Harris County, Texas, Nov. 10, 2023.

¹⁶ See Email from Maria Miller, Wayne County Prosecutor's Office, to Adam Gershowitz, Oct. 23, 2023.

¹⁷ See Talpins Interview, *supra* note 6.

¹⁸ Some prosecutors' offices are still paying entry-level salaries below \$70,000, while a few offices have managed to increase salaries to over \$80,000 and in rare instances to over \$100,000. But as Part IV.A below describes, many offices are paying salaries between \$70,000 and \$80,000.

¹⁹ See Adam M. Gershowitz & Laura R. Killinger, *The State (Never) Rests: How Excessive Prosecutor Caseloads Harm Criminal Defendants*, 105 NW. U. L. REV. 261 (2011).

states have also recently expanded their discovery laws to impose earlier and broader disclosure obligations on prosecutors.²⁰ While greater discovery is overdue for criminal defendants in some states, it does not change the fact that it has made prosecutors' jobs much more difficult. One prosecutor explained that "you've got to be a document pusher to be a prosecutor," and it is incredibly time-consuming.²¹

The pandemic also changed work expectations in ways that disadvantage prosecutors' offices. Lawyers in many fields can now work remotely, and law school graduates appear to crave that flexibility.²² But prosecutors have to be in court, not working from the comfort of their home. Almost no district attorney's office is in a position to offer flexible remote work arrangements, even when the office is fully staffed. And remote work is utterly impossible when 15%, 20% or even 30% of the prosecutor positions in the office are already vacant.

At the same time that prosecutor positions have become less attractive, the pool of available lawyers has shrunk. The number of law school graduates has declined dramatically from a decade ago.²³ On top of that, bar passage rates fell noticeably during the pandemic.²⁴ Law school graduates who fail the bar might be able to keep working in civil law firms,²⁵ but they cannot continue to work in a prosecutor's office where they need a bar license to try cases, sign pleadings, make plea offers, and do myriad other tasks.

Not only is the pool of lawyers smaller, but many law students are less willing to go into prosecution than just a few years ago. Following the murder of George Floyd in 2020, an increasing number of law students have become unreceptive to law enforcement jobs and believe the only way to "do justice" in the criminal system is to work in a public defender's office.²⁶

Vacancy problems have also been amplified in cities with newly elected progressive prosecutors. Progressive prosecutors come with a vision for change. And many existing prosecutors in the office (particularly some senior prosecutors on the management team) actively disagree with the new prosecutor's vision. The progressive prosecutor thus has to clean house and terminate some lawyers – sometimes dozens of prosecutors.²⁷ Other line prosecutors quit because they find

²⁰ See, e.g., Riley E. Clifton, *A Material Change to Brady: Rethinking Brady v. Maryland, Materiality, and Criminal Discovery*, 110 J. CRIM. L. & CRIMINOLOGY 307, 342 (2020) ("The 2013 Morton Act substantially amended the first section of Article 39.14 and added twelve additional sections.").

²¹ Interview with Wesley Wittig, Second Assistant District Attorney, Fort Bend County District Attorney's Office, Nov. 14, 2023.

²² See Colleen R. Smith, *How Fully Remote Work Has Enabled Me To Thrive in the Face of Adversity*, ABA J., Nov. 27, 2023.

²³ See Statista, available at <https://www.statista.com/statistics/428985/number-of-law-graduates-us/>

²⁴ See Karen Sloan, *U.S. Bar Exam Pass Rate Drops For First-Time Takers*, REUTERS, Feb. 28, 2023.

²⁵ See Casey Sawyer, *Big Law Associates Who Fail the Bar, What Happens to Them?* BLOOMBERG, July 20, 2016.

²⁶ See *infra* Part IV.F.

²⁷ See, e.g., Jason Tashea, *3 Days Into New Job, DA Krasner Fires 31 Staff Members*, ABA J., Jan. 5, 2018 (explaining that the newly elected progressive prosecutor fired 10% of the office's prosecutors to make "clear his intention to take the office in a different direction").

themselves in disagreement with the progressive prosecutor's new policies.²⁸ The result is dozens upon dozens of vacancies. And progressive prosecutors have to find replacements willing to tolerate low salaries, high caseloads, and massive discovery obligations. Positions thus remain empty.

The factors described above have created a perfect storm that has made it extremely difficult to staff prosecutor positions in many offices. As one senior prosecutor in Miami explained, "it will take us years to recover from this situation."²⁹

The prosecutor vacancy crisis is not simply a problem for the lawyers who work in district attorneys' offices. It is a serious problem for public safety. Faced with a huge workload, prosecutors can make mistakes on their cases that result in guilty defendants going free. In short-staffed offices, junior prosecutors are promoted to handle serious cases before they are ready.³⁰ The absence of experienced senior lawyers makes it nearly impossible to train entry-level lawyers who are joining the office. And prosecutor vacancies mean that specialized units – whether it be the family violence unit, the sexual assault division, or the anti-gang task force – are not filled because prosecutors are needed elsewhere to cover the most basic felony cases.³¹

Just as importantly (and perhaps counter-intuitively) prosecutor vacancies are terrible news for criminal defendants. Over-burdened prosecutors lack the time to promptly review their cases and figure out which defendants are actually innocent.³² Defendants thus languish in jail (and possibly lose their jobs and their ability to pay rent) while they wait for prosecutors to focus on their cases.³³ Busy prosecutors do not have enough time to investigate their cases and learn which defendants are less culpable than the police reports suggest.³⁴ Overburdened prosecutors thus fail to give out more lenient plea bargain offers in some cases. And short staffing means that prosecutors do not have the time to determine which defendants are good candidates for drug court. Worse yet, prosecutors who are flying by the seat of their pants unintentionally commit *Brady* violations because they lack the time to read the casefile closely or to communicate with police officers who are in possession of exculpatory evidence.³⁵

To explain the dire state of prosecutorial staffing, this article proceeds in five parts. Part I explains how I gathered data from more than 25 large and small prosecutors' offices across the country and how I interviewed many elected and senior prosecutors to understand what is happening in their offices. Part II describes how numerous prosecutors have identified a dramatic nationwide drop in applications. Part III then shows the bleak numbers of prosecutor vacancies. Part III describes the

²⁸ See, e.g., Jonah Owen Lamb, *Veteran Alameda County Prosecutors Depart as New DA Pushes Progressive Overhaul*, SAN. FRAN. STANDARD, Mar. 28, 2023.

²⁹ Talpins Interview, *supra* note 6.

³⁰ See *infra* note 339 and accompanying text.

³¹ See *infra* Part V.D.

³² See Gershowitz & Killinger, *supra* note 19, at 285-88.

³³ See *id.*

³⁴ See *id.*

³⁵ See *New Perspectives on Brady and Other Disclosure Obligations: Report of the Working Groups on Best Practices*, 31 CARDOZO L. REV. 1961, 1985 (2010).

situation in more than 20 offices that are suffering from huge vacancies. Part IV then explains the numerous (and often intersecting) reasons for prosecutor vacancies, including low salaries, massive caseloads, growing discovery obligations, reduced pools of law school graduates and bar passers to draw from, increased demand for remote work that prosecutors' offices cannot accommodate, reduced interest in law enforcement jobs following the murder of George Floyd, resignations and terminations due to policy disagreements with progressive prosecutors, and garden variety mismanagement by some district attorneys. Part V then details the harms caused by prosecutor vacancies, including improper handling of serious cases, promotion of inexperienced lawyers, delays in dismissing weak cases, and *Brady* violations. While the news is mostly bad, not all prosecutors' offices are in crisis.³⁶ Finally, Part VI explains why some counties are not suffering from prosecutor shortages and shows how those offices can serve as a model for reducing the vacancy crisis across the country.

I. Methodology for Understanding the Prosecutor Vacancy Problem

To understand the challenges prosecutors' offices face in hiring, I wrote to prosecutors' offices in more than 50 counties to request information about their allotted prosecutor positions and how many are vacant. I sought data from and interviews with district attorneys' offices in the 25 largest counties in the nation. Because medium-sized and small counties sometimes face different problems than large offices, I also contacted 25 small and medium-sized counties to request vacancy rates and to request interviews. When an office did not respond, I also sent multiple reminders.

Some district attorneys' offices declined to provide the information on the grounds that it amounted to personnel data. Of the 50 offices I contacted, more than 20 provided information. Some of those offices were extremely interested in shedding light on the under-staffing problem and provided lengthy interviews and detailed information. Other offices provided only basic information.

To provide a fuller picture, I canvassed recent news articles about prosecutor vacancies.³⁷ When a news story provided specific data about the number of prosecutor vacancies, I reached out to that district attorney's office to request the most current data. If the office did not reply to multiple requests for information, I relied on the vacancy data from the recent news article.

³⁶ As Professors Ron Wright and Kay Levine have explained, "place matters in prosecution research." Ronald F. Wright, Kay L. Levine, *Place Matters in Prosecution Research*, 14 OHIO ST. J. CRIM. L. 675, 677 (2017).

³⁷ Of course, it is unlikely that newspapers or television stations run stories about offices that are fully or nearly fully staffed. As such, it is certainly the case that my list of counties without staffing problems is incomplete. There are surely many additional counties without major staffing problems. This, however, does not undermine the premise of the article, which is to demonstrate (1) that many district attorney's offices are suffering from staffing problems; and (2) to identify reasons why some offices are having staffing challenges while others are not.

Because the district attorneys' offices responded to my information requests over a period of months (sometimes after multiple reminders) the responses do not reflect a snapshot of staffing on the same day. In other words, some offices provided their vacancy rates in September 2023, while others provided data from October or subsequent months. Similarly, by supplementing my data requests with news articles that were written in 2022 and 2023, the news stories do not capture an identical moment in time.

Because hiring in district attorneys' offices occurs throughout the year, reporting a vacancy at the time data is available is necessarily imprecise. An office with a 20% vacancy rate on one date might have a different vacancy rate a month later. For instance, a senior prosecutor in the Hidalgo County District Attorney's Office explained that the office had a 27% vacancy rate on November 14th, but that its vacancy rate had actually been above 30% in September. The reason was that bar results for recent law school graduates – some of whom the office hired – came out in October.³⁸ On the flip side, in some counties the vacancy rate almost surely rose from December to January when newly elected district attorneys were sworn in and when they removed prosecutors who did not share their policy views.

Accordingly, it is important to acknowledge that the numbers reported in this article would be slightly different had my information requests gone out in a different month. To deal with this reality, I have reported the most recent data available in all instances. Reporting the most recent data does not always result in reporting the highest prosecutor vacancy rate for that county over the course of the year.

Before proceeding to analyze the offices that are under-staffed and the reasons for those vacancies, I begin where the prosecutors I interviewed began: a drastic decline in applications for prosecutor positions.

II. Applications for Prosecutor Positions Are Down Dramatically

The first place to start in analyzing prosecutor vacancies is the number of applications to fill those vacancies. As explained in this Part, applications for prosecutor positions across the nation are down dramatically. In offices large and small, district attorneys are receiving far fewer applications than in the recent past. As a result, some prosecutors' offices have been forced, often for the first time, to proactively recruit applicants.

In Miami-Dade County, applications for prosecutor positions have fallen off a cliff. The Chief Deputy Assistant State's Attorney explained that when he was hired as an entry-level prosecutor in 1991 there were 2,000 applicants for a class of 23 lawyers.³⁹ The office had "could take pretty much whoever it wanted" because it was a "coveted job."⁴⁰

³⁸ See Telephone Interview with Alex Benavides, First Assistant District Attorney, Hidalgo County District Attorney's Office, Nov. 14, 2023.

³⁹ See Talpins Interview, *supra* note 6.

⁴⁰ *Id.*

The number of applicants to the Miami-Dade office has “plunged.”⁴¹ Prior to Covid, the number of applicants had declined to roughly 500 per year.⁴² By 2023, the number of applicants had fallen to approximately 300 per year.⁴³

In the 17th District of Colorado (an eighty-lawyer office that serves two counties north of Denver), the district attorney posted 10 new job openings in August 2021.⁴⁴ The District Attorney hoped that access to the outdoors and what he described as a commitment to criminal justice reform would help fill the 10 new job openings.⁴⁵ Despite the desirable location “he never received more than one or two applications for any of the positions” and they all remained unfilled as of March 2022.⁴⁶

The First Assistant District Attorney for Montgomery County, Texas (just north of Houston) offered a similar explanation. In 2016, he would post job openings with the Texas District and County Attorneys Association and receive about 200 applications.⁴⁷ In 2023, that same job posting would result in between 10 and 20 applications.⁴⁸

Small counties have also seen dramatic application drops and suffered long-term vacancies as a result.⁴⁹ The elected prosecutor in Halifax, Virginia has led a six person office for a decade.⁵⁰ When she started in the position in 2014, she would receive over 100 applications, with 30 strong prospects.⁵¹ Over time, the quantity and quality of the applicants declined. When two prosecutors coincidentally left at the same time in 2020, she received only a handful of applicants to replace them. The positions sat mostly empty for over a year.⁵²

A decade ago, the Kalamazoo County District Attorney’s Office in Michigan would receive 50 applications within 10 days of posting a prosecutor position.⁵³ Today, it “gets 10 resumes in 10 months.”⁵⁴ Worse yet, the office is caught in a cycle of continuous openings. The office will lose two attorneys, hire one person to replace them and then lose another two.⁵⁵

⁴¹ *Id.*

⁴² *See id.*

⁴³ *See id.*

⁴⁴ *See* Disha Raychaudhuri & Karen Sloane, *Prosecutors Wanted: District Attorneys Struggle to Recruit and Retain Lawyers*, REUTERS, Apr. 13, 2022.

⁴⁵ *See id.*

⁴⁶ *Id.*

⁴⁷ *See* Interview with Mike Holley, First Assistant District Attorney, Montgomery County District Attorney’s Office, Nov. 10, 2023.

⁴⁸ *See id.*

⁴⁹ *See* Telephone Interview with Tracy Martin, Elected Commonwealth’s Attorney for Halifax County, Dec. 6, 2023.

⁵⁰ *See id.*

⁵¹ *See id.*

⁵² *See id.*

⁵³ *See* Berg, *Michigan Prosecutors Face Staffing Crisis*, *supra* note 4.

⁵⁴ *Id.*

⁵⁵ *See id.*

In Pueblo, Colorado, the district attorney's office had 7 of 23 prosecutor positions unfilled in late 2021. The elected district attorney further explained that "I currently have no applicants for any of the jobs and haven't for the better part of a year."⁵⁶

Prosecutors in New York state have had the same experience. In Erie County, New York, the district attorney said "he used to have a stack of 50 or so resumes from people looking to become assistant DAs. . ." but those days are gone.⁵⁷

Matters are worse in some small offices. In Texas, prosecutor openings for some small counties have been posted for over a year without receiving a single resume.⁵⁸ In Dodge County, Wisconsin the entire office of five prosecutors quit their positions, leaving the office "pleading for applicants."⁵⁹ In another Wisconsin county (La Crosse) the office received no applications for a recent job posting in 2023.⁶⁰

Even highly prestigious offices with few or no vacancies have cited a drop in applications. For instance, the Kings County District Attorney's Office in Brooklyn, New York noted that "the total number of applications has been trending downward for the past few years."⁶¹ Nor are offices in highly desirable cities immune from the decline. In San Diego, California applications "fell 28% between 2019 and 2021."⁶²

To combat the application decline, some prosecutors have had to be even more aggressive by taking recruiting trips far from their own offices.⁶³ For instance, the Chief Deputy Assistant of Miami-Dade made recruiting trips to law schools in the metro Washington, D.C. area (including Maryland and Virginia), New York, and Puerto Rico.⁶⁴ In nearby Broward County, Florida, the district attorney's office made a recruitment video "that [they] have shared on [their] website, social media, and that [their] recruiters play on a loop at [their] recruiting table at job fairs and other events at law schools."⁶⁵

⁵⁶ Michael Karlik, *Pueblo County DA Blames 'Poisonous Attitude Toward Law Enforcement' for Staffing Shortage*, COLORADO POLITICS, Nov. 23, 2021.

⁵⁷ *Id.*

⁵⁸ See Holley Interview, *supra* note 47.

⁵⁹ Sarah Lehr, *From 'Serious' to 'Dire:' DAs Offices Across Wisconsin and the Country Are Struggling To Hire Prosecutors*, WIS. PUB RADIO, Feb. 8, 2023.

⁶⁰ See Evan Casey, *Low Pay Causes Shortage of Public Defenders, Prosecutors*, WIS. PUB. RADIO, May 2, 2023.

⁶¹ Email from Oren Yaniv, Director of Communications, Brooklyn District Attorney's Office, to Adam Gershowitz, Sept. 15, 2023.

⁶² See Raychaudhuri & Sloan, *supra* note 44.

⁶³ The National District Attorney's Association now produces a 19-page recruitment fair guide that walks prosecutors through the nuts and bolts of recruiting on law school campuses. It advises "providing light refreshments or lunch," setting up booths, creating promotional flyers, partnering with student groups, and even offers guidance on how a recruiting booth should look. See NATIONAL DISTRICT ATTORNEY'S ASSOCIATION, *COURTING LAW STUDENTS: A RECRUITMENT FAIR GUIDE FOR PROSECUTORS' OFFICES* 6, 9, 13 (2023).

⁶⁴ See Talpins Interview, *supra* note 6.

⁶⁵ See Email from Paula McMahon, Public Information Officer, Broward County State's Attorney's Office, to Adam Gershowitz, Nov. 27, 2023.

