



## COMMISSIONERS' COURT AGENDA ITEM

**Meeting Date:** 06/14/2010

**Prepared by:** Betsy Keller, HR Director

### **Description:**

Approve the committee's recommendation on Requests #2010-037, #2010-038, and 2010-039 to approve waiving the hiring freeze for: an Accounting Clerk position contingent upon the Expungement Specialist position being eliminated and the incumbent being moved to this position; a Court Clerk position to be filled internally by a part time Office Specialist, Intermediate; and the subsequent Office Specialist, Intermediate (part-time) position vacancy, all not to be filled prior to meeting the 6 week waiting periods for the District Clerk's Office.

### **Background:**

The County of El Paso, responding to an anticipated budget shortfall, initiated a hiring freeze April 20, 2009. On April 27, 2009, Commissioners' Court adopted a hiring freeze policy detailing how the hiring freeze will be administered. On May 18, 2009, Commissioners' Court heard legal advice regarding applying the hiring freeze to positions in departments administered by elected officials. It was determined that the Court would also review requests for exception to the hiring freeze for cases in elected officials' departments when the committee's recommendation is to deny the exception. This is to insure the County has thoroughly reviewed whether denying the request will impede the elected official being able to carry out the core function of the office.

The District Clerk's Office submitted Requests #2010-037 and 2010-039 for waivers for a Court Clerk position and an Office Specialist, Intermediate (part-time) position. On #2010-039, the department explained that this position works directly for the 346<sup>th</sup> District Court and that it intends to promote the person who is in the part-time Office Specialist, Intermediate position to this vacancy. This leads to Request #2010-037 which is to fill that subsequent vacancy which provides data entry and scanning of filings for the AG court. The committee reviewed that the AG court filings are revenue producing.

The department explained that Request #2010-038 is to be able properly classify an employee who is currently holding the position of Expungement Specialist, but is performing the work on Accounting Clerk. The department explained that if allowed to fill the Accounting Clerk position, they will then move this person to the position and eliminate one of the Expungement Specialist positions in the department. The committee reviewed information that this is a problem the department has had for some time since the Accounting Clerk position was vacated.

### **Recommendation:**

Based on the information presented, the committee recommends approving waiving the hiring freeze for: an Accounting Clerk position contingent upon the Expungement Specialist position being eliminated and the incumbent being moved to this position; a Court Clerk position to be filled internally by a part time Office Specialist, Intermediate; and the subsequent Office Specialist, Intermediate (part-time) position vacancy, all not to be filled prior to meeting the 6 week waiting periods for the District Clerk's Office.

## Request for Exception from County-wide Hiring Freeze

Reference Number: (HR will complete)

Date Requested:

2010-031

5-3-2010 (received 06/02/2010)

Department:

Date Position Needed To Be Filled By:

COUNTY ATTORNEY

June 14, 2010

### Submitted By:

Name:

Title:

Jo Anne Bernal

County Attorney

Telephone Number:

546-2053

### Exception Requested: To fill 1 position

Position Title:

Senior Trial Attorney

Full-time or Part-time:

Full-time

Length of Time Position Has Been Vacant:

5/14/2010

Name of Last Person Who Filled the Position:

Naomi Gonzalez

### Criteria Justifying Exception:

Please Check One:

Does this position perform functions that are critical to the health, welfare, and safety of the public?

☒ Yes

☐ No

If yes, please explain:

In many instances litigation against or on behalf of the County directly affects the health, welfare and safety of the public. For example, the pipeline case, temporary injunctions relating to the selling of fireworks, and other public safety, health and welfare matters relating to the functions of County Government.

Does this position perform functions that are critical to revenue generation for the County?

☒ Yes

☐ No

If yes, please explain:

In general the individual sought to fill this position performs functions relating to the litigation defense of the County. There are occasions, however, when funds are generated. For example, the Project Bravo case provided \$125,000 in funds to the County, the Western Playland case generated \$75,000 and several million dollars is sought to be recovered on the Catalina case.

Does this position perform functions that are critical to the care and safety (direct care) for persons that are in legal custody of the County?

☒ Yes

☐ No

If yes, please explain:

The lawyer handling matters relative to this position often provides legal advice to the Sheriff's Office and its administrators on issues involving the direct care and safety of inmates. This advice primarily comes in the form of general advice and intended to prevent litigation exposure and follows through until the conclusion if any litigation arises.

