

**AGENDA  
REGULAR CITY COUNCIL MEETING  
CITY OF BANNING  
BANNING, CALIFORNIA**

November 7, 2016  
6:00 p.m.

Banning Civic Center  
Council Chambers  
99 E. Ramsey St.

**ADDENDUM**

**V. CONSENT ITEMS**

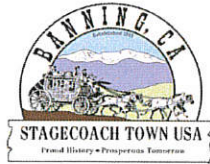
7. Ordinance No. 1502 – 2<sup>nd</sup> Reading:  
*An Ordinance of the City of Banning, California, Amending Section 3.18.030 of Chapter 3.18 of the Banning Municipal Code Reducing the Mining Tax from Eighty Cents to Twenty-Five Cents per Ton of Rock Materials Excavated, Processed and Transported Within the City of Banning .....1*

Posted on: November 3, 2016

*Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Friday, 7 a.m. to 5 p.m.*

*The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens.*

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**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** City Council

**FROM:** Michael Rock, City Manager

**PREPARED BY:** Sonja De La Fuente, Executive Assistant/Deputy City Clerk

**MEETING DATE:** November 7, 2016

**SUBJECT:** Adopt Ordinance 1502 Amending Section 3.18.030 of Chapter 3.18 of the Banning Municipal Code, Reducing the Mining Tax from Eighty Cents to Twenty Five Cents per Ton of Rock Materials Excavated, Processed and Transported within the City of Banning

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**RECOMMENDATION:**

That the City Council adopt Ordinance 1502 (Attachment 1) amending Section 3.18.030 of Chapter 3.18 of the Banning Municipal Code, reducing the Mining Tax from eighty cents to twenty five cents per ton of rock materials excavated, processed and transported within the City of Banning.

**JUSTIFICATION:**

Ordinance 1502 passed its first and second readings and was adopted by the City Council on October 25, 2016. However, the version adopted at the 2<sup>nd</sup> Reading was an outdated version and should have been the same as the one presented at the 1<sup>st</sup> Reading.

**BACKGROUND:**

On October 11, 2016, Ordinance 1502 passed its first reading. When this item was brought back to Council on October 25<sup>th</sup> an outdated version was presented in error, and staff intended it to be the same version as presented on October 11<sup>th</sup>. Therefore, we have attached both versions for your reference. The following outlines exactly what was different:

### **Ordinance 1502 – 1st reading on October 11, 2016**

- Includes Section E in the Findings/Recitals, laying out the terms from Section 1.c. of the MOU pursuant to which the City could adopt a further ordinance adjusting the tax.
- Adds Section E to the existing ordinance, where Section E reads in its entirety:

Effective July 1, 2016, the eighty-cent (\$0.80) per-ton tax rate in Subsection A of this Section is hereby suspended and reduced to twenty-five cents (\$0.25) per ton of rock materials excavated, processed and transported.

The suspension of the eighty-cent (\$0.80) per-ton tax rate in Subsection A, and the reduced tax rate of twenty-five cents (\$0.25) per ton of rock materials excavated, processed and transported established herein, shall remain in full force and effect unless and until the City Council adopts an ordinance lifting the suspension or modifying the tax rate, which adoption shall be consistent with the Findings and Purpose of Ordinance No. 1502.

### **Ordinance 1502 – 2nd reading on October 25, 2016**

- Does not include Section E in the Findings/Recitals.
- Adds Section E to the existing ordinance, where Section E reads in its entirety:

Effective July 1, 2016, the eighty-cent (\$0.80) per-ton tax rate in Subsection A of this Section is hereby suspended and reduced to twenty-five cents (\$0.25) per ton of rock materials excavated, processed and transported.

The suspension of the eighty-cent (\$0.80) per-ton tax rate in Subsection A, and the reduced tax rate of twenty-five cents (\$0.25) per ton of rock materials excavated, processed and transported established herein, shall remain in full force and effect unless and until the City Council adopts an ordinance lifting the suspension or modifying the tax rate. Pursuant to Section 1.d. of the MOU, the City Council may, but is not required to, adopt such an ordinance, but may do so only upon, and in compliance with, the earlier of the following conditions as set forth in Section 1.c. of the MOU.

Therefore, staff recommends adopting Ordinance 1502 as initially presented at its first reading on October 11, 2016.

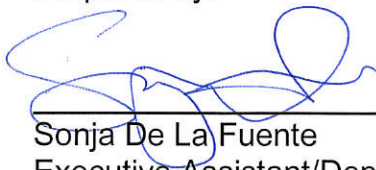
**OPTIONS:**

1. Adopt Ordinance 1502 as passed on the 1<sup>st</sup> Reading.
2. Provide direction to staff.

**ATTACHMENT:**

1. Ordinance 1502 as presented at the 1<sup>st</sup> Reading on October 11, 2016 and as presented for adoption November 7, 2016.
2. Ordinance 1502 as adopted on the 2<sup>nd</sup> Reading on October 25, 2016.