The District Attorney in Erie County, New York explained that “[i]n my 5 1/2 years here, I’ve never had to advertise for an opening. Until now.”⁶⁶ In 2022, he “put up ads in the bar association journal, on the county website and the University at Buffalo career services office.”⁶⁷ In nearby Niagara County, the district attorney had to make “the unusual request of asking to set up a recruitment table at Niagara County’s next job fair.”⁶⁸

The First Assistant District Attorney of Montgomery County, Texas explained that we “have to be more aggressive about pursuing good candidates.”⁶⁹ Even if we don’t have an opening, the Montgomery prosecutor will bring in prospective candidates to show them around the office and courthouse.⁷⁰ He seeks out speaking opportunities at conferences (such as the state prosecutor’s association) and at law schools.⁷¹ The idea is to do “reputation building” so that law students and lateral candidates will have heard good things about the office.⁷² Following that same playbook, the elected commonwealth’s attorney in a small Virginia office explained that he speaks at the same law school multiple times a year so that students get to know you and learn the good things your office is doing.⁷³

III. Some Prosecutors’ Offices Are Suffering from Huge Vacancies

Given how demanding and important a line prosecutor’s job is, any vacancy is significant. This Part focuses however on the offices that are dealing with substantial and in some cases massive vacancies.

A. Vacancies by the Numbers

Across the United States, prosecutors’ offices are dealing with huge vacancies. Large offices, mid-sized offices, and small offices are all struggling with prosecutor shortages. In some large offices, dozens of prosecutor positions are vacant. In smaller offices, vacancy rates exceed 50%. Table 1 sets forth the high vacancy rates for some large and small prosecutors’ offices.

Table 1: Prosecutors’ Offices With Large Vacancies

County	Prosecutor Positions Allocated	Prosecutor Positions Filled	Prosecutor Positions Vacant	Percentage of Prosecutor Positions Vacant

⁶⁶ Sandra Tan, *Criminal Justice Agencies Grapple With Recruitment Challenges*, BUFFALO NEWS, Aug. 1, 2022.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See Holley Interview, *supra* note 47.

⁷⁰ See *id.*

⁷¹ See *id.*

⁷² *Id.*

⁷³ See Collins Interview, *supra* note 14.

Alameda, CA ⁷⁴	185	139	46	25%
Anchorage, AK ⁷⁵	38	29	9	24%
Athens, GA ⁷⁶	17	3	14	82%
Bexar, TX ⁷⁷	237	218	19	8%
Broward, FL ⁷⁸	189	149	40	21%
Cook (Chicago), IL ⁷⁹	770	627	143	18%
Dougherty, GA ⁸⁰	16	11	5	31%
Greg, TX ⁸¹	17	6	11	65%
Harris (Houston), TX ⁸²	441	373	68	15%
Hidalgo, TX ⁸³	98	72	26	27%
Los Angeles, CA ⁸⁴	966	812	154	16%
Maricopa (Phoenix), AZ ⁸⁵	366	319	47	13%
Miami-Dade, FL ⁸⁶	349.5	230	119.5	33%
Nueces (Corpus Christi), TX ⁸⁷	44	33	11	25%
Pueblo, CO ⁸⁸	27	17	10	37%

⁷⁴ See Jeffries Interview, *supra* note 5.

⁷⁵ See *Alaska's Prosecutors Need Our Help*, STATES NEWS SERVICE, Apr. 27, 2022.

⁷⁶ See Joe Johnson, *Judge Rebukes Athens DA Blaming Him For Prosecutor Resignation*, CLASSIC CITY NEWS, Sept. 26, 2023.

⁷⁷ See Email from Bexar County District Attorney's Office Open Records Division to Adam Gershowitz, Nov. 28, 2023.

⁷⁸ See McMahon Email, *supra* note 65.

⁷⁹ The Cook County numbers are approximate. The State's Attorney's Office failed to respond to numerous requests for information. But one recent news report details that the office "had 143 vacancies. That's about 18% of all assistant state's attorney positions that the office is budgeted for." Megan Hickey, *Cook County State's Attorney Claims Resignations Not To Blame for Case Backlog*, CBS NEWS CHICAGO, Apr. 5, 2023. Another news report indicates that the office had about 770 prosecutors prior to the pandemic. See Megan Crepeau, *Her Office Hit By the Pandemic and Morale Issues, Cook County State's Attorney Kim Foxx Struggles to Keep Up With Prosecutor Exit*, CHI. TRIB., July 25, 2022. Assuming 770 allocated positions and 143 vacancies, the office would have 627 prosecutors, which amounts to a vacancy rate of 18.6%.

⁸⁰ See Alan Mauldin, *Dougherty DA's Office Struggling Backlog, Shortage of Felony Prosecutors in Taking Felony Cases to Trial*, THE ALBANY HERALD, Sept. 22, 2022.

⁸¹ See Ashlyn Anderson, *Greg County Experiencing Criminal Prosecutor Shortage*, KETK.COM, Apr. 29, 2023.

⁸² See Stevens Email, *supra* note 2.

⁸³ See Benavides Interview *supra* note 38.

⁸⁴ See Albracht Letter *supra* note 3.

⁸⁵ See Email from Debbie Mackenzie, Custodian of Records, Maricopa County Attorney's Office, to Adam Gershowitz, Sept. 18, 2023. The Maricopa office noted that "some of these positions are part-time at .5 FTE (20 hours per week) or .75 (30 hours per week)." *Id.*

⁸⁶ See Talpins Interview, *supra* note 6.

⁸⁷ See Telephone Interview with James Granberry, District Attorney, Nueces County District Attorney's Office, Nov. 20, 2023.

⁸⁸ See James Bartolo, *Pueblo DA's Office Hiring Law Students as Prosecutors in Response to Staff Shortages*, PUEBLO CHIEFTAN, Mar. 26, 2023.

St. Louis, MO ⁸⁹	58	23	35	60%
Salt Lake, UT ⁹⁰	133	118-122	21-25	16-19%
Wayne (Detroit), MI ⁹¹	163	127	36	22%
Yakima, WA ⁹²	37	31	6	16%

B. Vacancies in Large Prosecutors' Offices

As the data in Table 1 indicates, some large prosecutors' offices are suffering from huge vacancies. Maricopa County (home to Phoenix) has 47 open prosecutor positions – 13% of its office.⁹³

In Harris County -- which includes the fourth largest city in the United States (Houston), there were 68 vacancies as of November 2023 – 15% of the office.⁹⁴ In Los Angeles, 154 of the 966 prosecutor positions – 16%-- were unfilled.⁹⁵ A similar percentage of positions were open in Salt Lake City, Utah. The Salt Lake District Attorney's Office has 133 prosecutor positions.⁹⁶ But in early 2022, between 21 and 25 positions were vacant at any given time.⁹⁷ That amounts to 17% of prosecutor positions going unfilled.

Matters are equally dire in Wayne County (home to Detroit), which had 22% of its prosecutor positions vacant as of late October 2023.⁹⁸ The 22% vacancy rate in Wayne County was actually a considerable improvement over earlier in the year (likely because bar results comes out in October enabling the office to hire recent graduates). Looking back to January 2023, there were 47 vacancies in Wayne County, which amounted to 29% of prosecutor positions being vacant.⁹⁹

Florida's two largest counties also have enormous vacancy rates. In Broward County, Florida (home to Fort Lauderdale) the prosecutor vacancy rate is 21%.¹⁰⁰ And in the even larger Miami-Dade County – Florida's largest metropolitan area -- roughly one-third of the 349.5 prosecutor positions were unfilled as of late 2023.¹⁰¹

⁸⁹ See Jim Salter, *St. Louis Judges Deeply Concerned by Prosecutor Shortage*, INDEPENDENT ONLINE, May 1, 2023 (reporting that “about 23 prosecutors are left to handle thousands of cases”); Katie Kull & Erin Heffernan, *St. Louis Prosecutor's Staff Down By Nearly Half As Caseloads Jump: Seriously Underwater*, ST. LOUIS POST-DISPATCH, Mar. 6, 2023 (reporting 58 total positions).

⁹⁰ See Raychaudhuri & Sloane, *supra* note 44.

⁹¹ See Miller Email *supra* note 16.

⁹² See Email from Joseph Brusic, Elected District Attorney, Yakima County Prosecuting Attorney, to Adam Gershowitz, Nov. 20, 2023.

⁹³ See Mackenzie Email, *supra* note 85.

⁹⁴ See Stevens Email, *supra* note 2.

⁹⁵ See Albract Letter, *supra* note 3.

⁹⁶ See Raychaudhuri & Sloane, *supra* note 44.

⁹⁷ See *id.*

⁹⁸ See Miller Email, *supra* note 16.

⁹⁹ See Berg, *Michigan Prosecutors Face Staffing Crisis*, *supra* note 4.

¹⁰⁰ See McMahon Email, *supra* note 65.

¹⁰¹ See Talpins Interview, *supra* note 6.

Philadelphia did not respond to repeated requests for information, but there is ample news coverage documenting significant vacancies and turnover. According to the *Legal Intelligencer*, between April 1 and December 16 of 2022, the office lost 46 prosecutors.¹⁰² That was in addition to 115 lawyers who left between January 2021 and March 2022.¹⁰³ As of December 2022, the office was down to 282 prosecutors. Matters improved in early 2023 with the office reporting 311 prosecutors on staff.¹⁰⁴ That number still lagged the October 2021 headcount of 328 prosecutors though.¹⁰⁵

Cook County in Chicago has also suffered from major vacancy problems over the last few years. Despite repeated requests for information, Cook County never provided information on the number of allocated positions and the number of vacancies.¹⁰⁶ But news reports from April 2023 indicated that the office had 143 vacant prosecutor positions, which amounted to an 18% vacancy rate.¹⁰⁷ That percentage lines up identically with news reports indicating that the office had 770 prosecutors before the pandemic.¹⁰⁸ And the 18% vacancy rate is also consistent with the office's own website which describes it as having "600+ attorneys,"¹⁰⁹ not 770 attorneys. Moreover, numerous news reports detailing "significant attrition"¹¹⁰ and prosecutors "leaving in droves."¹¹¹

C. Vacancies in Medium-Sized Offices

The vacancy problem is not limited to large offices. Medium-sized prosecutors' offices are also suffering from hiring emergencies. For instance, in St. Louis, Missouri, the number of prosecutors dropped from 58 in 2016 to 23 in 2023.¹¹² The vacancy problem caused such a backlog that in the summer of 2023 the elected county prosecutor brought in "[a]t least eight federal prosecutors [from the U.S. Attorney's Office] . . . to help clear dozens of the city's pending homicide cases."¹¹³

In Hidalgo County, Texas, 26 of 98 positions – or 27% -- were vacant as of November 2023.¹¹⁴ The First Assistant District Attorney in Hidalgo noted however

¹⁰² See Aleeza Furman, *Philadelphia Prosecutors Struggle to Manage Caseloads as DA's Office Slows Turnover*, THE LEGAL INTELLIGENCER, Feb. 13, 2023.

¹⁰³ See *id.*

¹⁰⁴ See *id.*

¹⁰⁵ See Aleeza Furman, *Phila DA's Office Lost Over 130 Staff in 2021, Records Show*, THE LEGAL INTELLIGENCER, Dec. 7, 2021.

¹⁰⁶ Requests for information to the general email address, the media department, and the human resources department all went un-returned.

¹⁰⁷ See Hickey, *supra* note 79.

¹⁰⁸ See Crepeau, *supra* note 79.

¹⁰⁹ See COOK COUNTY STATE'S ATTORNEY'S OFFICE, ABOUT THE COOK COUNTY STATE'S ATTORNEY'S OFFICE.

¹¹⁰ Crepeau, *supra* note 79.

¹¹¹ Hickey, *supra* note 79.

¹¹² See Kull & Heffernan, *supra* note 89.

¹¹³ See Katie Kull, *US Attorney Talks About Helping St. Louis Circuit Attorney's Office, Violent Crime*, ST. LOUIS POST-DISPATCH, July 7, 2023.

¹¹⁴ See Benavides Interview, *supra* note 38.

that the vacancy rate had recently been higher. After bar exam results were released in October, the office was able to hire some recent law school graduates. A few months earlier, roughly 30 of the 91 prosecutor positions -- about one-third of the Hidalgo County District Attorney's Office -- were vacant.¹¹⁵

About 150 miles north of Hidalgo in Corpus Christi, Texas, the Nueces County District Attorney's Office has also suffered terrible vacancies. In 2022, a senior prosecutor recounted how 13 prosecutors had recently left, including a prosecutor who left for another county where she would be paid \$35,000 more.¹¹⁶ To deal with the low salaries and stop the departures, the previous district attorney proposed a deal to the county commissioners. In exchange for giving back five prosecutor positions, the county would allow the district attorney's office to use the savings from those positions to increase salaries as a way to retain current prosecutors.¹¹⁷ The district attorney left the positions vacant, but the commissioners never authorized the salary increase.¹¹⁸ When a new district attorney was appointed by the governor in late 2023 he began trying to reclaim the five positions.¹¹⁹ But as of November 2023 those five positions, as well as six others, remained empty, leaving the office with a 25% vacancy rate.¹²⁰ The district attorney explained that "we're holding the misdemeanor courts together with spit and glue."¹²¹

In Chatham County, Georgia the number of prosecutor vacancies is up and so are caseloads. In 2020, the office had 26 prosecutors devoted to felony cases. By mid-2023, there were only 12 felony prosecutors.¹²² Those prosecutors were each "shouldering about 369 active cases" and they were also responsible for 367 pending cases that had yet to be presented to the grand jury."¹²³

On the other side of the country, Yakima, Washington is experiencing similar problems. As of November 2023, the office was allocated 37 prosecutor positions and had 6 open positions -- a vacancy rate of 16%.¹²⁴ For fiscal year 2024, the county commissioners reduced the prosecutor's budget by \$175,000, which will force the district attorney to reduce the number of prosecutor positions from 37 to 35.¹²⁵

¹¹⁵ *See id.*

¹¹⁶ *See* Chase Rogers, *Nueces County DA is Down More Than a Dozen Prosecutors*, CORPUS CHRISTI CALLER TIMES, June 23, 2022. In addition to the 13 departures, the senior prosecutor warned that another 3 prosecutors were on the cusp of leaving in the near future. *See id.*

¹¹⁷ *See* Granberry Interview, *supra* note 87.

¹¹⁸ *See id.*

¹¹⁹ *See id.*

¹²⁰ *See id.*

¹²¹ *Id.*

¹²² *See Chatham County District Attorney Shortage Puts Defendants, Victims, Prosecutors in Jeopardy*, SAVANNAH MORNING NEWS, May 16, 2023.

¹²³ *Id.*

¹²⁴ *See* Brusie Email *supra* note 92.

¹²⁵ *See id.*

In Indiana in 2023, there were open prosecutor positions in 50 of the state's 92 counties.¹²⁶ In Tippecanoe County (population 187,000) there were seven open prosecutor positions.¹²⁷

D. Vacancies in Small Offices

District attorneys' offices in some small counties are also in disastrous shape. Consider Greg County, an east Texas county with a population of over 100,000 people. To be fully staffed, the Greg County District Attorney's Office is supposed to have 17 prosecutors.¹²⁸ But as of April 2023 it had only six.¹²⁹

In Dodge County, Wisconsin (population 89,000), the elected district attorney turned in his notice because all four of his assistant prosecutors were leaving the office.¹³⁰ The elected prosecutor explained that "I realized that that was going to cause me to probably commit multiple acts of malpractice just because I wouldn't have the time to properly address my cases."¹³¹ The problem was not limited to Dodge County. According to a news report, "[c]lose to 12% of Wisconsin's assistant DA jobs are vacant and turnover is high [statewide]."¹³²

In Michigan, the Attorney General had to take over running the prosecutor's office in Houghton County after the lead prosecutor – and only current prosecutor in the office -- quit in September 2023. The lead prosecutor had posted two prosecutor jobs in September 2022 and November 2022.¹³³ However as of a year later "he was unable to hire any assistant prosecutors to help him run the office."¹³⁴ Other counties in Michigan were also suffering from vacancies. A 2022 study of 28 counties by the Prosecuting Attorney's Association found that all those counties were understaffed.¹³⁵

In Halifax, Virginia, the six-person Commonwealth's Attorney's Office went through a period of more than a year in which two of the six positions were vacant.¹³⁶ During that time-period, the elected prosecutor recruited aggressively by visiting law schools, posting the jobs with the statewide prosecutor's association, and reaching out to lawyers around the state.¹³⁷ But all of those efforts resulted in only five applications in a multi-year period.¹³⁸

¹²⁶ See Maria Flora, *Statewide Attorney Shortage Puts Prosecutors in a Bind*, THE LEBANON REPORTER, Apr. 14, 2023.

¹²⁷ See *id.*

¹²⁸ See Anderson, *supra* note 81.

¹²⁹ See *id.*

¹³⁰ See Sarah Lehr, *As Wisconsin Struggles to Hire Prosecutors, One DA Resigned Because of the Workload*, NPR, Feb. 4, 2023.

¹³¹ *Id.*

¹³² *Id.*

¹³³ See Kara Berg, *Prosecutor's Resignation Leaves U.P. County With No Attorneys; AG to Take Over*, DETROIT NEWS, Oct. 1, 2023.

¹³⁴ See Berg, *Michigan Prosecutors Face Staffing Crisis*, *supra* note 4

¹³⁵ See *id.*

¹³⁶ See Martin Interview, *supra* note 49.

¹³⁷ See *id.*

¹³⁸ See *id.*

IV. The Reasons for Prosecutor Vacancies

In analyzing why there are huge prosecutor vacancies across the country it is important to recognize that each prosecutor's office has unique features. In particular, the historical culture of an office contributes to its work environment. Moreover, the values, policy choices, management style, and personality of the elected district attorney heavily impacts how the office functions. No two offices are the same and therefore it is challenging to paint with a broad brush and reach conclusions across multiple offices. Nevertheless, based on interviews and public comments from prosecutors, there are some very clear reasons why some district attorneys are having difficulty staffing their offices.