Does this position perform functions that are part of a caseload staffing requirement established by statute, licensing, certification, or accreditation requirements?

☐ Yes

☒ No

If yes, please explain and refer to specific statute or requirement:

Does this position perform functions that would create a disruption to an essential County function if not filled?

☒ Yes

☐ No

If yes, please explain:

Section 45.171 of the Local Government Code states that it is the primary duty of the County Attorney to represent El Paso County and the official of El Paso County in all civil matters. The inability to fill this position has direct effects on the ability to perform those duties noted above.

Does this position perform functions where there is a legal liability for failure to perform the service?

☒ Yes

☐ No

If yes, please explain:

The lawyer assigned to this position will manage a large and diverse case load with matters in federal and state court. The inability to fill this position could have detrimental effects on pending litigation and as such cause legal liability to the County.

Please explain how the responsibilities are being currently managed?

Why can they not continue to be managed this way?

The case load previously handled by the former employees has now been divided among other lawyers through out the office.

The other lawyers in the office handling the overload of cases have pre-existing duties and responsibilities.

What are the consequences of not filling the position?

The level of representation to the County of El Paso and its elected officials could be compromised.

How much is saved by the position being unfilled for 1 year?

Are you willing to cut your operating budget to cover or offset this expense?

\$74,698 (Starting salary for the replacement for this position would be a Sr. Trial Attorney, up to Grade 02 Level 03 at \$74,698).

Several cuts have already been made. Any further cuts would be severely detrimental to the successful operation of the office and would infringe upon the County Attorney's core functions.

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**NOTE: IF THE REQUEST IS APPROVED BY COMMISSIONERS COURT, IT MUST BE ATTACHED TO ALL PERSONNEL DOCUMENTS RELATED TO THE FILLING OF THE POSITION (VACANCY REQUISITION, PAF, ETC.)**

Status:	<input type="checkbox"/> Approved by Committee	<input type="checkbox"/> Rejected by Committee	<input type="checkbox"/> Other: _____
	<input type="checkbox"/> Approved by Commissioners Court	Date: _____	
	<input type="checkbox"/> Rejected by Commissioners Court	Date: _____	

## Request for Exception from County-wide Hiring Freeze

Reference Number: (HR will complete)

Date Requested:

2010-031 b

5-3-2010 (Received 06/02/2010)

Department:

Date Position Needed To Be Filled By:

COUNTY ATTORNEY

June 14, 2010

### Submitted By:

Name:

Title:

Jo Anne Bernal

County Attorney

Telephone Number:

546-2053

### Exception Requested: To fill 1 position

Position Title:

Full-time or Part-time:

Senior Trial Attorney

Full-time

Length of Time Position Has Been Vacant:

Name of Last Person Who Filled the Position:

4/23/2010

Rosendo Torres

### Criteria Justifying Exception:

Please Check One:

Does this position perform functions that are critical to the health, welfare, and safety of the public?

☒ Yes

☐ No

If yes, please explain:

In many instances litigation against or on behalf of the County directly affects the health, welfare and safety of the public. For example, the pipeline case, temporary injunctions relating to the selling of fireworks, and other public safety, health and welfare matters relating to the functions of County Government.

Does this position perform functions that are critical to revenue generation for the County?

☒ Yes

☐ No

If yes, please explain:

In general the individual sought to fill this position performs functions relating to the litigation defense of the County. There are occasions, however, when funds are generated. For example, the Project Bravo case provided \$125,000 in funds to the County, the Western Playland case generated \$75,000 and several million dollars is sought to be recovered on the Catalina case.

Does this position perform functions that are critical to the care and safety (direct care) for persons that are in legal custody of the County?

☒ Yes

☐ No

If yes, please explain:

The lawyer handling matters relative to this position often provides legal advice to the Sheriff's Office and its administrators on issues involving the direct care and safety of inmates. This advice primarily comes in the form of general advice and intended to prevent litigation exposure and follows through until the conclusion if any litigation arises.

Does this position perform functions that are part of a caseload staffing requirement established by statute, licensing, certification, or accreditation requirements?

☐ Yes

☒ No

If yes, please explain and refer to specific statute or requirement:

Does this position perform functions that would create a disruption to an essential County function if not filled?