Prepared by:



Sonja De La Fuente  
Executive Assistant/Deputy City Clerk

Approved by:



Michael Rock  
City Manager

# ***ATTACHMENT 1***

## ORDINANCE NO. 1502

### AN ORDINANCE OF THE CITY OF BANNING, CALIFORNIA, AMENDING SECTION 3.18.030 OF CHAPTER 3.18 OF THE BANNING MUNICIPAL CODE REDUCING THE MINING TAX FROM EIGHTY CENTS TO TWENTY-FIVE CENTS PER TON OF ROCK MATERIALS EXCAVATED, PROCESSED AND TRANSPORTED WITHIN THE CITY OF BANNING.

The City Council of the City of Banning does hereby ordain as follows:

#### SECTION 1. Findings and Purpose.

- A. In November, 2014, the City of Banning (“the City”) placed on the ballot a proposed tax on surface mining operations within the City limits (“the Mining Tax”), including the Banning Quarry (“the Quarry”). In the November, 2016, election, Banning voters passed the Mining Tax, and the City Council subsequently set the Mining Tax rate at eighty (\$.80) cents per ton of mined aggregate;
- B. Robertson’s Ready Mix, Ltd. (“Robertson’s”) challenged the necessity and legality of the Mining Tax by filing several lawsuits against the City, including (1) Robertson’s v. City of Banning, et al., Case No. RIC 1409037 (“CEQA/1983 case”), (2) Robertson’s v. City of Banning, et al., Case No. RIC 1409829 (“Brown Act case”), (3) Robertson’s v. City of Banning, Case No. RIC 1500296 (“Public Records Act case”), and (4) Robertson’s v. City of Banning, et al., Case No. RIC 1513475 (“Tax Refund case”) (collectively, “Actions”);
- C. In September, 2016, to resolve the Actions, the City and Robertson’s entered into a Memorandum of Understanding (“MOU”);
- D. Section 1 of the MOU requires a reduction from \$0.80 to \$0.25 per ton of mined aggregate following the execution of this MOU by all parties, and adoption by the City Council of a City Ordinance suspending the \$0.80 per ton Mining Tax rate, effective July 1, 2016;
- E. Pursuant to Section 1.d. of the MOU, the City Council may, but is not required to, adopt an ordinance lifting the suspension of the eighty-cent (\$0.80) per-ton Mining Tax rate, and modifying the reduced twenty-five-cent (\$0.25) per-ton Mining Tax rate, but may do so only upon, and in compliance with, the earlier of the following conditions, as set forth in Section 1.c. of the MOU:
  - (i.) Robertson’s ceases to operate the Quarry, and completes final reclamation of the Quarry site (although the Mining Tax shall effectively cease when actual mining ceases and shall not apply to reclamation of the property), at which time the Mining Tax shall no longer be in effect; or
  - (ii.) Three years from the date an application is submitted by Robertson’s for the “Development Agreement” and related “Entitlements” (as defined in the MOU), unless the City approves the Development Agreement and related

Entitlements prior to the end of the three-year approval period (as described in the MOU), or prior to any extension by Robertson's of that three-year approval period, in which case the \$0.25-per ton Mining Tax rate shall be required to remain in effect until Robertson's ceases to operate the Quarry, as described in Section 1.c.(1) of the MOU; or

- (iii.) The City takes formal action to issue a final denial, following a public hearing, of the Development Agreement and related Entitlements, at or before the end of the three-year approval period; or
- (iv.) Robertson's shall fail to pay the Revenue Supplement in Section 2 of the MOU, when such payment is due, and following notice of, and a period to cure, such failure to pay; or
- (v.) Robertson's shall otherwise breach and failure to cure the terms of the MOU.

**SECTION 2.** Section 3.18.030, of Title 3, Chapter 3.18 of the Banning Municipal Code, is hereby amended to add Subsection E, as follows:

**"3.18.030 Tax for Rock Material Excavation/Processing/Transportation.**

- E. Effective July 1, 2016, the eighty-cent (\$0.80) per-ton tax rate in Subsection A of this Section is hereby suspended and reduced to twenty-five cents (\$0.25) per ton of rock materials excavated, processed and transported.

The suspension of the eighty-cent (\$0.80) per-ton tax rate in Subsection A, and the reduced tax rate of twenty-five cents (\$0.25) per ton of rock materials excavated, processed and transported established herein, shall remain in full force and effect unless and until the City Council adopts an ordinance lifting the suspension or modifying the tax rate, which adoption shall be consistent with the Findings and Purpose of Ordinance No. 1502."