A. Low Salaries Are a Huge Hiring Challenge

Numerous district attorneys' offices pointed to low salaries as a key reason for difficulty in hiring. Prosecutors' offices lose lawyers to the private sector (which pays markedly better), and they also lose entry-level attorneys to other district attorneys' offices with higher salaries.

1. Low Prosecutor Salaries Are Not Competitive With Other Attorney Positions

While some large offices have recently managed to raise salaries, they still lag well behind the private sector. And the raises are diminished by inflation. Accordingly, on a comparative basis, prosecutor salaries remain low, particularly for recent graduates with large student loans.

In Harris County (home to Houston, Texas), the starting salary for prosecutors was only \$66,000 as of 2021.¹³⁹ The elected district attorney pushed for additional resources and in 2022¹⁴⁰ was able to raise salaries to \$88,000.¹⁴¹ While Houston has a far lower cost of living than comparable large cities, it nevertheless is still an expensive place to live if someone wants to buy a home and have a reasonable commute.¹⁴²

In Miami-Dade County the situation is even more dire. Until a few years ago, starting salaries for entry-level prosecutors were below \$50,000.¹⁴³ Recently, the office has offered a substantial percentage raise to \$68,000.¹⁴⁴ But Miami remains

¹³⁹ See Ogg Interview, *supra* note 15.

¹⁴⁰ See Dug Begley & Leah Brennan, *Extra \$7.2 Million Is OK'd for DA's Office; Funds Settling Department Dispute Aimed at Filling Positions, Boosting Prosecutor Pay*, HOUS. CHRON. Apr. 9, 2022.

¹⁴¹ See Ogg Interview, *supra* note 15.

¹⁴² See Erica Grieder, *Houston's Cost of Living Is Lower Than the National Average –and that of Most Big Cities*, HOUS. CHRON. Mar. 24, 2023; Yichen Su, *Gentrification Transforming Neighborhoods in Big Texas Cities*, SOUTHWEST ECONOMY, FOURTH QUARTER 2019.

¹⁴³ See Talpins Interview, *supra* note 6.

¹⁴⁴ See *id.*

one of the most expensive cities in the United States. To subsist on \$68,000, a prosecutor must endure a lengthy commute or live in an undesirable location. At the same time, attorneys in private practice are being paid far better. As the Chief Assistant District Attorney said in an interview, “we are being slaughtered by the private firms, businesses, and other government agencies (especially federal agencies) that pay much higher salaries than we do.”¹⁴⁵

The elected prosecutor in a small Virginia county agreed that low salaries make it extremely difficult to compete for attorneys. She explained that “there is not a prosecutor’s office that can compete with the private sector on salaries. You can make so much more working for a big corporation or hanging your own shingle.”¹⁴⁶ In Virginia (which sets a statewide base salary for prosecutors), the entry-level salary has been only about \$65,000.¹⁴⁷ In response to the dramatic downturn in applications for prosecutor jobs, Virginia raised the entry-level salary to about \$71,000 in December 2023.¹⁴⁸ But prosecutors say that salary is still too low to attract many lawyers.¹⁴⁹ As a result, elected prosecutors must advocate with their counties for additional “locality pay” to supplement the base salary and attract candidates.¹⁵⁰ Some counties have far more robust additional funds than others.¹⁵¹

Low pay for prosecutors is one of the main reasons for prosecutor vacancies in Wisconsin. Until mid-2023, prosecutors across the state were paid \$56,659 per year.¹⁵² As noted above in Part II, all four assistant prosecutors in Dodge County, Wisconsin quit, which in turn led to the elected district attorney also turning in his notice.¹⁵³ News reports indicated that vacancies were a statewide problem with nearly 12% of Wisconsin assistant prosecutor positions vacant.¹⁵⁴ In a bit of positive news, these news reports led the legislature in July 2023 to increase starting salaries to roughly \$75,000 per year.¹⁵⁵

2. Offices With Low Salaries Lose Lawyers to Nearby Offices With Higher Salaries

Some prosecutors’ offices pay better than others. And when the better paying offices are within the same state or worse yet, right down the road, lawyers choose the higher-paying positions.

¹⁴⁵ *Id.*

¹⁴⁶ Martin Interview, *supra* note 49.

¹⁴⁷ *See id.*

¹⁴⁸ *See id.*

¹⁴⁹ *See id.*

¹⁵⁰ *Id.*

¹⁵¹ *See id.*

¹⁵² See Jason Calvi, *Wisconsin Prosecutors, Public Defenders Pay Getting a Boost*, FOX6NOW.COM, July 6, 2023.

¹⁵³ See Lehr, *As Wisconsin Struggles to Hire*, *supra* note 130.

¹⁵⁴ *See id.*

¹⁵⁵ See Calvi, *supra* note 152.

In Wayne County (home to Detroit) the prosecutor's office is significantly understaffed with 22% of the prosecutor positions vacant.¹⁵⁶ The office pointed to low salaries as a major reason for vacancies, noting that "[o]ur pay rate was behind other larger prosecutors' offices in Michigan. . . [which] made it difficult to attract people to the office, and made people who wanted to remain leave because other offices had better salaries and benefits."¹⁵⁷ In September 2023, the County and the prosecutor's union agreed to a much more favorable contract terms, including a 25% wage increase (from \$60,000 to \$75,000) for entry-level hires, retention bonuses of up to \$15,000, a reduction of employee health care contributions, and free parking.¹⁵⁸ The elected prosecutor remarked that the salary increases and other benefits "will help us bring down our huge backlogs and has already attracted interest in lawyers coming and returning to our office."¹⁵⁹

In Hidalgo County, Texas, the First Assistant District Attorney pointed to low salary as the primary reason for losing prosecutors.¹⁶⁰ The entry-level starting salary in Hidalgo is around only \$69,000.¹⁶¹ Hidalgo is the seventh largest district attorney's office in Texas and has a large volume of cases.¹⁶² It has to compete for lawyers with other Texas counties, most of which pay more. For instance, in the Webb County District Attorney's Office, which has a smaller caseload due to the size of the jurisdiction, the starting salary exceeds \$75,000.¹⁶³ The First Assistant District Attorney bluntly stated that "we can't recruit and retain well with our current salaries."¹⁶⁴ Indeed, the Hidalgo First Assistant thought that the reason why attorneys are leaving the office has more to do with salary than anything else. He explained that "I think if we could better compensate them, they would be okay with the volume [of work]. I don't think volume alone is the reason people leave. It's more the pay."¹⁶⁵

Across the state in Nueces County, Texas, the District Attorney said prosecutor vacancies are primarily due to low salaries.¹⁶⁶ The entry-level salary of \$67,454 is lower than the compensation in larger Texas counties.¹⁶⁷ The District Attorney explained that "We're running a farm team for the bigger offices. We hire them and train them and then they go somewhere else to get paid better."¹⁶⁸ The lead prosecutor further noted that the county commissioners do not want to increase

¹⁵⁶ See Miller Email, *supra* note 16.

¹⁵⁷ See *id.*

¹⁵⁸ See *id.*

¹⁵⁹ *Id.*

¹⁶⁰ See Benavides Interview, *supra* note 38.

¹⁶¹ See *id.*

¹⁶² See *id.*

¹⁶³ See *id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ See Granberry Interview, *supra* note 87.

¹⁶⁷ See *id.*

¹⁶⁸ *Id.*

salaries because the junior prosecutors are going to go to Houston, Dallas, and San Antonio anyway so the commissioners think “why spend the money.”¹⁶⁹

In Colonial Heights Virginia the elected commonwealth’s attorney said – with pride – that he loses young prosecutors to higher-paying offices.¹⁷⁰ He explained that Virginia prosecutors start at a base pay of \$73,000, but that wealthier jurisdictions are free to supplement that base pay.¹⁷¹ Because Colonial Heights is a small jurisdiction (with six total prosecutors), it lacks the funds to supplement the base salary with local money.¹⁷² But nearby, and larger, Chesterfield, Virginia provides a \$15,000 to \$20,000 salary supplement to its prosecutors.¹⁷³ The Colonial Heights Commonwealth’s Attorney explained that “I can’t compete with Chesterfield. I hire young talent and they go to Chesterfield after two or three years.”¹⁷⁴ Indeed, when I interviewed the Colonial Heights Commonwealth’s Attorney in November 2023, he explained – once again, with pride -- that his deputy had just won the election to become the commonwealth’s attorney in Chesterfield and she had immediately hired half of the Colonial Heights office.¹⁷⁵

A similar problem exists on the eastern side of Virginia. The Norfolk Commonwealth’s Attorney’s Office pays a starting salary of \$73,000.¹⁷⁶ But nearby Virginia Beach pays \$82,000 and some other offices in the area pay even more.¹⁷⁷ The Norfolk Commonwealth’s Attorney explained November 2023 that he had just lost six of his prosecutors to the Suffolk office, which is only twenty miles away.¹⁷⁸ He explained that those prosecutors got \$20,000 to \$30,000 salary increases by taking jobs in the Suffolk Commonwealth Attorney’s Office.¹⁷⁹

In Oklahoma, “the most common starting salary [in 2022] for an assistant district attorney in Oklahoma [was] \$45,000 a year.”¹⁸⁰ One district attorney wrote an editorial encouraging a pay increase because “prosecutors are leaving District Attorneys’ offices in increasing numbers for the simple reason we cannot pay a competitive salary.”¹⁸¹ The district attorney further noted that Oklahoma offices could not compete with neighboring states like Arkansas and New Mexico that pay far more.¹⁸²

¹⁶⁹ *Id.*

¹⁷⁰ See Collins Interview, *supra* note 14.

¹⁷¹ See *id.*

¹⁷² See *id.*

¹⁷³ See *id.*

¹⁷⁴ *Id.*

¹⁷⁵ See *id.*

¹⁷⁶ See Telephone Interview with Ramin Fatehi, Elected Commonwealth’s Attorney in Norfolk, Virginia, Nov. 29, 2023.

¹⁷⁷ See *id.*

¹⁷⁸ See *id.*

¹⁷⁹ See *id.*

¹⁸⁰ See Matt Ballard, Opinion, *Oklahoma Will Lose Its Prosecutors If We Don’t Fund Them*, OKLAHOMAN, Apr. 3, 2022.

¹⁸¹ *Id.*

¹⁸² See *id.*

Lane County, Oregon provides an example of how low salaries can drive out junior prosecutors and how a pay raise can bring them back. Nearly a dozen prosecutors left the Lane County District Attorney's Office between November 2021 and January 2023, "with many leaving for better-paying jobs."¹⁸³ A news story reported that one attorney left for the Oregon Department of Justice, which pays better, and that other prosecutors had left for nearby county prosecutors positions which paid almost 14% higher salaries.¹⁸⁴ The elected prosecutor pushed for higher salaries, even boldly telling the media that the office might have to stop charging some non-violent felonies and misdemeanors if it could not hire and retain lawyers.¹⁸⁵ Even though the county's contract with the prosecutor's office was not up until mid-2024, the Board of Commissioners authorized a raise and improved retirement benefits in March 2023.¹⁸⁶ And by late 2023, the Lane County office was fully staffed.¹⁸⁷

Salary raises do not always solve the problem though. In Yakima, Washington the starting salary for an entry-level prosecutor was \$63,000.¹⁸⁸ In late 2022, the elected prosecutor substantially raised the starting salary substantially to \$80,100.¹⁸⁹ But as of late 2023 the office still had 16% of prosecutor positions vacant.¹⁹⁰ The elected prosecutor said that salaries are still too low to fully compete in the market.¹⁹¹ He explained that some junior lawyers will simply go to another county where they can make more money or have a lighter caseload.¹⁹²

3. Offices in Expensive Cities and No Cost-of-Living Adjustments Have Vacancy Problems

A related problem to low salaries is the lack of cost-of-living adjustments for expensive cities. Even when salaries within a state are equal, some offices still lose the war for talent because the same salary is worth more in a cheaper city. Florida provides an instructive example.

Entry-level prosecutors in Florida are paid roughly the same amount regardless of whether they are working in Miami or a rural town.¹⁹³ Yet, Miami is one of the most expensive cities in the United States.¹⁹⁴ Rent and other expenses are

¹⁸³ Makenzie Elliott, *Attorneys' Group Blames Lane County as DA Struggles to Hire, Retain Prosecutors*, REGISTER GUARD, Jan. 14, 2023.

¹⁸⁴ *See id.*

¹⁸⁵ *See id.*

¹⁸⁶ *See* Email from Patricia Perlow, Elected District Attorney, Lane County District Attorney's Office, to Adam Gershowitz, Nov. 20, 2023.

¹⁸⁷ *See id.*

¹⁸⁸ *See* Brusica Email, *supra* note 92.

¹⁸⁹ *See id.*

¹⁹⁰ *See id.*

¹⁹¹ *See id.*

¹⁹² *See id.*

¹⁹³ *See* Talpins Interview, *supra* note 6.

¹⁹⁴ *See* U.S. NEWS & WORLD REPORT, *Most Expensive Places to Live in the U.S. 2023-24*, available at <https://realestate.usnews.com/places/rankings/most-expensive-places-to-live> (listing Miami as the fourth most expensive city).

thus much higher than they would be in, for instance, Jacksonville, Florida. A cost-of-living calculator indicates that a prosecutor making \$70,000 a year in Jacksonville, Florida would have to make \$90,000 a year to have a comparable standard of living in Miami.¹⁹⁵

The Miami-Dade State's Attorney's Office recently raised the starting salary to \$68,000 a year.¹⁹⁶ Yet, according to a senior prosecutor in the Miami-Dade office, even that salary increase does not make it feasible for many starting lawyers – particularly those with student loans – to live in Miami. Some applicants “accept the job, then see the cost of the housing market, and then withdraw from the position.”¹⁹⁷

The lack of a considerable cost-of-living adjustment for expensive cities is thus one of the drivers of vacancies in the Miami-Dade office. As noted above, one-third of prosecutor positions are vacant in the Miami-Dade office. By contrast, the prosecutor's office in Palm Beach County – which has more affordable housing -- is fully staffed with 120 of 120 prosecutor positions full.¹⁹⁸

In short, both large and small district attorneys' offices lose prosecutors to other offices. In some instances, prosecutors flow from small counties to big cities that pay more, leaving smaller offices in a constant state of vacancy and re-hiring. But in other states where salaries are equal across localities, it is the larger offices that suffer the vacancy problems because entry-level lawyers accept positions in cheaper locations where their salary goes further.

4. Offices With Higher Salaries Are Better Staffed

Not all prosecutors' offices suffer from low salaries. But those offices seem to be the exception that proves the rule because the higher-salaried offices tend to be fully staffed.

In the Santa Clara County District Attorney's Office, the salary for entry-level prosecutors in Santa Clara is between roughly \$129,000 and \$135,000 per year which is markedly higher than most prosecutors' offices.¹⁹⁹ The explanation for the higher salaries is multi-faceted. First, the Santa Clara County Charter provides that “[r]ates of pay shall be fixed by the Board of Supervisors which are commensurate with those prevailing throughout the county for comparable work.”²⁰⁰ This means that salaries are set with the private sector in mind. And government workers in the county – not just prosecutors, but also public defenders – are represented by the Government Attorneys Association, which effectively negotiates salaries and other employment

¹⁹⁵ See CNN, *How Far Will My Salary Go In Another City*, available at <https://money.cnn.com/calculator/pf/cost-of-living/index.html>

¹⁹⁶ See Talpins Interview, *supra* note 6.

¹⁹⁷ *Id.*

¹⁹⁸ See Email from Marc Freeman, Public Information Office, Palm Beach County State's Attorney's Office, to Adam Gershowitz, Sept. 18, 2023.

¹⁹⁹ See Email from James Gibbons-Shapiro, Santa Clara District Attorney's Office, to Adam Gershowitz, Nov. 28, 2023.

²⁰⁰ SANTA CLARA COUNTY CHARTER, Section 709.

matters on behalf of prosecutors.²⁰¹ Not surprisingly, the Santa Clara office is nearly fully staffed.

Similarly, the starting salary for entry-level prosecutors in the San Francisco District Attorney's Office is \$114,816.²⁰² [Waiting for response on San Francisco vacancy rate. . .]

5. The High Prestige Exception to the Low Salary Problem

While low salaries is a compelling explanation for prosecutor vacancies, it does not explain the staffing situation in all offices however. Some district attorneys' offices have low salaries but are nevertheless fully staffed.

The Manhattan District Attorney's Office pays entry-level prosecutors only \$74,553 per year, yet it has few vacancies.²⁰³ And New York City is one of the most expensive places in the nation to live. Moreover, the Manhattan office often hires cream of the crop lawyers who could walk across the street to jobs at law firms paying well over \$200,000 a year. Those same entry-level prosecutors could also land positions at district attorneys' offices around the country that pay more and are located in cheaper cities. As the District Attorney's Office said in testimony to the City Council Public Safety Committee, "[the] low starting salary combined with the burdens of tremendous law school debt and the cost of living in New York City makes it extremely challenging for our offices to recruit recent law school graduates in the competitive legal labor market."²⁰⁴

How then is the Manhattan District Attorney's Office nearly fully staffed? One explanation is the geographic draw of living in New York City. Another, perhaps even more likely explanation is that the Manhattan office is widely considered to be the most prestigious state prosecutor's office in the nation.²⁰⁵ Junior prosecutors are seemingly willing to be paid less and live in tighter quarters to work in a high-profile office.

²⁰¹ See MEMORANDUM OF AGREEMENT BETWEEN COUNTY OF SANTA CLARA AND SANTA CLARA COUNTY GOVERNMENT ATTORNEYS' ASSOCIATION (2016) (40-page document detailing agreement on salary, insurance benefits, leaves, labor practices, disciplinary policy, grievance policy, and many other topics).