☒ Yes

☐ No

If yes, please explain:

Section 45.171 of the Local Government Code states that it is the primary duty of the County Attorney to represent El Paso County and the official of El Paso County in all civil matters. The inability to fill this position has direct effects on the ability to perform those duties noted above.

Does this position perform functions where there is a legal liability for failure to perform the service?

☒ Yes

☐ No

If yes, please explain:

The lawyer assigned to this position will manage a large and diverse case load with matters in federal and state court. The inability to fill this position could have detrimental effects on pending litigation and as such cause legal liability to the County.

Please explain how the responsibilities are being currently managed?

The case load previously handled by the former employees has now been divided among other lawyers through out the office.

What are the consequences of not filling the position?

The level of representation to the County of El Paso and its elected officials could be compromised.

How much is saved by the position being unfilled for 1 year?

\$74,698 (Starting salary for the replacement for this position would be a Sr. Trial Attorney, up to Grade 02 Level 03 at \$74,698).

Why can they not continue to be managed this way?

The other lawyers in the office handling the overload of cases have pre-existing duties and responsibilities.

Are you willing to cut your operating budget to cover or offset this expense?

Several cuts have already been made. Any further cuts would be severely detrimental to the successful operation of the office and would infringe upon the County Attorney's core functions.

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**NOTE: IF THE REQUEST IS APPROVED BY COMMISSIONERS COURT, IT MUST BE ATTACHED TO ALL PERSONNEL DOCUMENTS RELATED TO THE FILLING OF THE POSITION (VACANCY REQUISITION, PAF, ETC.)**

Status:	<input type="checkbox"/> Approved by Committee	<input type="checkbox"/> Rejected by Committee	<input type="checkbox"/> Other: _____
	<input type="checkbox"/> Approved by Commissioners Court	Date: _____	
	<input type="checkbox"/> Rejected by Commissioners Court	Date: _____	

## Request for Exception from County-wide Hiring Freeze

Reference Number: (HR will complete)

Date Requested:

2010-032

6-7/2010

Department:

Date Position Needed To Be Filled By:

COUNTY ATTORNEY

October 1,2010

### Submitted By: COUNTY ATTORNEY

Name:

Title:

Jo Anne Bernal

County Attorney

Telephone Number:

546-2053

### Exception Requested: To fill 1 position

Position Title:

Full-time or Part-time:

FIRST ASSISTANT COUNTY ATTORNEY

Full-time

Length of Time Position Has Been Vacant:

Name of Last Person Who Filled the Position:

11/17/2009

Jo Anne Bernal

### Criteria Justifying Exception:

Please Check One:

Does this position perform functions that are critical to the health, welfare, and safety of the public?

☒ Yes

☐ No

If yes, please explain:

This position serves as the County Attorney's right hand and is the acting authority in the County Attorney's absence or incapacitation. In essence, the First Assistant is the primary overseer of all managerial issues relating to the overall operation of the County Attorney's office and in such capacity ensures that all statutory obligations are met. In performing such duties the First Assistant, under the direction of the County Attorney, ensures that the health, safety and welfare of the public is maintained while ensuring that good quality legal representation is provided to the County of El Paso and its elected officials.

Does this position perform functions that are critical to revenue generation for the County?

☒ Yes

☐ No

If yes, please explain:

In general this position does not directly perform functions that are critical to revenue generation. But the First Assistant does on a daily basis oversee each and every section of the County Attorney's office to include those units that provide revenue generation.

Does this position perform functions that are critical to the care and safety (direct care) for persons that are in legal custody of the County?

☒ Yes

☐ No

If yes, please explain:

The First Assistant ensures that litigation and/or advice critical to the care of inmates is provided when required.

Does this position perform functions that are part of a caseload staffing requirement established by statute, licensing, certification, or accreditation requirements?

☐ Yes

☒ No

If yes, please explain and refer to specific statute or requirement:

Does this position perform functions that would create a disruption to an essential County function if not filled?

☒ Yes

☐ No

If yes, please explain:

Section 45.171 of the Local Government Code states that it is the primary duty of the County Attorney to represent El Paso County and the official of El Paso County in all civil matters. The inability to fill this position has direct effects on the ability to perform those duties noted above.

Does this position perform functions where there is a legal liability for failure to perform the service?