**SECTION 3. Severability.** If any sections, subsections, sentences, phrases, or portions of this Ordinance are for any reason, held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Banning hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

**SECTION 4.** The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Banning's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

**SECTION 5:** This Ordinance will become effective on the thirty-first (31st) day following its passage and adoption.



**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Banning, California, this 7<sup>th</sup> day of November, 2016.

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Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

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Marie A. Calderon, City Clerk

**APPROVED AS TO FORM AND  
LEGAL CONTENT:**

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John C. Cotti, Interim City Attorney  
Jenkins & Hogin, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. \_\_\_\_ was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 11th day of October, 2016, and was duly adopted at a regular meeting of said City Council on the 25<sup>th</sup> day of October, 2016, by the following vote, to wit:

AYES: Councilmembers Miller, Peterson, Franklin, Moyer, Mayor Welch

NOES: None

ABSENT: None

ABSTAIN: None

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Marie A. Calderon, City Clerk  
City of Banning, Banning, California

# ***ATTACHMENT 2***

# **OCTOBER 25<sup>th</sup> MEETING**

## ORDINANCE NO. 1502

**AN ORDINANCE OF THE CITY OF BANNING, CALIFORNIA,  
AMENDING SECTION 3.18.030 OF CHAPTER 3.18 OF THE  
BANNING MUNICIPAL CODE REDUCING THE MINING TAX  
FROM EIGHTY CENTS TO TWENTY-FIVE CENTS PER TON OF  
ROCK MATERIALS EXCAVATED, PROCESSED AND  
TRANSPORTED WITHIN THE CITY OF BANNING.**

The City Council of the City of Banning does hereby ordain as follows:

SECTION 1. Findings and Purpose.

- A. In November, 2014, the City of Banning ("the City") placed on the ballot a proposed tax on surface mining operations within the City limits ("the Mining Tax"). In the November, 2016, election, Banning voters passed the Mining Tax, and the City Council subsequently set the Mining Tax rate at eighty (\$.80) cents per ton of mined aggregate;
- B. Robertson's Ready Mix, Ltd. ("Robertson's") challenged the necessity and legality of the Mining Tax by filing several lawsuits against the City, including (1) Robertson's v. City of Banning, et al., Case No. RIC 1409037 ("CEQA/1983 case"), (2) Robertson's v. City of Banning, et al., Case No. RIC 1409829 ("Brown Act case"), (3) Robertson's v. City of Banning, Case No. RIC 1500296 ("Public Records Act case"), and (4) Robertson's v. City of Banning, et al., Case No. RIC 1513475 ("Tax Refund case") (collectively, "Actions");
- C. In September, 2016, to resolve the Actions, the City and Robertson's entered into a Memorandum of Understanding ("MOU");
- D. Section 1 of the MOU requires a reduction from \$0.80 to \$0.25 per ton of mined aggregate following the execution of this MOU by all parties, and adoption by the City Council of a City Ordinance suspending the \$0.80 per ton Mining Tax rate, effective July 1, 2016.

SECTION 2. Section 3.18.030, of Title 3, Chapter 3.18 of the Banning Municipal Code, is hereby amended to add Subsection E, as follows:

**"3.18.030 Tax for Rock Material Excavation/Processing/Transportation.**

- E. Effective July 1, 2016, the eighty-cent (\$0.80) per-ton tax rate in Subsection A of this Section is hereby suspended and reduced to twenty-five cents (\$0.25) per ton of rock materials excavated, processed and transported.

The suspension of the eighty-cent (\$0.80) per-ton tax rate in Subsection A, and the reduced tax rate of twenty-five cents (\$0.25) per ton of rock materials excavated, processed and transported established herein, shall remain in full force and effect unless and until the City Council adopts an ordinance lifting the suspension or modifying the

tax rate. Pursuant to Section 1.d. of the MOU, the City Council may, but is not required to, adopt such an ordinance, but may do so only upon, and in compliance with, the earlier of the following conditions as set forth in Section 1.c. of the MOU.”

SECTION 4. Severability. If any sections, subsections, sentences, phrases, or portions of this Ordinance are for any reason, held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Banning hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 5. The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Banning’s book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 6: This Ordinance will become effective on the thirty-first (31st) day following its passage and adoption.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Banning, California, this 25<sup>th</sup> day of October, 2016.

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

**APPROVED AS TO FORM AND  
LEGAL CONTENT:**

\_\_\_\_\_  
John C. Cotti, Interim City Attorney  
Jenkins & Hogin, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1502 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 11<sup>th</sup> day of October, 2016, and was duly adopted at a regular meeting of said City Council on the 25<sup>th</sup> day of October, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Marie A. Calderon, City Clerk  
City of Banning, Banning, California