²⁰² See SAN FRANCISCO DISTRICT ATTORNEY'S OFFICE, JOIN OUR TEAM, available at <https://www.sfdistrictattorney.org/about-us/join-our-team/attorneys/>. The San Francisco office previously suffered from vacancies during the Chesa Boudin administration. See *infra* notes 291-92 and accompanying text. As explained in Part IV.H, progressive prosecutors often fire some (sometimes many) senior prosecutors who they believe do not agree with their vision. And some line prosecutors quit because of policy disagreements. At present however the San Francisco District Attorney's Office

²⁰³ See Email from Emily Tuttle, Deputy Communications Director, Manhattan District Attorney's Office, to Adam Gershowitz, Nov. 13, 2023.

²⁰⁴ See WRITTEN TESTIMONY: CITY COUNCIL PUBLIC SAFETY COMMITTEE, FY23 BUDGET & OVERSIGHT HEARINGS, Mar. 18, 2022, available at <https://manhattanda.org/written-testimony-city-council-public-safety-committee-fy23-budget-oversight-hearings/>

²⁰⁵ See e.g., Joshua Chaffin, *Alvin Bragg, the District Attorney Behind the Case Against Trump*, FIN. TIMES, Mar. 31, 2023 (describing Manhattan as "arguably the nation's premier law enforcement office).

The same explanation appears to hold across town for the also prestigious Brooklyn District Attorney's Office. In spite of a low starting salary of \$78,000 per year, the office is fully staffed.²⁰⁶

The Manhattan and Brooklyn offices (and perhaps a handful of other high-profile offices) are the exception that proves the rule though. For most offices, the inability to pay a competitive salary is a major obstacle to hiring all of the prosecutors they need.

B. Huge Workloads Burn Out Prosecutors and Lead Them To Quit

In addition to salary, a major reason for prosecutor burnout and attrition is the workload. Caseloads in many district attorneys' offices have been heavy for decades.²⁰⁷ But a confluence of events have made caseloads far worse in some offices over the last few years.

First, and most obviously, courtrooms, like everything else across the country, shut down during the Covid pandemic. Pending cases slowed down or even came to a halt.²⁰⁸ But crime did not stop during the pandemic. New defendants came in the door and their cases were piled on top of old cases.²⁰⁹ Backlogs grew, and years later prosecutors are still trying to dig their way out from under them.

As caseloads grew, so did frustration with the job. As a result, many prosecutors quit. Of course, when a prosecutor quits, their cases do not simply disappear. Instead, they are transferred to the remaining prosecutors in the office. Those prosecutors then each have higher caseloads than they did the day before. With each new departure, the situation grows worse.

For instance, in St. Louis, nearly half of the prosecutor position were vacant as of early 2023. The result was massive caseloads.²¹⁰ Prosecutors were forced to "often drop and refile charges because they aren't ready for trial — a maneuver they used at least a dozen times in murder cases last year."²¹¹ An experienced prosecutor described the caseload as "untenable" and "like an avalanche" and caused him to leave the office.²¹² The high caseloads in turn caused more prosecutors to quit.

²⁰⁶ See Email from Orin Yaniv, Director of Communications, Brooklyn District Attorney's Office, to Adam Gershowitz, Nov. 14, 2023.

²⁰⁷ See Gershowitz & Killinger, *supra* note 19.

²⁰⁸ Susie Neilson & Joshua Sharpe, *D.A.'s Alternative Focus for Lower-Level Crimes*, SAN. FRAN. CHRON., May 15, 2022 ("Cases are moving through the court at an incredibly slow pace . . . because the courts were shut down, and then were only partially open.").

²⁰⁹ Worse yet, backlogged cases can be more time-consuming than new cases. In older cases, defendants are often out on bond and not in a hurry to resolve their cases. Moreover, finding witnesses from older cases can be more challenging. See Email from Mike Holley, First Assistant District Attorney, Montgomery County District Attorney's Office, to Adam Gershowitz Dec. 1, 2023.

²¹⁰ See Kull & Heffernan, *supra* note 89.

²¹¹ *Id.*

²¹² *Id.*

In Baltimore, prosecutors and former prosecutors in the Marilyn Mosby administration reported that “grueling hours, large caseloads and depleted morale have driven [prosecutors] out.”²¹³

In Yakima, Washington, felony prosecutors carry upwards of 120 cases at any given time.²¹⁴ The elected prosecutor pointed to caseloads as a key problem, noting that “our caseloads are too high so some of the attorneys go to other counties.”²¹⁵ The “work/life balance” is a key issue for younger prosecutors and Yakima loses some of them because of high caseloads.²¹⁶

In Cook County (Chicago), prosecutors said that caseloads had become so high that “[y]ou now have first-chair ASAs [Assistant State’s Attorney’s] who have no time to prepare for murders because they have so many that need to be set (for trial) because they’ve been pending forever. . . . Even if you’re an experienced ASA, you’re going to get burned out if you just do trial after trial after trial.”²¹⁷ Several longtime prosecutors who would only speak on the condition of anonymity described the understaffing problem with words such as “hemorrhaging,” “unheard of” and “dumpster fire.” Due in large part to high caseloads, Cook County prosecutors “are attending what seems like an endless string of going-away parties.”

In Kalamazoo County, Michigan, “the number of pending felony cases has nearly doubled, going from 650 in 2017 to 1,150 in 2023.”²¹⁸ The elected district attorney in that county has said that as a result “[w]e have huge caseloads with attorneys trying to manage too many cases That leads to stress and burnout. That combined with the low salaries that we pay leads people to leave. And we can’t attract new people because of low starting salaries.”²¹⁹

It is not just line prosecutors who highlight excessive caseloads. Kim Ogg, the elected district attorney in Harris County (Houston) recognizes the recruiting and retention problem that huge caseloads poses:

The number one cause of our retention problems is that we do not have enough lawyers or support staff. That in turn leads to high caseloads. Caseloads have been a significant part of the problem in retaining young prosecutors. Our retention of lawyers with fewer than five years of experience is directly impacted by the unreasonable caseloads that they have. And it has an even greater negative impact on those young lawyers with children. It is very difficult to maintain a caseload of 900 cases and have young children at home. We lose good lawyers who we should not lose.²²⁰

²¹³ Lee O. Sanderlin & Alex Mann, *'A Threat to Public Safety': Staffing Shortage and Low Morale Plague Baltimore State's Attorney Marilyn Mosby's Office*, *BALT. SUN*, June 6, 2022.

²¹⁴ See Brusie Email, *supra* note 92.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Crepeau, *supra* note 79.

²¹⁸ Berg, *Michigan Prosecutors Face Staffing Crisis*, *supra* note 4.

²¹⁹ *Id.*

²²⁰ See Ogg Interview, *supra* note 15.

Worse yet, attrition resulting from huge caseloads occurs at the same time as “normal” departures. Senior prosecutors retire. Prosecutors who had always been planning to open a criminal defense firm eventually do so. Young lawyers get married and move to new cities. In short, regular attrition continues alongside caseload-based attrition. The ultimate result is massive departures from some offices.

And while caseload-based attrition and normal departures are happening, the district attorneys must look for replacements. But law school graduates and lateral attorneys are sophisticated and well networked. Those prospective hires recognize that the office’s workload is unreasonable, and so they decline to accept positions when offered or decline to even apply for positions in the first place.

C. Increasing Discovery Obligations From Body Cameras and New Statutory Obligations Have Exhausted Prosecutors

In addition to low salaries and large caseloads, multiple prosecutors’ offices identified growing discovery obligations as a reason why prosecutors are burned out and leaving their positions. The situation varies from office-to-office, but there were two main themes: (1) new statutory obligations to turn over evidence at an earlier stage are burdensome for prosecutors; and (2) recording technology such as dashcams is creating more and more material for prosecutors to review and disclose.

In 2022, the *New York Times* reported massive departures from the Manhattan, Brooklyn, Bronx, and Queens district attorneys’ offices.²²¹ In addition to pandemic burnout and low salaries, the report explained that two new discovery statutes were contributing to departures.

The *Times* explained that “[t]he first law requires prosecutors to obtain and hand over hundreds of documents on many cases, a demanding task that can impede interviewing witnesses and otherwise preparing for court.”²²² The first statute added to the amount of information that must be disclosed prior to trial – “including all electronically created or stored information relevant to a case.”²²³

The second discovery statute then “ties the handover of that material to the speedy trial clock, creating deadline pressure for prosecutors to collect all the material once charges are filed.”²²⁴ That statute requires prosecutors to obtain “reams of paperwork” from the New York City Police Department, causing “immense pressure” on prosecutors who worry that “their cases are going to get dismissed or that [the elected District Attorney is] going to fire them.”²²⁵ A former New York prosecutor explained that the discovery statutes were “difficult to comply with because there was so much we were expected to produce.”²²⁶

²²¹ See Jonah E. Bromwich, *Why Hundreds of New York City Prosecutors Are Leaving Their Jobs*, N.Y. TIMES, Apr. 4, 2022.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

The discovery burden is not just limited to New York. In Texas, the Michael Morton Act, which imposed greater discovery burdens following an exoneration, has also been time-consuming for prosecutors.²²⁷ A senior prosecutor in a mid-sized Texas county did not criticize the new discovery obligations – calling them “understandable” – but said they are “burdensome and time-consuming.”²²⁸ He went on to explain that “you’ve got to be a document pusher to be a prosecutor in Texas.”²²⁹

The recent increase in the discovery burden for prosecutors goes beyond just statutory obligations. An increasingly technological world has actually created more time-consuming discovery obligations for prosecutors across the country. Three recurring examples are body camera recordings, police dash-cam footage, and Ring doorbell footage.

As a senior Texas prosecutor explained, “there is much more video now than there used to be. That is good, but the prosecutor has to watch it.”²³⁰ In a recent murder trial, that prosecutor had to review 45 hours of video.²³¹

The elected Manhattan District Attorney offered a similar explanation, noting that “before 2020, his office used about 32 terabytes of data storage. Today, it uses 320 terabytes, a 900 percent increase over two years.”²³² In testimony to the City Council Public Safety Committee, the District Attorney’s Office explained that “[m]uch of this growth is tied to the video and digital evidence that is now part of every investigation. For example, our Body Worn Camera Unit has linked and stored more than 339,000 videos associated with investigations and cases between January 2020 and March 4, 2022.”²³³

Recording technology has also created huge discovery obligations in run-of-the-mill drunk driving cases (one of the most common criminal prosecutions) and other straightforward prosecutions. As Virginia prosecutors explained, “[t]ypically, multiple officers respond to a crime scene with body cameras rolling, leaving it to the prosecutor to sift through what can be several hours of footage when criminal charges are filed.”²³⁴ The Commonwealth’s Attorney for Arlington County, Virginia

²²⁷ One time-consuming portion of the Act involves redaction of non-discoverable parts of a document. Pursuant to the Michael Morton Act, “[i]f only a portion of the applicable document, item, or information is subject to discovery under this article, the state is not required to produce or permit the inspection of the remaining portion that is not subject to discovery and may withhold or redact that portion.” Tex. Code Crim Pro § 39.14(c). The items to be redacted include “address, telephone number, driver’s license number, social security number, date of birth, and any bank account or other identifying numbers contained in the document or witness statement.” Tex. Code Crim Pro § 39.14(f).

²²⁸ Wittig Interview, *supra* note 21.

²²⁹ *Id.*

²³⁰ Holley Interview, *supra* note 47.

²³¹ *See id.*

²³² *Id.*

²³³ TESTIMONY, *supra* note 204.

²³⁴ *See* Antonio Olivo, *Criminal Justice Changes in Virginia Prompt Debate Over How Prosecutors Are Funded By the State*, WASH. POST, July 6, 2021.

explained that “[i]t’s a crushing, crushing burden. . . You’d think that a 30-minute stop for a DUI would be 30 minutes of in-car camera video, but it’s not.”²³⁵

And then of course there are cell phones, which carry a huge amount of evidence for prosecutors to sift through. Prosecutors must ordinarily take the time to procure a warrant to search a cell phone,²³⁶ and they often need a subpoena to gather data held by third-party applications such as Snapchat.²³⁷ Once they have access to the phone and its applications, prosecutors must sift through gigabytes of data.²³⁸

The combination of new statutory discovery obligations and increased camera footage has contributed to prosecutor departures. As the Manhattan District Attorney’s Office explained, “we must both reproduce and keep tremendously more paper on every case than had been required in the past.”²³⁹ “Faced with these unprecedented evidentiary demands, we’ve experienced record attrition, as our ADAs burned out and sought less demanding jobs for more money.”²⁴⁰

D. Covid Increased Demand for Remote Work, Which Is Nearly Impossible For Prosecutors’ Offices

The Covid pandemic brought changes to the labor market. Workers across all industries began to re-examine their priorities and how hard they are willing to work.²⁴¹ Workers also realized that they preferred the opportunity to work remotely for part of the time. The legal market was no exception. Just as some restaurant workers discovered that they do not want (or need) to work grueling hours in person for low pay, some prosecutors reached the same conclusion.

According to a senior prosecutor in Montgomery County, Texas “the hours people are willing to put in got re-set by the pandemic. The work mindset has changed. Keeping prosecutors became more difficult after the pandemic.”²⁴²

The demand for more reasonable hours was particularly true among junior lawyers. One prosecutor explained that scaled down remote work during the

²³⁵ *Id.* Virginia prosecutors also pointed to the change in Virginia’s jury sentencing law as an added burden on prosecutors. Until 2020, a defendant who elected by tried by a jury in Virginia would be sentenced by that jury. Because of the perception among defendants that they could end up with a longer sentence from the jury, they were incentivized to plead guilty. The Virginia legislature amended the jury sentencing statute in 2021 to allow defendants to opt for a jury trial only at the guilt stage of the trial and to have a judge conduct sentencing. *See Rachel Weiner & Laura Vozzella, Revolutionary ‘Criminal Sentencing’ Change Passes in Virginia*, WASH. POST, Oct. 20, 2020. As a result of the statutory change, prosecutors contend that more defendants opted for jury trials rather than pleading guilty. With more trials but the same number of prosecutors, the work burden on prosecutors increased. *See* Martin Interview, *supra* note 49.

²³⁶ *See* *Riley v. California*, 573 U.S. 373 (2014).

²³⁷ *See* Holley Email, *supra* note 47.

²³⁸ *See id.*

²³⁹ TESTIMONY, *supra* note 204.

²⁴⁰ *Id.*

²⁴¹ *See* R. Jason Faberman, Andreas I. Mueller, & Aysegul Sahin, *Has the Willingness to Work Fallen During the Pandemic*, National Bureau of Economic Research Working Paper, Feb. 2022, available at https://www.nber.org/system/files/working_papers/w29784/w29784.pdf

²⁴² Holley Interview, *supra* note 47.

pandemic may have contributed to junior prosecutors leaving the field even sooner than they normally would: “Some younger attorneys never really got the courtroom experience and the experience of preparing a jury trial and handling it from beginning to end. The newer attorneys never really had the in-person trial experience. Covid caused people to get a little too relaxed” and it is difficult to re-adjust from that.²⁴³

The pandemic did not just re-set expectations about the raw number of hours lawyers are willing to work. It also clarified that lawyers prefer to work from home. In civil practice, remote work is possible and attorneys began to demand it.²⁴⁴ The market responded and many law firms – even those that pay astronomically high salaries – allowed their lawyers to work from home, at least part of the week, in order to remain competitive.²⁴⁵

Prosecutors, too, would prefer to work from home. One senior prosecutor explained that “when we interview candidates we get questions about remote positions” and the answer is always “no.”²⁴⁶ Remote work typically does not exist in prosecutors’ offices because line prosecutors are usually assigned to a particular courtroom, and that court is often in session every day. Prosecutors cannot work remotely when defendants, defense attorneys, judges, and the rest of the court staff are working in person.

The lack of remote work options has led to prosecutors’ offices losing prosecutors to civil law firms. The district attorney for a small office with a 31% vacancy rate noted that “as far as other practices of law, the ability to practice civil law, you can do far more things remotely than you can as a prosecutor or even a public defender. In the civil practice you can do a lot more remotely, at home.”²⁴⁷ A spokesperson for the Brooklyn District Attorney’s Office echoed this in noting that there is “very limited access to remote or hybrid work for government workers in New York City, a perk that is provided in many other legal firms.”²⁴⁸

That is not to say that remote work for prosecutors’ offices is impossible. In one large district attorney’s office, prosecutors are in fact permitted to work from home up to two times per week.²⁴⁹ To foster remote work, a prosecutor’s office needs to think creatively about how to cover all the court proceedings, and it must have a well-staffed office with enough lawyers. This combination is exceedingly rare, which is why remote work in prosecution is rare.

E. Decreased Pool of Prospective Prosecutors: Fewer Law School Graduates and Lower Bar Pass Rates

²⁴³ See Benavides Interview, *supra* note 38.

²⁴⁴ See Smith, *supra* note 22.

²⁴⁵ See Sara Merken, *Another U.S. Law Firm Shrinks Office Space as Hybrid Work Becomes the Norm*, REUTERS, Nov. 22, 2022.

²⁴⁶ Benavides Interview, *supra* note 38.

²⁴⁷ Mauldin, *supra* note 80.

²⁴⁸ See Yaniv, *supra* note 61.

²⁴⁹ See Interview with anonymous senior prosecutor, Oct. 2, 2023.

Most prosecutors hired at district attorneys' offices around the country are entry-level lawyers who have just graduated from law school. The reason is that more senior lawyers would typically need to take a large pay cut to go to work at the prosecutor's office. As such, any decrease in the pool of entry-level lawyers makes it harder for prosecutors' offices to fully staff their offices.

At first glance, it would seem like there should be a larger pool of new lawyers for district attorneys' offices to choose from. However, in recent years, two phenomena have combined to reduce the size of the entry-level pool: fewer law school graduates and decreased bar passage rates.