☒ Yes

☐ No

If yes, please explain:

The lawyer assigned to this position is responsible for the direct management of all supervisors in the office and performs other regularly assigned duties by the County Attorney. The inability to fill this position could have detrimental effects on pending litigation and as

such cause legal liability to the County.

Please explain how the responsibilities are being currently managed?

The responsibilities have been shared by other managers in the office.

Why can they not continue to be managed this way?

The other managers in the office who are handling the overload of cases and/or responsibilities have pre-existing duties and responsibilities that require 100% of their time and effort.

What are the consequences of not filling the position?

The ability to perform the statutory duties of the office may be compromised.

How much is saved by the position being unfilled for 1 year?

\$162,196 – This is the salary when vacated on 11/17/2009. Replacement employee would be paid up to \$108,827, AT 05-13.

Are you willing to cut your operating budget to cover or offset this expense?

Several cuts have already been made. Any further cuts would be severely detrimental to the successful operation of the office and would infringe upon the County Attorney's core functions.

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**NOTE: IF THE REQUEST IS APPROVED BY COMMISSIONERS COURT, IT MUST BE ATTACHED TO ALL PERSONNEL DOCUMENTS RELATED TO THE FILLING OF THE POSITION (VACANCY REQUISITION, PAF, ETC.)**

Status:	<input type="checkbox"/> Approved by Committee	<input type="checkbox"/> Rejected by Committee	<input type="checkbox"/> Other: _____
	<input type="checkbox"/> Approved by Commissioners Court	Date: _____	
	<input type="checkbox"/> Rejected by Commissioners Court	Date: _____	

## Request for Exception from County-wide Hiring Freeze

Reference Number: (HR will complete)

Date Requested:

2010-005

6/7/2010

Department:

Date Position Needed To Be Filled By:

COUNTY ATTORNEY

6/14/2010

### Submitted By: COUNTY ATTORNEY

Name:

Title:

JO ANNE BERNAL

County Attorney

Telephone Number:

546-2050

### Exception Requested: 1 position

Position Title:

Full-time or Part-time:

Paralegal

Full-time

Length of Time Position Has Been Vacant:

Name of Last Person Who Filled the Position:

Since 3/27/2009

Christina Arditti

### Criteria Justifying Exception:

Please Check One:

Does this position perform functions that are critical to the health, welfare, and safety of the public?

☒ Yes

☐ No

If yes, please explain:

This position will assist lawyers and other staff members who are charged with the task of ensuring that those members of the community afflicted with mental disorders are not held in jail for periods longer than necessary. Additionally, with proper intervention many of these individuals will never be incarcerated and instead treated by the appropriate mental health professionals.

Does this position perform functions that are critical to revenue generation for the County?

☐ Yes

☒ No

If yes, please explain:

Does this position perform functions that are critical to the care and safety (direct care) for persons that are in legal custody of the County?

☒ Yes

☐ No

If yes, please explain:

This position will work closely with jail administrators and the appropriate law enforcement entities to ensure that proper treatment is provided to those individuals with mental ailments while they are incarcerated.

Does this position perform functions that are part of a caseload staffing requirement established by statute, licensing, certification, or accreditation requirements?

☐ Yes

☒ No

If yes, please explain and refer to specific statute or requirement:

Does this position perform functions that would create a disruption to an essential County function if not filled?

☐ Yes

☒ No

If yes, please explain:

Does this position perform functions where there is a legal liability for failure to perform the service?

☒ Yes

☐ No

If yes, please explain:

In many instances individuals who are plagued with mental disabilities fall victim to the criminal justice system and are often incarcerated. Immediately after arrest and/or incarceration the members of the mental health unit work to assist these individuals by providing the services they need. Not providing services to individuals with mental health needs while they are incarcerated could give rise to action under 42 U.S.C. § 1983 for a denial of medical care.

Please explain how the responsibilities are being currently managed?

Why can they not continue to be managed this way?

The case load is spread out to other

Mental health law is a specialized area of



staff members who are already overloaded with other responsibilities.

the law that requires a high level of attention and focus. The temporary situation of having others perform this work is not feasible absent an inordinate amount of education and costly training.

What are the consequences of not filling the position?

Members of the community who have mental illness could and most likely suffer extended periods of incarceration without benefit of treatment by medically licensed professionals.

How much is saved by the position being unfilled for 1 year?