First, the number of law school graduates has hovered between 34,000 and 35,000 from 2017 to 2022.²⁵⁰ In earlier years, the number of graduates was markedly higher – roughly 37,000 in 2016, 40,000 in 2015, 44,000 in 2014, and more than 46,000 in 2013.²⁵¹ There was hope that the number of graduates would increase because law school enrollment surged by 12% in 2021.²⁵² However in 2022, enrollment declined by 11%, thus returning to about 34,000 to 35,000 graduates per year.²⁵³ As such, prosecutors must continue to draw from a smaller pool of graduates than pre-2017. As one prosecutor explained, if we had 80,000 more law school graduates over the last 10 years, we'd have plenty of lawyers applying for prosecutor jobs."²⁵⁴

Second, the percentage of graduates passing the bar has also declined. In 2020, the national bar exam pass rate for first-time bar takers was 84%.²⁵⁵ Perhaps due to the problems with online learning during the Covid pandemic,²⁵⁶ the pass rate declined over the next few years. By 2022, the first-time pass rate nationally was down to 78%.²⁵⁷

Civil law firms can continue to employ recent law school graduates who fail the bar exam. Those graduates can work under the supervision of a senior lawyer and have that attorney sign all pleadings or contracts. Indeed, civil law firms who have already invested in recruiting lawyers and paying them as summer associates may see little downside to continuing to employ recent graduates for another six months until they take the bar exam a second time.²⁵⁸

Prosecutors' offices face a different calculus however. District attorneys' offices need to be able to place a prosecutor in court and have that lawyer handle tasks. The prosecutor needs to be able to sign pleadings, make plea offers, argue motions, and handle trials. District attorneys' offices do not have the resources to assign a

²⁵⁰ See Statista, available at <https://www.statista.com/statistics/428985/number-of-law-graduates-us/>

²⁵¹ See *id.*

²⁵² See Karen Sloan, *Law School See Double-Digit Decline in New Students After Surge*, REUTERS, Dec. 19, 2022.

²⁵³ See *id.*

²⁵⁴ Fatehi Interview, *supra* note 176.

²⁵⁵ See Karen Sloan, *U.S. Bar Exam Pass Rate Drops For First-Time Takers*, REUTERS, Feb. 28, 2023.

²⁵⁶ See Stephanie Francis Ward, *Pass Rates for First-Time Takers Decrease; Are Online Classes the Cause*, ABA JOURNAL, Nov. 17, 2022.

²⁵⁷ See Sloan, *supra* note 252.

²⁵⁸ See Sawyer, *supra* note 25.

senior prosecutor to sign off on every single thing an unlicensed lawyer does. Thus, prosecutors' offices cannot carry someone who has recently failed the bar and they have to let them go.

The bar failure problem hit particularly hard in some under-staffed prosecutors' offices. Harris County (home to Houston) provides a good example. For decades, the Harris County District Attorney's office paid unlicensed law school graduates as "pre-commits" on an hourly basis until they passed the bar exam.²⁵⁹ The pay was paltry. Some recent law school graduates would work for these low wages between the time they graduated law school and the time when they officially became licensed because they were very enthusiastic about working in the prosecutor's office. But many graduates could not afford to live on this low pay, or they were simply unwilling to do so.²⁶⁰

The most recent District Attorney, Kim Ogg, poured resources into a new policy that paid unlicensed graduates as full-time employees – post-bar fellows -- who earned 95% of the salary of licensed entry-level hires.²⁶¹ Under this approach, recent law school graduates began their careers at the District Attorney's Office immediately after graduating from law school, rather than looking elsewhere and landing a different job before their bar results were posted.²⁶² The office was excited about this new initiative. Unfortunately, as in other parts of the country, there was a high failure rate for the Texas Bar Exam during the Covid pandemic.²⁶³ According to the District Attorney, many of the fellows "didn't pass the bar and we lost a significant percentage of post-bar fellows to bar exam failure."²⁶⁴ The entry-level lawyers that the District Attorney's Office was counting on to fill vacant positions never materialized.

F. Hostility to Law Enforcement Jobs Among Some Law Students and Professors

The murder of George Floyd in the summer of 2020 created "an astonishing [negative] shift in public opinion" toward law enforcement.²⁶⁵ The impact of the murder and the ensuing protests is often discussed in terms of the public's reaction to policing. However, some prosecutors have also noticed that law students and entry-level lawyers have begun to have negative attitudes toward prosecution work as well.

According to a senior prosecutor in Texas, after the summer where George Floyd was murdered "younger students increasingly seem to have the mindset that to

²⁵⁹ See Ogg Interview, *supra* note 15.

²⁶⁰ See *id.*

²⁶¹ See *id.*

²⁶² See *id.*

²⁶³ See Karen Sloan, *Big Drop in Bar Exam Rates for New York, Florida, Texas, and Elsewhere*, REUTERS, Apr. 21, 2023.

²⁶⁴ Ogg Interview, *supra* note 15.

²⁶⁵ David A. Graham, *George Floyd's Murder Changed Americans' Views on Policing*, THE ATLANTIC, May 25, 2021.

work for justice that they have to do it as a defense attorney. Students increasingly seem to believe that the system is too flawed to work as a prosecutor.”²⁶⁶ Indeed, current prosecutors sometimes are asked by their friends and family “How can you be a prosecutor?”²⁶⁷ There is a “stigma of being in prosecution.”²⁶⁸

According to an experienced prosecutor in Wisconsin “There's been so much bad publicity, around policing and the whole criminal justice system, that it doesn't appear that there are as many students even ... taking the criminal law courses and doing internships in criminal law as there used to be.”²⁶⁹

An experienced prosecutor in Virginia agreed, noting that negative sentiment toward police and prosecutors pre-dated the George Floyd murder. She explained that it “happened slowly over a period of time.”²⁷⁰ The discourse reputed among law students and law faculty went from “prosecutors are the ones who pursue justice, to prosecutors becoming the problem. Maybe there is a sense among students that you have to be mean to be a prosecutor. And the students want to be the good guy.”²⁷¹ Students who at one point might have sought careers in prosecution in the pursuit of justice might now see “The Innocence Project as the only pursuer of justice.”²⁷²

The elected progressive prosecutor in Norfolk, Virginia also pointed toward negative publicity about prosecutors but said that some of it was understandable. He explained that the public has become more distrustful of law enforcement because of exonerations and documented cases of police brutality.²⁷³ He further stated that prosecutors have been resistant to the public and the media reviewing their work and that the public has noticed.²⁷⁴ Though pointing to a different cause of public distrust, he said the result is the same: law students seem more interested in becoming public defenders than prosecutors.²⁷⁵

Other prosecutors focused less on public opinion or the the George Floyd murder and instead on the negative picture that some law schools and law professors paint of prosecutors. A senior prosecutor in Miami-Dade County noted that some, though not all, “law schools seem to discourage people from becoming prosecutors. There are negative societal attitudes toward prosecutors.”²⁷⁶ The elected district attorney in Pueblo Colorado similarly remarked that “[t]here is a resistance for young attorneys and law school graduates to go into prosecution, that had not previously existed.”²⁷⁷

²⁶⁶ Holley Interview, *supra* note 47.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ See Lehr, *From 'Serious' to 'Dire,' supra* note 59.

²⁷⁰ Martin Interview, *supra* note 49.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ See Fatehi Interview, *supra* note 176.

²⁷⁴ See *id.*

²⁷⁵ See *id.*

²⁷⁶ Talpins Interview, *supra* note 6.

²⁷⁷ Karlik, *supra* note 55.

In the Lane County District Attorney's Office, which hosted a major law school's prosecution clinic, the office had to cancel the clinic in Fall 2023 for "lack of interest."²⁷⁸ The District Attorney said the reason was that "[l]aw schools do not promote prosecution as a career."²⁷⁹

Of course, the legal academy's criticism of prosecutors is not new. Some scholars openly criticize careers in prosecution.²⁸⁰ It has been over twenty years since Professor Abbe Smith penned her provocative article "*Can You Be a Good Person and a Good Prosecutor?*," a question she answered in the negative²⁸¹ Less striking than Professor Smith's criticism of prosecutors were the opening words of her article:

Somehow, it is understood that prosecutors have the high ground. Most people simply assume that prosecutors are the good guys, wear the white hats, and are on the "right" side. Most law students contemplating a career in criminal law seem to think this. It could be that most practicing lawyers think this, as well. Prosecutors represent the people, the state, the government. This is very noble, important, and heady stuff. Prosecutors seek truth, justice, and the American way. They are the ones who stand up for the victims and would-be victims, the bullied and battered and burgled. They protect *all of us*.²⁸²

It is unclear if Professor Smith was correct in 2001 that "most" law students believed prosecutors are the good guys. Even if so, law student belief in the purity of prosecution, and their interest in those careers, seems to have declined, perhaps dramatically in recent years.

G. Disruption of Internship Pipelines Due to Covid

While some law professors do signal negative attitudes about prosecution work, law schools are still a huge pipeline to prosecutor offices. Many prosecutors' offices rely heavily on internship programs to find and vet their future employees. During Covid however, many internships moved online and some district attorneys' offices had difficulty maintaining their internship programs.

²⁷⁸ Email from Patricia Perlow, Lane County District Attorney, to Adam Gershowitz, Nov. 27, 2023.

²⁷⁹ *Id.*

²⁸⁰ See, e.g., Cynthia Godsoe, *The Place of the Prosecutor in Abolitionist Praxis*, 69 UCLA L. Rev. 164, 211 (2022) ("Prosecutors cannot execute justice within the current framework because justice cannot be done via the criminal legal system--the racism, narrative of individual blame rather than attention to structural root causes, and reactive rather than preventive stance--are all built into it. . . [T]he only way for prosecutors to contribute to a transformed system is to cede both their influence as political elites and professional experts and their material resources.").

²⁸¹ Abbe Smith, *Can You Be a Good Person and a Good Prosecutor*, 14 GEO. J. LEGAL ETHICS 355 (2001).

²⁸² *Id.* at 355-56.

A senior prosecutor in Miami-Dade County explained that their office “had a robust legal internship program” and that “we relied heavily on interns to find full-time lawyers.”²⁸³ But Covid “crashed the internship program.”²⁸⁴ The harm went beyond the online years though. The Miami prosecutor explained that when our internship program crashed, “word of mouth from law students took a hit.”²⁸⁵ He elaborated that “1Ls and 2Ls listen to older students who had good experiences. When they didn’t intern because of Covid we lost our best ambassadors.”²⁸⁶

Recognizing the importance of the law school pipeline, at least one district attorney’s office is doubling down on experiential recruiting. In Harris County, the district attorney worked with one of the Houston law schools to establish a prosecution clinic.²⁸⁷ The district attorney noted that while many law schools have innocence clinics, comparatively few have prosecution clinics, thus failing to maximize recruiting prospects.²⁸⁸

H. Policy Differences (and Resignations) Related to Progressive Prosecutors

In some prosecutors’ offices, vacancies can be directly traced to the election of progressive prosecutors. Not surprisingly, newly elected progressive prosecutors have fired or asked for the resignation of some prosecutors (often at the management level) in order to install lawyers who share their policy vision for the office.²⁸⁹ In addition, some line prosecutors quit because they disagree with the policies implemented by the new progressive prosecutor.²⁹⁰

For instance, “at least 51 lawyers at the San Francisco District Attorney’s Office . . . either left or [were] fired” between Chesa Boudin taking office in January 2020 and October 2021.²⁹¹ A San Francisco judge claimed the office “is beset by the ‘chaos’ of constant staff turnover and management reorganizations.”²⁹²

In St. Louis, there were massive departures following the election of progressive prosecutor Kim Gardener in 2017.²⁹³ Those who quit said that they had “their hands tied in trying to prosecute and punish criminals. Not surprisingly, many left for

²⁸³ Talpins Interview, *supra* note 6.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ See Ogg Interview, *supra* note 15.

²⁸⁸ See *id.*

²⁸⁹ See, e.g., *Lawyers, Top Brass Among Cuts as Krasner Trims More Than 30 Jobs From DA’s Office*, THE LEGAL INTELLIGENCER, Jan. 5, 2018.

²⁹⁰ For a more critical take on the motivations of the resignations, see Cynthia Godsoe & Maybell Romero, *Prosecutorial Mutiny*, 60 AM. CRIM. L. REV. 1403 (2023).

²⁹¹ See Bigad Shaban, Robert Campos, Jeremy Carroll & Mark Villareal, *Two SF Prosecutors Quit, Join Effort to Recall DA Chesa Boudin*, NBCBAYAREA.com, Oct. 31, 2021.

²⁹² Jaxon Van Derbeken, *SF Judge to DA Boudin: ‘Take Care of Business,’* NBCBAYAREA.COM, Sept. 29, 2021.

²⁹³ See Joel Currier, *470 Years of Experience Gone; Kimberly Gardner Has Lost More Lawyers Than She Had When She Took Office*, ST. LOUIS POST-DISPATCH, Sept. 20, 2019.

private practice, academia, or retirement.”²⁹⁴ According to Gardner, “most of those leaving were loyal to her predecessor and resistant to Gardner's reforms. . . Most of those people who left, I'm not missing them.”²⁹⁵ Regardless of whether one believes that Gardener pushed out too many prosecutors or that those who left had sour grapes about not getting their way, there is no question the number of departures were huge. Between January 2017 and September 2019 more than 65 prosecutors quit or were fired.²⁹⁶ That amounted to more prosecutors resigning or being fired than were in the office when Gardner took over.²⁹⁷

More recently, there were many attorney departures following the election of Pamela Price as the Alameda County District Attorney in California. In her first month in office, Price “put a half-dozen of the office's most experienced prosecutors on leave.”²⁹⁸ The following month, news reports indicated that, “six experienced trial prosecutors had left or given notice . . . and that more departures are coming.”²⁹⁹ One departing prosecutor explained that she was quitting because of an “office policy shift toward minimal consequences for most crimes to a lack of concern for crime victims and their families.”³⁰⁰ Once again, it is difficult to know whether blame should be laid at the feet of the new prosecutor or the departing employees. But either way, the result was fewer prosecutors on staff.

Chicago experienced a similar turn of events. Senior prosecutors in the Cook County State’s Attorney’s Office resigned in protest because they believed District Attorney Kim Foxx was too defense-oriented and did not pay enough attention to crime victims.³⁰¹ One prosecutor wrote a lengthy departure email where he explained that his policy disagreements with the State’s Attorney were the reason for his departure:

Bond reform designed to make sure no one stays in jail while their cases are pending with no safety net to handle more criminals on the streets, shorter parole periods, lower sentences for repeat offenders, the malicious and unnecessary prosecution of law enforcement officers, the overuse of diversion programs, intentionally not pursuing prosecutions for crimes lawfully on the books after being passed by our legislature and signed by a governor, all of the so-called reforms have had a direct negative impact, with consequences that will last for a generation.³⁰²

²⁹⁴ See Thomas Hogan, *The Prosecutor Exodus*, CITY JOURNAL, July 9, 2021.

²⁹⁵ Currier, *supra* note 293.

²⁹⁶ See *id.*

²⁹⁷ See Hogan, *supra* note 294.

²⁹⁸ Emilie Raguso, *Pamela Price’s First Month as DA Sees Big Moves, Leaves Many Questions*, BERKELEY SCANNER, BERKELEY SCANNER, Feb. 7, 2023.

²⁹⁹ Emilie Raguso, *A Prosecutor Said She Can’t Fulfill Her Ethical Duties Under DA Pamela Price*, BERKELEY SCANNER, Mar. 22, 2023.

³⁰⁰ *Id.*

³⁰¹ See Craig Wall, *Resigning Prosecutor Says He Has “Zero Confidence” in Cook County State’s Attorney Kim Foxx*, ABC7CHICAGO.COM, Aug. 3, 2022.

³⁰² Florian Sohnke, *Departing Cook County Prosecutor Upbraids Kim Foxx in Searing Exit Letter*, CHICAGO CONTRARIAN, May 6, 2023.

In the cases above, the terminations and noisy resignations attracted news coverage. There are likely many other unreported cases in which prosecutors were let go or quit because of disagreements with the policy preferences of newly elected district attorneys.

I. Management Problems

A final reason for huge prosecutor vacancies is garden-variety mismanagement. This category breaks down into two sub-categories. First, a prosecutor who poorly manages a fully-staffed office can drive out their lawyers. Second, a newly elected prosecutor who believes he must replace a large number of the existing prosecutors with “his own” people may be left with huge vacancies if he over-estimates how difficult it will be to replace the lawyers he fires.

1. Poor Management Leads to Quitting

When a new district attorney is elected – particularly when they come from outside the office – there is often a clash with the line prosecutors who were already working there. The clash can be particularly great when the newly elected district attorney has no prior prosecution experience. Line prosecutors complain that the new district attorney “doesn’t know what they are doing” or that (s)he is mismanaging the office. When these types of allegations are leveled, it is hard for outside observers to know whether they are true. Nevertheless, it is clear that mismanagement – whether real or only perceived – causes prosecutors to leave when a new district attorney is elected.

For example, in 2020, voters in Athens, Georgia elected a new district attorney, Deborah Gonzalez, who had previously been an entertainment lawyer.³⁰³ Shortly thereafter, prosecutors began to quit.³⁰⁴ By 2023, 14 of the 17 prosecutor positions were vacant.³⁰⁵ District Attorney Gonzalez blamed the departures on low salaries and hostility from local judges.³⁰⁶ But news reports indicated that prosecutors left for neighboring counties that actually paid less.³⁰⁷ Some prosecutors said they left because they “were unhappy with the way Gonzalez ran her office. . . [citing] Gonzalez's inexperience with criminal law as a significant reason.”³⁰⁸ Other news reports quoted former prosecutors as saying that the office was “toxic.”³⁰⁹

³⁰³ See Johnson, *supra* note 76.

³⁰⁴ See *id.*

³⁰⁵ See *id.*

³⁰⁶ See *id.*

³⁰⁷ See *id.*

³⁰⁸ *Id.*

³⁰⁹ Rebecca Lindstrom, Nick Wooten, & Meredith Sheldon, “*It’s in Crisis*” *Embattled Athens DA Faces Staffing Woes, Lawsuit*, 11ALIVE.COM, Mar. 30, 2023.

In San Francisco, the public and some line prosecutors had strong reactions to progressive prosecutor Chesa Boudin (who was subsequently recalled).³¹⁰ Some prosecutors quit because they disagreed with his new policies. But others blamed his management style. A self-described progressive line prosecutor “who has long sought alternatives to incarceration” quit because she believed Boudin was prioritizing ideology and politics over the day-to-day handling of cases, which “yielded an unorganized office, plummeting morale and bad outcomes for victims and their families.”³¹¹

2. Over-Estimating How Easy It Is To Replace Prosecutors

As described in Part V.I above, it is common for newly elected district attorneys to fire senior prosecutors at the start of their term and to install their own team. It is also common for newly elected prosecutors to terminate line prosecutors who they view as too aggressive or who vocally do not share the policy views of the new administration. Sometimes, however, the new district attorney fires more prosecutors than they can replace and the office is left with persistent and huge vacancies.

Yvonne Rosales, who was elected El Paso District Attorney in late 2020, made the mistake of firing more people than she could replace. In December 2020, a month after her election, Rosales announced that “25% of the current District Attorney's Office staff will not return when she takes over in January.”³¹² District Attorney Rosales explained that:

Every newly elected official has the opportunity to hire their own staff . . . People that they feel comfortable with, that they feel would be loyal and trustworthy and help execute the plans of the newly elected official. So, I have that opportunity. . . What I have done is nothing different than any other elected official, including the newly elected officials that were part of this election locally. Nothing different than our new president [Biden] is undergoing.³¹³

Replacing 25% of the staff would be a huge undertaking. But the terminations were not evenly distributed. Rosales terminated a far higher percentage of prosecutors than support staff. News reports indicated that the office had about 90 prosecutors and that she notified about 40 of them that they had been terminated.³¹⁴ That amounted to roughly 44% of the prosecutors in the office.

³¹⁰ See Thomas Fuller, *Voters in San Francisco Topple City's Progressive District Attorney, Chesa Boudin*, N.Y. TIMES, June 8, 2022.

³¹¹ Heather Knight, *Why a Progressive Prosecutor Just Left D.A. Chesa Boudin's Office and Joined the Recall Effort*, SAN. FRAN. CHRON., Oct. 24, 2021.

³¹² Aaron Martinez, *El Paso District Attorney's Office to Lose 25% of Staff as Yvonne Rosales Takes Post*, EL PASO TIMES, Dec. 7, 2020.

³¹³ *Id.*

³¹⁴ See *id.*

Rosales took office in January 2021. And she did not last long in the position. Critics accused Rosales of mismanaging her office, including the high-profile case where a mass shooter killed 23 people at a Wal-Mart in El Paso.³¹⁵ By August 2022, a local lawyer had filed a petition to remove her for “official misconduct and continued incompetence.”³¹⁶ In November 2022, Rosales resigned to avoid the removal proceeding. At that point, roughly two years after firing 44% of the office prosecutors, there was still a huge prosecutor vacancy. Roughly 30 of the 90 prosecutor positions were vacant.³¹⁷ Without enough prosecutors on staff, the case backlog had ballooned to over 17,000 cases.³¹⁸ And in the final months of Rosales tenure, the El Paso Public Defender’s Office was able to get hundreds of cases dismissed not because of the merits but because of inaction by the district attorney’s office.³¹⁹

V. Harms Caused By Prosecutor Vacancies

Prosecutor vacancies cause a litany of problems. Most obviously, each time a prosecutor quits, the workload for the remaining prosecutors increases and makes their lives harder. The harms go beyond the work-life balance of individual employees though. Prosecutor vacancies pose a serious danger to public safety. Prosecutors who are over-burdened by excessive caseloads make mistakes in serious felony cases. Vacancies can also lead to the premature promotion of junior prosecutors who are not yet ready to handle more complicated cases and considerable responsibility. And prosecutor vacancies lead to specialized divisions going un-staffed. Finally, and counter-intuitively, prosecutor vacancies cause hidden and serious harms to criminal defendants. This Part explains that prosecutor vacancies are not simply a matter of making a few assistant prosecutors work harder. Instead, under-staffing leads to dire consequences.

A. Practical and Legitimacy Problems for the District Attorney’s Office

Prosecutor vacancies are harmful to the district attorney’s office itself. When a prosecutor departs their position, their existing cases must be re-distributed to other prosecutors in the office. When the vacancy rate is small it is typically not burdensome for remaining prosecutors to absorb cases. But as the vacancy rate grows and the number of re-assigned cases grows, the burden on the remaining prosecutors becomes unsustainable. Prosecutors will be forced to work nights and weekends to try to keep up. As salaried employees, they will not be paid overtime in most cities. More work for the same pay harms morale.

³¹⁵ See Jolie McCollough, *Chaos Surrounding Rookie El Paso DA Yvonne Rosales Fuels Concern About Wal Mart Massacre Prosecution*, TEX. TRIB. Oct. 10, 2022.

³¹⁶ Aaron Martinez, *District Attorney Bill Hicks Making Progress on Wal Mart Case, But Case Backlog Lingers*, EL PASO TIMES, July 23, 2023.

³¹⁷ See *id.*

³¹⁸ See *id.*

³¹⁹ See *id.*

Lawyers who are firmly committed to their jobs or who have no other employment prospects will stay at the district attorney's office. But not all lawyers will stay. Prosecutors who are repeatedly asked to absorb the cases of departing prosecutors will, at some point, themselves leave the office. And with each additional departure, a downward spiral will occur that harms the legitimacy of the entire office.

Critics of the criminal legal system will not shed a tear over the mass departures. They have long advocated for "starving the beast" and would see a dramatic drop in prosecutors as a feature not a bug.³²⁰ Critics believe that fewer prosecutors will result in fewer criminal charges and fewer convictions. As explained in Part IV.B below, this may be correct. If an office becomes too under-staffed, it will eventually have no choice but to dismiss (and stop charging) some low-level drug crimes and quality of life offenses.

As a political matter however, non-prosecution can only go so far before it affects the legitimacy of the office. Most of the work of a prosecutor's office cannot be ignored.³²¹ The public will not tolerate ignoring murders, robberies, or other violent crime. Indeed, the recall of progressive prosecutor Chesa Boudin in San Francisco indicates that the public will not even tolerate decreased prosecution of property crimes. During the pandemic, a narrative took hold that the San Francisco District Attorney's Office was ignoring property crime and signaling to thieves that there were no consequences for theft.³²² Although it is disputed whether Boudin's office did in fact decrease prosecution of property crimes,³²³ the public perceived Boudin to have done so. And over 55% of the electorate in a liberal city voted to remove him from office.³²⁴

In short, the public expects the district attorney's office to prosecute not just violent crime but also property crimes. To prosecute the minimum threshold of criminal activity, the office needs enough prosecutors to do the basic work of the office. If the office becomes too under-staffed, the legitimacy of the office and the district attorney will suffer. Vacancies that in turn feed additional vacancies is therefore a serious problem for the political legitimacy of the district attorney's office.

B. Declining to Charge Legitimate Crimes and Improperly Handling Serious Cases

As described in Part IV.A above, when vacancies become large enough, it becomes impossible for prosecutors to continue to charge the same number of cases and properly handle them. A human being can only work so many hours in a day. Although district attorneys rarely acknowledge that staffing problems lead to case reductions and errors, a few chief prosecutors have been bold enough to say it.

³²⁰ See Godsoe, *supra* note 280 (advocating for a reduction in resources).

³²¹ See Richman & Stuntz, *supra* note 8, at 600.

³²² See Michael Barba, *Data Shows Chesa Boudin Prosecutes Fewer Shoplifters Than Predecessor*, S.F. EXAMINER, July 9, 2021.

³²³ See Eric Ting, *New Data Explore Chesa Boudin's Handling of San Francisco Retail Theft Cases*, S.F. GATE, Mar. 17, 2022.

³²⁴ See *San Francisco District Attorney Chesa Boudin Recalled*, 136 HARV. L. REV. 1740, 1742 (2023).

In Lane County, Oregon the district attorney’s office of 29 prosecutors was hemorrhaging lawyers in late 2022 and early 2023. As a result, the elected district attorney told the media that unless she was able to fill the vacancies her office would stop filing charges for nonviolent felonies and low-level misdemeanors, as well as dismiss some cases.”³²⁵

A district attorney in Idaho similarly highlighted the connection between prosecutor vacancies and the number of criminal charges. The Bonneville County District Attorney in Idaho “asked local law enforcement, in June, to limit arrests as multiple attorneys in her office have entered their resignations.”³²⁶ The prosecutor later clarified that the request was just to clear arrests with the district attorney’s office in advance and that “[r]est assured, those who commit crimes in Bonneville County will be prosecuted.” Nevertheless, the message was clear: at some point prosecutor vacancies impact the ability of the office to bring charges that it would otherwise bring.

And prosecutor vacancies can surely contribute to district attorneys’ offices plea bargaining cases that they otherwise would have brought to trial. As a New York district attorney explained: “We don’t get to choose the crimes that come in,’ said [Anthony] Jordan, who is the district attorney in Washington County, New York. ‘But if you don’t have enough people to prosecute them then you have to let certain ones go.’”³²⁷

Of course, it is difficult to say what the right number of criminal charges is, and I do not purport do so in this article. There are a lot of criminal statutes on the books and there are a lot of people who violate those statutes. Prosecutors have always lacked the resources to charge every possible criminal violation that police bring to them.³²⁸ Nor should they want to bring every charge. Police sometimes bring weak cases and prosecutors have equitable discretion to decline or later dismiss some charges.³²⁹ Prosecutors, defense attorneys, scholars and activists have long disagreed over the “right” number of cases to charge. This article is not the place to resolve the optimal number or types of criminal charges that prosecutors should bring. Instead, whether good or bad, I want to highlight that prosecutor vacancies lead to involuntary changes in charging.

Prosecutor vacancies not only lead to changes in the number of charges brought, they also lead to prosecutors mishandling serious cases. A prosecutor with a massive

³²⁵ Elliott, *supra* note 183.

³²⁶ Jonathan Hogan, *As Attorneys Quit, Bonneville Prosecutor Asks Police To Make Fewer Arrests*, POST-REGISTER, Aug. 10, 2023.

³²⁷ Raychaudhuri & Sloane, *supra* note 44.

³²⁸ Russell M. Gold, *Promoting Democracy in Prosecution*, 86 WASH. L. REV. 69, 84 (2011) (“Prosecutors lack sufficient resources to bring all charges supported by probable cause in all cases.”); Roger A. Fairfax, Jr., *Grand Jury Discretion and Constitutional Design*, 93 CORNELL L. REV. 703, 732 (2008) (“[There are far too many criminal laws and far too many offenders for society’s limited police, prosecutorial, judicial, and penological resources.”]).

³²⁹ See Josh Bowers, *Legal Guilt, Normative Innocence, and the Equitable Decision Not to Prosecute*, 110 COLUM. L. REV. 1655, 1700 (2010).

caseload will be inadequately prepared for some of them and make mistakes. Those mistakes can lead to guilty defendants going free.

In the last half of 2022, judges in El Paso, Texas dismissed nearly 1,000 cases³³⁰ because the district attorney's office failed to procure an indictment within 180 days of detention as required by section 32.01 of the Texas Code of Criminal Procedure.³³¹ The point of that statute is to avoid cases languishing and to ensure that defendants know the charges against them so that they can prepare their defense. The defendants in these roughly 1,000 cases were left dangling for more than six months because prosecutors lacked the time to present the cases to a grand jury and seek an indictment.

Some of the dismissed cases were quite serious. In the first batch of 100 cases that were dismissed on 32.01 grounds “[a]bout one in four of the dismissed charges were against people accused of assault family violence.”³³² When the cases were dismissed “any protective conditions imposed on someone as part of their bond were [also] removed” which potentially endangered domestic violence victims.³³³ Moreover, when family violence situations are not addressed they unfortunately sometimes escalate in severity.³³⁴

The El Paso District Attorney's Office failed to handle the cases appropriately because it lacked adequate staffing. Indeed, “the District Attorney's Office did not initially send a prosecutor to be present at the hearing” where the judge was deciding whether to dismiss the first 100 cases.³³⁵ Instead, the office sent a paralegal to court for this important hearing.³³⁶ And even then, the paralegal was late to the hearing!³³⁷ The paralegal explained that “[t]he prosecutors are slammed right now, that's why they sent me up.”³³⁸

The El Paso example is extreme, but that is why it resulted in news coverage. Every day, overburdened prosecutors across the country are almost certainly making mistakes in serious cases because their offices are under-staffed and they have too many cases. Yet, for most of those cases there will never be news stories. Some of those mistakes would occur in a fully staffed office – people are human after all. But many mistakes are the result of excessive caseloads caused by prosecutor attrition and case reassignments.

C. Promotion of Inexperienced Prosecutors Before They Are Ready

³³⁰ See Aaron J. Montes, *DA's Office Requests Funds for Attorney Positions as Rosales Steps Down, Governor Names Replacement*, KTEP.COM., Dec. 14, 2022.

³³¹ See Tex. Code Crim Pro. 32.01.

³³² Victoria Rossi, *Criminal Charges Dismissed Against 100 People for Lack of Prosecution by District Attorney*, EL PASO TIMES, Aug. 16, 2022.

³³³ *Id.*

³³⁴ See *United States v. Castleman*, 572 U.S. 157, 160 (2014) (“Domestic violence often escalates in severity over time.”).

³³⁵ Rossi, *supra* note 332.

³³⁶ See *id.*

³³⁷ See *id.*

³³⁸ *Id.*

In under-staffed offices, prosecutors are promoted very quickly.³³⁹ An attorney who might have spent a year in a misdemeanor position, may find themselves promoted to felony courtroom in only a few months. And a prosecutor who might have been the #2 prosecutor in a courtroom for a few years might be promoted to the chief prosecutor position much faster.

Rapid advancement is exciting for junior prosecutors who get to move up the ranks quickly, but it is also dangerous for the public and for criminal defendants. Prosecutors with limited experience don't know what they don't know. They have seen fewer cases, appeared in front of fewer judges, and likely know less about the penal law, the Code of Criminal Procedure, and the Supreme Court's caselaw.

Not only do junior prosecutors have less developed legal skills, they also have had less opportunity to develop inter-personal skills and life knowledge; they are less mature. Junior prosecutors are more likely to have an overly simplistic, aggressive, good versus evil view of the criminal justice system.³⁴⁰ Junior prosecutors on balance are also more likely to be overly punitive.³⁴¹ Based on interviews with hundreds of prosecutors, Professors Ron Wright and Kay Levine dubbed this "young prosecutor's syndrome."³⁴²

If junior prosecutors with less skill and knowledge are promoted too quickly to handle more serious felony cases, they are more likely to lose those cases. In St. Louis, 65 prosecutors quit or were fired and a combined 470 years of experience walked out the door during Kim Gardener's first 2 ½ years as district attorney.³⁴³ One defense attorney pointed out that an office with mostly junior lawyers is likely to lose major cases: "Quite honestly, the office is made up of rookies and that's why I think the win rate is so bad."³⁴⁴

In Philadelphia, the turnover was also massive. More than 250 lawyers left the office during Larry Krasner's first term as district attorney.³⁴⁵ The result was a much more junior office. Following the wave of departures in Philadelphia, the median attorney tenure declined from 5.7 years to 3.3 years.³⁴⁶ A former homicide prosecutor remarked that "The DA's Office is completely ill-equipped to prosecute serious cases outside a handful of prosecutors. They don't have the experience."³⁴⁷

Of course, one must always wonder about the impartiality of former employees particularly if they have policy disagreements with a new progressive prosecutor. But

³³⁹ See, e.g., *Connick v. Thompson*, 563 U.S. 51, 96 (2011) (discussing the New Orleans District Attorney's Office and noting that "[h]uge turnover' allowed attorneys with little experience to advance quickly to supervisory positions").

³⁴⁰ Ronald F. Wright & Kay L. Levine, *The Cure for Young Prosecutor's Syndrome*, 56 ARIZ. L. REV. 1065, 1081-82 (2014).

³⁴¹ See *id.* at 1082.

³⁴² *Id.* at 1081.

³⁴³ *100% Turnover in St. Louis Prosecutor's Office in 2 ½ Years*, NEWS TRIBUNE, Sept. 21, 2019.

³⁴⁴ *Id.*

³⁴⁵ See Samantha Melamed, Chris Palmer, & Dylan Purcell, *More Than 70 Lawyers Hired by DA Larry Krasner Have Left, Some Say Office Is in Disarray*, PHILA. INQ., Dec. 22, 2021.

³⁴⁶ See *id.*

³⁴⁷ *Id.*

in the Philadelphia example the claims of former prosecutors were supported by both statistical evidence and also comments from current employees. As of the end of 2021, two-thirds of the lawyers in the major crimes unit and two-thirds of the lawyers in the sexual assault unit in the Philadelphia office had graduated from law school in the past five years.³⁴⁸ One-third of lawyers in the Homicide and Non-Fatal Shootings Unit were equally junior.³⁴⁹ Some current junior prosecutors anonymously commented that “they felt ill-prepared for their jobs in high-profile units.”³⁵⁰

In addition to problems handling their own cases, lawyers who are promoted too quickly will not be in a position to train the junior prosecutors coming in behind them. As one former prosecutor said of Kim Gardener’s office in St. Louis, “you don’t have the people that are entrenched that can teach the people fresh out of law school.”³⁵¹ Lawyers in Chicago leveled similar comments after huge departures from the Cook County State’s Attorney’s Office: “The departures of veteran prosecutors and midlevel management has led to concerns about brain drain. When older attorneys leave, newer attorneys don’t get the benefit of their on-the-job guidance.”³⁵²

The examples above, unfortunately, come from offices where progressive prosecutors were elected and where they fired many line prosecutors. The problem is almost certainly not unique to progressive prosecutors though. Instead, when new progressive prosecutors come into office and replace a large number of lawyers, those attorneys are more likely to go to the media and generate news stories.³⁵³ It is certainly the case that other offices with “traditional” prosecutors have replaced senior lawyers with junior lawyers and rapidly promoted those with limited experience.