\$36,632 (Replacement would be at the same salary and Grade P02-E, \$36,632)

Are you willing to cut your operating budget to cover or offset this expense?

No. Cuts have already been made in other areas to offset this expense.

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**NOTE: IF THE REQUEST IS APPROVED BY COMMISSIONERS COURT, IT MUST BE ATTACHED TO ALL PERSONNEL DOCUMENTS RELATED TO THE FILLING OF THE POSITION (VACANCY REQUISITION, PAF, ETC.)**

Status:	<input type="checkbox"/> Approved by Committee	<input type="checkbox"/> Rejected by Committee	<input type="checkbox"/> Other: _____
	<input type="checkbox"/> Approved by Commissioners Court	Date: _____	
	<input type="checkbox"/> Rejected by Commissioners Court	Date: _____	

# **County of El Paso Hiring Freeze Policy**

**Effective 04/20/2009  
Amended 10/19/2009**

The County of El Paso, responding to an anticipated budget shortfall, initiated a hiring freeze April 20, 2009. Commissioners Court wants to assure minimal impact to services to citizens, while being fiscally responsible, so hereby implements the following amended policy.

## **Applicability of Hiring Freeze:**

The hiring freeze will apply to positions (including temporary positions) in all departments. Of those departments that the authority of the policy is in question, the Court asks for voluntary participation in the spirit of fiscal responsibility for the County budget and the community.

Certain positions are exempted from the hiring freeze: positions automatically exempted are those that are statutorily required where only 1 position exists in the department to perform the function to only include bailiff, court coordinator, and court reporter; positions covered under a collective bargaining agreement; positions 100% funded with special revenues (e.g. Roads & Bridges and Law Library); positions 100% funded with grant funds; and previously allocated seasonal positions necessary to meet minimum staffing requirements (e.g. lifeguards and parks maintenance workers).

## **Current vacancies:**

Positions currently vacant that do not meet the criteria to be exempt from the freeze where no offer of employment was extended prior to April 20, 2009 will remain vacant until such time as the freeze is lifted. Existing announcements should be updated to note the position will not be filled in the near future or cancelled unless the position meets the definition of an exempt position listed above.

## **Committee to Review Requests for Hiring Freeze/Personnel Exceptions:**

A five member committee organized by the Human Resources Director to review requests for exceptions from the hiring freeze and other personnel related exceptions during the time the freeze is in effect will be created.

Members of the committee will include representatives from the following:

- Commissioner Dan Haggerty
- Commissioner Veronica Escobar
- County Auditor's office
- County Attorney's office
- Human Resources Department

The committee will review requests for exception to the hiring freeze as soon as reasonable after requests are presented.

### **Guidelines for Requests for Exceptions:**

Requests for exceptions will be submitted to the committee through the HR department on the Exception Request Form. The request must address any of the following criteria if applicable:

- Position functions that are critical to the health, welfare, and safety of the public in general;
- Position functions that are critical to revenue generation for the County;
- Position functions that are critical to the care and safety (direct care) for persons that are in legal custody of the County or when a direct service is involved;
- Positions and functions that are part of a caseload staffing requirement that are typically established through statute, licensing, certification, or accreditation requirements;
- Position functions that would create a disruption to an essential County function if not filled;
- Positions and functions where there is a legal liability for failure to perform the service.
- How the current responsibilities are being managed;
- Why they cannot continue being managed in this way;
- The consequences of not filling the position;
- The cost impact of filling the position for the remainder of the FY09 and for FY10 (verified through the Auditor's office).

The committee will review whether the position meets the criteria described herein and if the situation warrants the exception. Exceptions approved by majority of the committee will be placed on the next available Commissioners' Court agenda for final approval.

### **Impacts of Freeze on Other Personnel:**

- As vacant positions and functions are not filled, workload increases may affect certain individuals that could result in the inability to take sufficient annual leave prior to the end of the fiscal year. Current maximum accrual levels of leave accounts still apply, and supervisors are expected to accommodate annual leave requests by September 30<sup>th</sup> each year to comply with these levels.

### **Impacts of Freeze on New or Existing Contracts:**

- Specifically departments should not be seeking to enter into new contracts or utilize existing contracts in order to make up for the impact of not being able to fill vacancies.
- Every contract will be reviewed by Commissioners' Court to make sure that departments are in compliance and are not seeking to circumvent the hiring freeze.