D. Specialized Units Cannot Be Staffed

Prosecutor vacancies also cause problems for staffing specialized units in district attorneys’ offices. Prosecutors’ offices are complicated organizational entities. A district attorney’s office does not simply have widgets who are all doing the identical job. In smaller offices, cases are, at a minimum, divided between misdemeanor and felony divisions. In larger offices there are numerous specialized departments, including *inter alia*, animal cruelty, appellate, automobile theft, consumer fraud, cybercrime, environmental justice, elder abuse, family violence, health care fraud, human trafficking, juvenile, narcotics, organized crime, public integrity, sex crimes, white collar, and writs.³⁵⁴

³⁴⁸ *See id.*

³⁴⁹ *See id.*

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² Crepeau, *supra* note 79.

³⁵³ *See* Godsoe & Romero, *supra* note 290.

³⁵⁴ These divisions are drawn from the Los Angeles County District Attorney’s Office. *See* LOS ANGELES COUNTY DISTRICT ATTORNEY’S OFFICE FUNCTIONAL ORGANIZATIONAL CHART, available at <https://da.lacounty.gov/sites/default/files/pdf/LADA-Org-Chart-110623.pdf>

Specialized units require specialized training. They also require having enough bodies on hand, which is not always the case when the prosecutor's office is understaffed.

According to a senior prosecutor in Miami, where one-third of prosecutor positions are vacant, the staffing crisis makes it difficult to keep "specialized units staffed because we don't have enough lawyers and we need them to be in regular courts."³⁵⁵ Indeed, the problem is so serious in Miami-Dade County that the office is leaving grant-funded positions empty. As he explained, "[w]e have grant funds for gun violence positions where prosecutors embed with the police to work with them to build better cases. One of those three grant funded positions is not filled because we cannot spare the bodies to put prosecutors there. We need bodies in front of podiums."³⁵⁶

News reports in late 2022 indicated a similar problem in Cook County, Illinois. In one of the main Chicago courthouses, there were supposed to be "two Assistant State's Attorney's for each of the 10 courtrooms, but recently at times there have been only three Assistant State's Attorneys to cover six or even seven of the courtrooms."³⁵⁷ The lack of prosecutors to cover the main courtrooms in turn prevented the office from fully staffing specialized units. According to prosecutors, there were vacancies in "Felony Review, Special Prosecutions, Civil, Sex Crimes, Juvenile, Domestic Violence and Traffic courts as well."³⁵⁸

E. Excessive Prosecutor Workloads Harm Defendants

Last, but certainly not least, prosecutor vacancies have terrible consequences for criminal defendants. Before exploring the myriad way that an under-staffed prosecutor's office harms criminal defendants it is important to set the stage and understand that prosecutor vacancies do not benefit defendants by leading district attorneys' offices to simply drop cases.

1. Vacancies Do Not Lead Prosecutors to Stop Charging

At the outset, it is important to consider the argument made in some quarters that reducing the number of prosecutors will be a net benefit to potential defendants (and to the problem of mass imprisonment) because fewer prosecutors would mean fewer cases. There is a glimmer of truth to the "starve the beast" theory. As described above in Part V.B, prosecutor shortages do lead to prosecutors dismissing or declining to charge some low-level misdemeanor cases. But those are charges at the margins.³⁵⁹ Prosecutor shortages do not lead to the gutting of misdemeanor divisions and the

³⁵⁵ Talpins Interview, *supra* note 6.

³⁵⁶ *Id.*

³⁵⁷ *Kim Foxx Faces Withering Criticism Amid High Staff Turnover at State's Attorney's Office*, NBC CHICAGO, Oct. 12, 2022.

³⁵⁸ *Id.*

³⁵⁹ *But see* Josh Bowers, *Physician Heal Thyself: Discretion and the Problem of Excessive Prosecutor Caseloads*, 106 NW. U.L. REV. COLLOQUY 143 (2011) (focusing on public order offenses as a way to reduce prosecutor caseloads).

cessation of misdemeanor charges. And dismissing some marginal misdemeanor charges does not lead to a wholesale reassignment of misdemeanor prosecutors to the felony division.

There has never been a reported instance where a district attorney has gutted its misdemeanor division to transfer their prosecutors to the felony division. Both traditional prosecutors (even those with huge staffing shortages) and progressive prosecutors have kept their misdemeanor divisions intact. The reason is that misdemeanor prosecutors are busy with a host of “politically mandatory”³⁶⁰ cases that cannot be dismissed altogether. Prosecutors’ offices cannot simply ignore drunk driving, burglary, and assault cases, even if they are denominated as misdemeanors.³⁶¹ At best, terribly high caseloads will enable busy misdemeanor prosecutors to dismiss minor drug possession charges or low-level quality of life charges in order to free them up to work on more serious misdemeanors.

The reality, quite simply, is that prosecutor vacancies exacerbate the problem of high caseloads. As explained below, those vacancies and excessive caseloads make matters worse, not better, for criminal defendants.

2. Excessive Caseloads Prevent Prosecutors from Quickly Dismissing Weak Cases

Excessive caseloads prevent overburdened prosecutors from quickly dismissing weak cases. Police sometimes arrest the wrong person. Or they arrest people for crimes that cannot be proven. Both the district attorney’s office and the defendant should want those cases dismissed as quickly as possible. The prosecutor’s office should want them off the docket so that prosecutor’s time can be re-directed to other cases rather than having needless additional hearings or time-consuming conversations with defense attorneys about cases that will ultimately be dismissed.

The defendant – who may well be in jail pending trial – wants the case dismissed so that he can see his family, get back to work, earn money to pay his rent and avoid eviction, not lose his spot in a drug treatment program, and for a hundred other reasons.

Why won’t the prosecutor quickly dismiss weak cases then? Because the prosecutor does not know which case is weak until they study it.³⁶² Many guilty defendants claim to be innocent, so prosecutors cannot simply take their word for it. If the defense attorney provides exculpatory information, the prosecutor has to follow up on it. The prosecutor has to carefully read the file, talk with witnesses, do legal research, and possibly consult with more experienced prosecutors about whether the case is viable or not.

³⁶⁰ See Jeffrey Bellin, *The Power of Prosecutors*, 94 N.Y.U. L. REV. 171, 205 (2019).

³⁶¹ Stephanos Bibas, *Sacrificing Quantity for Quality: Better Focusing Prosecutors’ Scarce Resources*, 106 NW. U.L. REV. COLLOQUY 138, 140 (2011) (“[P]rosecutors cannot simply stop prosecuting all misdemeanors; these charges help to keep our neighborhoods safe, orderly, and clean.”).

³⁶² See Gershowitz & Killinger, *supra* note 19, at 285-86.

A prosecutor who is buried under a mountain of open cases will not have time for all of the steps necessary to properly handle a case. The prosecutor will triage and instead devote most of their attention to the case that has a hearing or a trial right around the corner. Other cases – like the weak case we have been talking about – will go on the backburner. And the innocent defendant (or the defendant who might be guilty but the evidence is flimsy) will languish in jail for days or weeks longer before their case is eventually dismissed. Worse yet, if the defendant is detained for a low-level charge, he might plead guilty just to get out of jail and go home.³⁶³ In that way, excessive caseloads that cause backlogs lead to wrongful convictions.

3. Huge Caseloads Prevent Prosecutors From Recognizing Who Should Be Sent to Drug Court

Many jurisdictions have drug courts, veteran’s courts, mental health courts, or other specialty courts designed to rehabilitate non-violent offenders suffering from substance abuse or other problems. In drug court, an individual takes responsibility for their actions, goes through rehabilitation, and avoids jail time. If drug court works, it can be preferable to simply sending someone to jail.

The first step in the drug court process is typically a prosecutor referring a defendant to drug court and getting them out of the regular assembly line that is criminal court.³⁶⁴ Unfortunately, overburdened prosecutors might not have time to study a casefile closely enough to realize that a defendant would be a good candidate for drug court.³⁶⁵

Take a defendant who has been arrested multiple times for theft or prostitution. A prosecutor who only has moments to review the casefile will see the routine crimes of theft and prostitution – charges that come across their desk every day – and make a standard plea bargain offer.

If the prosecutor had time to investigate further however, she might learn that the defendant engaged in theft or prostitution to pay for their drug habit. The underlying drug problem makes the defendant a good candidate for drug court. But that will never happen unless the prosecutor has the time to recognize the drug problem and the time to make the referral. The overburdened prosecutor with a huge caseload is much more likely to just take the quicker path and slap the same standard plea offer on the file that office policy dictates for most theft or prostitution charges.

4. Excessive Caseloads Prevent Prosecutors from Recognizing Which Defendants Deserve More Generous Plea Offers

³⁶³ See *id.* at 287-88.

³⁶⁴ See Eric J. Miller, *Embracing Addiction: Drug Courts and the False Promise of Judicial Interventionism*, 65 OHIO ST. L.J. 1479, 1540 (2004) (“In most jurisdictions, the district attorney prosecuting the case makes the initial determination to divert defendants to the drug court program.”).

³⁶⁵ See Gershowitz & Killinger, *supra* note 19, at 282.

Overburdened prosecutors lack the time to determine which offenders are more culpable and which are deserving of mercy. As a result, they make suboptimal plea bargain offers. As every observer knows, the criminal justice system runs on plea bargaining.³⁶⁶ And while there is a “going rate” for many crimes, the plea bargain calculus is more complicated than simply plugging in the crime and a defendant’s criminal history and spitting out a plea offer. Prosecutors consider a host of other factors such as whether the defendant was a major player in the crime, or a follower who was minimally involved.

For instance, imagine a robbery with three defendants. Two people pointed guns at a man on the street and demanded his money while the third hung back by the getaway car. All three were arrested a few days later, and all three claim to be the one by the car without a gun. A prosecutor with enough time would review video surveillance footage from nearby stores and talk personally to witnesses. But the prosecutor is busy and she relies heavily on the police report, which makes no distinction between the three defendants. The prosecutor thus extends an identical plea offer to all three defendants because she lacks the time to do anything more nuanced.

The less culpable defendant could go to trial, where he would likely still be convicted. His best hope would be to convince the judge at sentencing that he was the guy by the car without a gun. But there’s no telling whether the judge would find that sympathetic. And, of course, pushing to trial carries the risk of the judge imposing a “trial penalty”³⁶⁷ and a greater sentence than the prosecutor’s standard plea offer. The smart move is for the defendant to plead guilty and accept the same sentence as the other two robbers, even though he is less culpable and more deserving of a sentencing break.³⁶⁸

This scenario is of course not limited to robbery cases. Overburdened prosecutors who lack the time to investigate might fail to recognize defendants who were mentally challenged or those who committed crimes because of bad life circumstances. When years of incarceration are on the line, we should want prosecutors to have the time to investigate each case carefully before defaulting to the “standard” plea offer.

5. Excessive Caseloads Lead to Unintentional Brady Violations

Ethical prosecutors with excessive caseloads commit *Brady* violations because they are simply too busy to notice exculpatory or impeachment evidence or because they lack the training to spot Brady evidence.³⁶⁹

When people think of Brady violations, their natural first reaction is to imagine prosecutors hiding evidence. For example, the classic Brady violation is a prosecutor

³⁶⁶ See *Lafler v. Cooper*, 566 U.S. 156, 170 (2012) (“[C]riminal justice today is for the most part a system of pleas, not a system of trials.”).

³⁶⁷ Michael M. O’Hear, *Plea Bargaining and Procedural Justice*, 42 GA. L. REV. 407, 419 (2008) (“[I]t is well recognized that judges routinely impose substantial penalties at sentencing on those defendants with the temerity to go to trial, sometimes doubling the punishment, or worse.”)

³⁶⁸ See Gershowitz & Killinger, *supra* note 19, at 280-81.

³⁶⁹ See *New Perspectives*, *supra* note 36, at 1985.

interviewing a witness who provides an alibi for the defendant and then burying that witness statement in a drawer where the defendant will never see it. To be sure, there are plenty of intentional Brady violations in the United States each year.³⁷⁰ But there are also accidental Brady violations that happen because of excessive prosecutor caseloads.

Let's begin with the Brady evidence that prosecutors fail to recognize because their office had no time to train them and because vacant positions and huge caseloads have re-directed supervisors to other work. Exculpatory or impeachment evidence does not come to prosecutors with a bright red sticker on it. Prosecutors must realize that evidence is favorable in order to know that they have to provide it to the defense. When a witness confesses to being the real killer, it is obvious to any sensible prosecutor that they are dealing with Brady evidence. But what about more nuanced evidence?

Consider a domestic violence victim who initially denies that her boyfriend hit her, but later acknowledges the abuse.³⁷¹ The victim's first denial is Brady evidence that must be disclosed, but junior prosecutors will likely not realize it. The average law student receives minimal Brady training in their ethics or criminal procedure classes. And if they join an overburdened prosecutor's office with little time or resources to offer training, the prosecutor may not learn much else. Perhaps the district attorney's office is structured to teach junior prosecutors about Brady evidence by having a senior lawyer in each courtroom to monitor and mentor junior lawyers. But in an overburdened office where 25% of the prosecutor positions are vacant, supervisors may be triaging cases themselves or, worse yet, the supervisor positions may be completely vacant. Junior prosecutors with minimal training and without adequate supervision make inadvertent Brady errors.³⁷²

Prosecutors also make inadvertent Brady errors because they lack the time to properly coordinate with other players in the criminal justice system. A key point to understand about the Brady doctrine is that it applies not just to evidence held by the prosecutor directly, but also to any evidence held by the prosecution team.³⁷³ Prosecutors must turn over evidence held by the police, crime laboratories, the agency that handles 911 calls, and a host of other actors in the criminal justice system.

Unfortunately, the criminal justice "system" is no system at all, but instead a "tiny jigsaw puzzle with a thousand tiny pieces in which no one is really in charge."³⁷⁴

³⁷⁰ See Brandon Garrett, Adam M. Gershowitz, & Jennifer Teitcher, *The Brady Database*, 114 J. CRIM. L. & CRIMINOLOGY __ (forthcoming 2024) (finding more than 80 Brady violations in a sample of roughly 800 cases that analyzed *Brady* claims); Jason Kreag, *Disclosing Prosecutorial Misconduct*, 72 VAND. L. REV. 297, 307 (2019) ("Despite being settled law for over fifty years, noncompliance with *Brady's* constitutional protections persists."); Vida B. Johnson, *Federal Criminal Defendants Out of the Frying Pan and into the Fire? Brady and the United States Attorney's Office*, 67 CATH. U. L. REV. 321, 364, n.49 (2018).

³⁷¹ See Gershowitz & Killinger, *supra* note 19, at 285.

³⁷² See *New Perspectives*, *supra* note 36.

³⁷³ See *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

³⁷⁴ LAWRENCE M. FRIEDMAN, CRIME AND PUNISHMENT IN AMERICAN HISTORY 461 (1993) (internal quotations omitted).

There is no one directing traffic in each case telling the police and the lab technicians to send every last scrap of paper and evidence to the prosecutor's office. Rather, the prosecutor is responsible for going out and ensuring that she has all the evidence. And that takes not just time, but also the foresight to know where to look and who in those departments to ask for it. Add to the equation that many cases are on the cusp of plea bargaining and that most jurisdictions do not require Brady evidence to be disclosed when a defendant pleads guilty.³⁷⁵ An overwhelmed prosecutor with an excessive caseload may put off dealing with searching for evidence held by other agencies since those cases may "go away" via plea bargaining anyway.

Finally, and most simply, prosecutors with excessive caseloads drop the ball on their Brady obligations because they are so busy that they fail to review their files in the leadup to trials. If a prosecutor has 200 active cases and four serious felony defendants set for different trials next week, the prosecutor has no choice but to triage.³⁷⁶ The prosecutor may pay less attention to a robbery case set 10 days in the future because the defense attorney in that case has strongly signaled that the defendant will accept an offer to plead guilty to a lesser offense. The prosecutor thus turns to the other three felony cases that are more likely to go to trial. But the robbery defendant never agrees to plead guilty. A few days before the trial date, the defense attorney calls the prosecutor and says "I guess I was wrong and that we're going to trial."

The prosecutor now has to play catch up. And he may make a mistake. In interviewing the victim again, the prosecutor may fail to recognize that the victim has made a new statement that is inconsistent with something she told the police at the crime scene. Or perhaps one of the key witnesses had a clean criminal history when the victim was originally robbed, but in the last few months that witness was arrested on theft charges. In the hectic few days before trial, the prosecutor may fail to re-run the witness's criminal history or overlook inconsistent statements, both of which are impeachment evidence that should be disclosed under the Brady doctrine.

In sum, there are numerous ways for overburdened prosecutors to commit unintentional Brady violations. In these cases, the exculpatory or impeachment evidence might have been the difference between a defendant being convicted and being acquitted. Of course, in most cases we will never know because most Brady violations never come to light.³⁷⁷ The violations remain hidden and the defendants will remain incarcerated simply because the prosecutor's office was too overburdened and under-staffed for its lawyers to recognize the Brady evidence in the first place.

IV. Not All Prosecutors' Offices Are Suffering From Vacancies

³⁷⁵ See *United States v. Ruiz*, 536 U.S. 622 (2002) (not requiring disclosure of impeachment evidence during plea bargaining); Cameron Casey, Comment, *Lost Opportunity: Supreme Court Declines to Resolve Circuit Split on Brady Obligations During Plea Bargaining*, 61 B.C. L. REV. E. SUPP. 73 (2020) (describing circuit split on the question of whether prosecutors must disclose exculpatory evidence during plea bargaining).

³⁷⁶ This example is drawn from Gershowitz & Killinger, *supra* note 19, at 283-84.

³⁷⁷ See Garrett, Gershowitz, & Teitcher, *supra* note 370.

Not every prosecutor's office in the United States is under-staffed. Some offices have vacancy rates of only a few percent. And some offices are even fully staffed. Table 2 provides a list of such offices, though it is surely under-inclusive.³⁷⁸

Table 2: Prosecutors' Offices That Are Fully or Nearly Fully Staffed

County	Prosecutor Positions Allocated	Prosecutor Positions Filled	Prosecutor Positions Vacant	Percentage of Prosecutor Positions Vacant
Fort Bend, TX ³⁷⁹	85	81	4	5%
Halifax, VA ³⁸⁰	6	6	0	0%
Kings (Brooklyn) NY ³⁸¹	510	510	0	0%
Lane, OR ³⁸²	29	29	0	0%
Manhattan ³⁸³	561	545	16	3%
Montgomery, TX ³⁸⁴	56	56	0	0%
Norfolk, VA ³⁸⁵	39	38	1	2%
Palm Beach, FL ³⁸⁶	120	120	0	0%
Santa Clara, CA ³⁸⁷	180	172	8	5%
Tarrant (Ft. Worth), TX ³⁸⁸	185	185	0	0%

Why are these offices not suffering massive prosecutor shortages? After all, most (but not all) of the offices in Table 2 pay comparable salaries to the under-staffed offices described in Part III. The answer is complicated and varies from place to place. But a common theme seems to be that these offices are still giving attorneys

³⁷⁸ As noted in Part I, I contacted only a fraction of the more than 2,000 prosecutors' offices in the nation. And news outlets typically do not write stories about offices that are fully staffed and functional.

³⁷⁹ Of the five vacancies, three were for positions that had been newly created about a month prior. See Email from Wes Wittig, Second Assistant District Attorney, Fort Bend County District Attorney's Office to Adam Gershowitz, Nov. 8, 2023.

³⁸⁰ See Martin Interview, *supra* note 49.

³⁸¹ See Yaniv Email, *supra* note 61.

³⁸² See Perlow email, *supra* note 186.

³⁸³ The Manhattan District Attorney's Office was not able to provide an exact number of allocated positions. The 561 figure represents the number of prosecutors that they had in 2019. See Email from Emily Tuttle, Deputy Director of Communications to Adam Gershowitz, Nov. 13, 2023.

³⁸⁴ See Holley Interview, *supra* note 47.

³⁸⁵ See Email from Ramen Fatehi, Norfolk Commonwealth's Attorney, to Jane Chambers, Nov. 28, 2023.

³⁸⁶ See Email from Marc Freeman, Public Information Officer, Palm Beach County State's Attorney's Office, to Adam Gershowitz, Sept. 18, 2023.

³⁸⁷ See Telephone Interview with James Gibbons-Shapiro, Santa Clara County District Attorney's Office, Oct. 2, 2023.

³⁸⁸ See Email from Anna Tinsley Williams, Communications Officer, Tarrant County District Attorney's Office, to Adam Gershowitz, Sept. 20, 2023.

something in addition to the “white hat” that comes with being on the prosecution team. Put differently, every prosecutor’s office – including the under-staffed ones – provides lawyers who prefer the prosecution side of the table to feel like they are on the side of justice.³⁸⁹ But the offices in Table 2 above seem to be providing something more than a feel good job. The something else varies by office though.

1. High Prestige Offices

Some district attorneys’ offices are able to maintain staffing based on the prestige of the office. Take the Manhattan and Brooklyn offices to start with. They both pay poorly – less than \$80,000 a year to live in one of the most expensive cities in the country. But they are both very high-prestige offices. The Manhattan District Attorney’s Office is often called the most prestigious prosecutor’s office in the nation.³⁹⁰ And Brooklyn is not far behind. Lawyers who go to work there can move up the pecking order to high prestige positions in New York or elsewhere in the country. Prosecutors who work there might not make a lot of money, but the resume value and experience are incredibly valuable.

Of course, the prestige of the Manhattan and Brooklyn offices is not to say that those offices have no problems. As the *New York Times* reported, time-consuming discovery obligations have led to a large number of prosecutor departures.³⁹¹ But the prestige of the office resulted in a robust number of applications and the office being able to offset the departures with new hires.

2. Manageable Caseloads

Some prosecutors’ offices are able to remain well-staffed because they have more manageable caseloads. For example, the Fort Bend County District Attorney’s Office in Texas is well regarded but it lacks the national reputation of Manhattan’s office. Nevertheless, it is able to remain nearly fully staffed because it has a more reasonable caseload than many offices, particularly the much larger Harris County District Attorney’s Office in neighboring Houston.

During the pandemic, the Fort Bend office fought the tide to avoid a backlog of cases. According to a senior prosecutor in that office, “we put eyes on every pending case. We asked: How old? How good? Why is it still here? We trimmed the fat. When we opened back up, we were lean and mean and ready to go.”³⁹²

Next door, the much larger Harris County District Attorney’s Office was not in the same position. Before the Covid pandemic caused a backlog of cases around the country, Harris County was already suffering from flooding caused by Hurricane

³⁸⁹ Of course, prosecutors do not have a monopoly on justice. Lawyers can certainly feel that they are pursuing justice by working in the public defender’s office. The point here is that some lawyers lean toward favoring prosecution work, just as others lean toward favoring defense work.

³⁹⁰ See Chaffin, *supra* note 205.

³⁹¹ See Bromwich, *supra* note 221.

³⁹² Wittig Interview, *supra* note 21.

Harvey in 2017. The Criminal Justice Center that housed the district attorney's office was so badly damaged that it had to be evacuated. Hurricane Harvey knocked the Harris County District Attorney's Office out of its office for five years.³⁹³ The district attorney's staff had to be scattered among seven different locations around the city.³⁹⁴ In one office building, 90 misdemeanor prosecutors worked "elbow-to-elbow; instead of being an elevator ride away from court, prosecutors are working blocks or even miles away."³⁹⁵ Harvey forced the district attorney's office to handle cases in a paper-driven format.³⁹⁶ That drove up the number of pending cases right before the Covid pandemic, which then amplified the backlog.

Of course, some lawyers were still drawn to the bustling Harris County office with its higher profile cases. But with the challenges faced by Harris County it is not hard to see why the some of the large pool of Houston lawyers made their way to the neighboring Fort Bend office.

3. Higher Salaries

One of the primary reasons for prosecutor vacancies is low salaries. But not all offices pay poorly. For instance, the starting salary for the Santa Clara County District Attorney's Office is between \$129,000 and \$135,000.³⁹⁷ Not surprisingly, the office is close to fully staffed.

Moreover, increasing salaries – even if not to a huge amount – can help to fill vacancies. In Lane County, Oregon, the office was bleeding lawyers.³⁹⁸ Prosecutors were departing for positions with the state or county prosecutor positions that paid better. The elected district attorney candidly told the press that continued vacancies would lead to the office being unable to prosecute some non-violent crimes, including felonies..³⁹⁹ The Board of Commissioners listened and authorized a pay raise, even though the county's contract with the prosecutor's office was not up yet.⁴⁰⁰ As a result of the pay raise, the office is now fully staffed.⁴⁰¹

4. Remote Work Options

Another major reason for prosecutor attrition was the post-Covid desire for remote work options. As explained in Part IV.E above, most district attorneys' offices are not able to allow remote working. A substantial part of a prosecutor's job is to appear in court, and courts operate in person.

³⁹³ See Ogg Interview, *supra* note 15.

³⁹⁴ See Brian Rogers, 'Harvey Deals' The New Normal; Makeshift Hearings Held as Flood-Damaged Courthouse Is Repaired, HOUS. CHRON., Nov. 14, 2017.

³⁹⁵ *Id.*

³⁹⁶ *See id.*

³⁹⁷ See Gibbons-Shapiro Email, *supra* note 199.

³⁹⁸ See Elliott, *supra* note 183.

³⁹⁹ *See id.*

⁴⁰⁰ See Perlow Email, *supra* note 186..

⁴⁰¹ *See id.*

At least one well-staffed prosecutor's office has allowed remote work however. In one large county, prosecutors are permitted to work at home up to two days per week.⁴⁰² This office also has a higher salary than most district attorneys' offices. A senior prosecutor explained that "the combination of good salary plus work at home options is a big seller to prospective hires."⁴⁰³

5. Positive Office Culture and Mission

Finally, multiple offices that were fully staffed pointed to their positive work environment as a reason. One prosecutor explained that "we offer an environment that is good for growth, camaraderie, professional development. It's an enjoyable place to work. We don't tolerate god complexes. We're small enough to know each other's names. If we were larger we'd have a hard time doing that. At the same time, we're modern and progressive."⁴⁰⁴

A prosecutor in another fully staffed office explained that maintaining a positive environment is something the senior management prosecutors consciously work on. "You have to be very intentional about hiring lawyers who will work to build a good community."⁴⁰⁵ The prosecutor elaborated that it is "very dangerous to lower standards. If you wouldn't have taken an applicant in the past, you can't take them now because you need a person in the spot. You don't want to hire people who create problems by cutting corners."⁴⁰⁶

A Virginia prosecutor also pointed to office culture and training as crucial for attracting young attorneys. He noted that because some nearby offices pay higher salaries, we are "never going to win on money. I have to win on work environment and training. A major part of people applying to us is our reputation."⁴⁰⁷

Relatedly, a progressive prosecutor pointed toward the office's reform mission as a basis for attracting lawyers. The prosecutor explained that "Hillary Clinton and Donald Trump are both politicians, but they are not the same person. Similarly, all prosecutors and prosecutors' offices are not the same from place to place."⁴⁰⁸ That progressive prosecutor said he was able to staff his office because my very public progressive prosecutor stances has helped me to attract applicants who would not work in other offices."⁴⁰⁹

Prosecutors who highlighted office culture said that it can be the difference that attracts an applicant who might have gone to another district attorney's office. Of course, there is likely a Lake Wobegon effect when it comes to office culture.⁴¹⁰ Many employers (including many prosecutor offices) likely think that their office

⁴⁰² See Interview with Anonymous Prosecutor, Oct. 2, 2023.

⁴⁰³ *Id.*

⁴⁰⁴ Wittig Interview, *supra* note 21.

⁴⁰⁵ Holley Interview, *supra* note 47.

⁴⁰⁶ *Id.*

⁴⁰⁷ Collins Interview, *supra* note 14.

⁴⁰⁸ Fatehi Interview, *supra* note 176.

⁴⁰⁹ *Id.*

⁴¹⁰ See GARRISON KEILLOR, LAKE WOBEGON DAYS (1985).

environment is better than their peers. Determining which offices are correct is not always easy.

Conclusion

Many prosecutors' offices around the country are suffering from massive vacancies. In Houston and Los Angeles, roughly 15% of prosecutor positions are vacant. In Detroit 22% of prosecutor position are unfilled. In Miami, 33% of prosecutor positions are open. And that is after all of those offices raised salaries dramatically.

Matters are worse in some smaller offices. In St. Louis, the prosecutor vacancy rate exceeded 60% this year. In Athens, Georgia, the district attorney's office was missing 84% of its prosecutors. And in one small Wisconsin every one of the five prosecutor positions was empty – not only was there no prosecutor steering the ship, there was no one even on it.

In some instances, bad management explains why prosecutors quit. But more often, low salaries and huge caseloads explain the attrition. While salaries vary around the country, entry-level prosecutors are typically paid in the neighborhood of \$70,000. In exchange, many prosecutors are asked to handle hundreds of cases and work relentlessly with no relief on the horizon. Not only can these prosecutors make more money in private practice, they can also work remotely in other legal jobs, something that the prosecutor's office is unlikely to ever offer again in the post-Covid crisis. Prosecutors therefore quit for greener pastures.

District attorneys' offices are constantly searching for replacement prosecutors. But applications are down dramatically across the nation. Even prestigious district attorneys' offices and offices located in beautiful cities are experiencing a drop in applications. In part, this is due to lower law school enrollment and lower bar passage rates. But it is also due to reduced interest in prosecutor positions than in the recent past. Following the murder of George Floyd, students have gravitated away from law enforcement work, believing that to be on the side of justice they must work as public defenders, not prosecutors.

Without the ability to replace vacancies, some offices are forced into a downward spiral. Prosecutors quit because they have too many cases. When they quit their work is re-assigned to existing prosecutors who will now have even higher caseloads. Some of those prosecutors eventually quit. And the vacancy problem grows larger and harder to dig out of.

In the meantime, over-burdened prosecutors cannot effectively handle their cases. Guilty defendants go free. Junior prosecutors who are not ready for prime time are promoted to senior positions. Fewer experienced prosecutors are left to train entry-level lawyers. And there are not enough prosecutors to staff specialized divisions like the family violence unit or the gang violence division.

Prosecutor vacancies also pose disastrous problems for criminal defendants. Overwhelmed prosecutors lack the time to promptly dismiss weak cases, leaving innocent defendants to languish in jail for days or weeks longer than necessary. Busy prosecutors do not have the time to investigate the nuances of their cases, which

prevents them from offering more generous plea deals to less culpable defendants. And prosecutors who are under-water fail to notice favorable evidence that should be disclosed to defendants under the Brady doctrine.

In short, the prosecutor staffing crisis is bad for the prosecutors who work in the system and for the district attorneys' offices that should be protecting the public. And prosecutor vacancies are nothing short of a disaster for the innocent and less culpable defendants who are caught up in the criminal justice system.

The news is not all bad though. Some prosecutors' offices are functioning at full capacity. These offices are able to attract lawyers because they have higher salaries or more manageable caseloads, or both. Other offices draw lawyers because of their prestige. And still other offices are able to attract applicants because the camaraderie and positive culture are palpable. These offices can be a guide star for district attorneys' offices that are struggling with vacancies.

Salary increases are a key starting point. While myriad problems have contributed to the prosecutor vacancy problem, low salaries are likely the biggest factor. Once a district attorney's office is able to raise salaries, neighboring counties can argue to their appropriating bodies that they also need a salary increase to compete for talent. In Texas, Harris County recently raised salaries to \$88,000 for entry-level lawyers. Most Texas counties do not pay \$80,000, and some still pay less than \$70,000. There is hope – or at least an argument – that the rising tide in Houston should lift boats elsewhere in the state.

In addition to higher base salaries, there are other financial tools to deal with the vacancy problem. Cost-of-living adjustments for expensive metropolitan cities are important. When an entry-level lawyer looks at housing prices in an expensive city and a cheaper city and sees that the salary is the same in both locations, she is drawn to the cheaper city. Therefore, it is not surprising, for example, that Miami is suffering from a 33% vacancy rate while Palm Beach County is fully staffed. Florida (and other states) should institute a reasonable cost-of-living adjustment to help expensive cities reduce their vacancy rate.

Prosecutors' offices should also provide enhanced retirement benefits to attract lawyers. The Lane County District Attorney's Office filled vacancies by increasing salaries and by moving its prosecutors into the more attractive retirement plan previously reserved for police officers and fireman.⁴¹¹ This enabled prosecutors to vest for retirement after 25 years of services, rather than 30 years.⁴¹² Offering enhanced retirement options might even serve to attract more senior lawyers who ordinarily would not be enticed by salaries that are far below the private sector.

Counties should also invest in technology and support staff to meaningfully reduce the burden placed on prosecutors by the crushing demands of complying with discovery obligations. We live in a digital world, and district attorneys' offices should be able to provide most discovery electronically without having to reproduce paper

⁴¹¹ See Perlow Email of Nov. 20, *supra* note 186.

⁴¹² See Email from Patricia Perlow, Elected Lane County District Attorney, to Adam Gershowitz, Nov. 28, 2023.

records. And district attorneys' offices need staff – non-lawyers – who can help sift through body camera footage and other recordings that are bogging down prosecutors.

Spending money is necessary to solve the prosecutor vacancy problem, but it cannot be the only answer and it cannot be one-sided. Appropriating bodies must still provide equivalent funding to public defender's offices.

State legislatures and the public must do their part as well. Legislatures should enhance loan forgiveness programs to further incentivize public-interest careers. They should also re-examine low-level misdemeanor statutes to see what crimes can be decriminalized and taken off the district attorney's plate. And the public should read the news coverage to learn whether their local prosecutors (and public defenders) are being adequately funded.

Finally, prosecutors themselves bear responsibility for solving the vacancy problem. When new prosecutors are elected – whether they be progressive or “traditional” – they should be cognizant about only firing the number of prosecutors that they can plausibly replace in a timely fashion. Additionally, prosecutors must create an office culture where lawyers feel supported and want to come to work. The data and interviews in this article demonstrate that entry-level lawyers will come to work in spite of low salaries and high workloads if an office has a positive culture and prioritizes mentoring and growth. Finally, elected prosecutors must have the courage to speak truth to power, not just to gripe about under-staffing behind closed doors. When a district attorney's office begins to lose prosecutors because of low salaries and high caseloads the elected prosecutor must speak up quickly and loudly to the appropriating body, even if it jeopardizes the prosecutor's political standing.

The prosecutor vacancy problem did not happen overnight and it did not result from just one cause. Filling prosecutor vacancies to protect the public and criminal defendants is a long-term challenge that will require bold action from elected prosecutors, legislators, and the public.