

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

06/12/18  
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Moyer on June 12, 2018, at 5:11 p.m. at the Banning Civic Center Council Chamber, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Council Member Andrade  
Council Member Franklin  
Council Member Peterson  
Council Member Welch  
Mayor Moyer

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT Rochelle Clayton, Interim City Manager  
Kevin Ennis, City Attorney  
Tim Chavez, Fire Battalion Chief  
Robert Fisher, Interim Police Chief  
Heidi Meraz, Community Services Director  
Tom Miller, Electric Utility Director  
Patty Nevins, Community Development Director  
Art Vela, Public Works Director/City Engineer  
Suzanne Cook, Deputy Finance Director  
Robert Meteau, Deputy Human Resources Director  
Michelle Devoux, Fire Marshal  
Sonja De La Fuente, Deputy City Clerk  
Laurie Sampson, Executive Assistant  
Leila Lopez, Office Specialist

The Invocation was given by Reverend Bill Dunn from St. Stephen's Episcopal Church. Council Member Franklin led the audience in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

The City Attorney indicated four items were discussed in Closed Session. 1) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Paragraph (1) of Subdivision (d) of Section 54956.9) Name of Case: City of Banning v. Go Green Calming Solutions, et al., Case No. RIC 1806731. A status report was provided regarding the case with no final or reportable action. 2) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Paragraph (1) of Subdivision (d) of Section 54956.9) Name of Case: Turner v. City of Banning, Case No. RIC 1607623. A status report was provided regarding the case with no final or reportable action. 3) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION, Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: (one case). A status report was

provided regarding the case with no final or reportable action. 4) PUBLIC EMPLOYEE APPOINTMENT: Police Chief – Pursuant to Government Code Section 54957. A status report was provided regarding the recruitment with no final or reportable action. 5) PUBLIC EMPLOYEE APPOINTMENT: City Manager – Pursuant to Government Code Section 54957. A status report was provided regarding the recruitment with no final or reportable action.

## PUBLIC COMMENTS / CORRESPONDENCE / ANNOUNCEMENTS & REPORTS

### PUBLIC COMMENTS

Ellen Carr announced that Animal Action League will be at the Community Center on Friday, June 22<sup>nd</sup> and Saturday, June 23<sup>rd</sup> to provide low cost spay/neuter surgeries and shot clinic. The shot clinic is from 10:00 a.m. until 2:00 p.m. (760) 336-1100 to make an appointment for spay/neuter.

Jim Price announced that on Saturday, June 9<sup>th</sup> the Banning Pass Little League closed their season and he thanked the City for everything they have done to support their program, especially Heidi Meraz. He also thanked all of their sponsors.

Jerry Westholder applauded the Council for hiring Tom Miller, Electric Utility Director. He feels Mr. Miller is doing a great job. He also applauded Jason Smith, as he assisted him with some issues and got some things figured out at his church.

Heather Rhodes with Banning Family Community Health Center advised they will be participating in the Summer Meal Program and providing free meals June 4<sup>th</sup> through July 27<sup>th</sup> (Monday through Friday) from Noon until 1:00 p.m.

Frank Burgess requested the City Council take action on getting the Highland Home Road Interchange back in the General Pan. He also suggested moving the City Council Meetings to a later time.

Ed Quental with Watermark Development, property owner at 1450 East Lincoln, informed the Council he would like his property, which is located in the airport industrial zone, to be included in the cultivation zone.

Richard Rutherford expressed his concern with adding new development with the City's current water issues.

Seeing no further comments, the Mayor closed Public Comment.

### CORRESPONDENCE

The Deputy City Clerk read a letter from Vera Macias (see Exhibit "A") and a letter from Ed Quental and Mark Quental of Watermark Development (see Exhibit "B").

## ANNOUNCEMENTS & REPORTS

Council Member Peterson read a portion of Section 10.5 from the Manual of Procedural Guidelines for the Conduct of City Council Meetings (see Exhibit C”) and a Statement of Charges against Council Member Welch (see Exhibit “D”). He asked Officer Becker to provide Council Member Welch with the Statement of Charges. He reminded the Council that by censuring Councilman Welch, a Council expresses their disapproval of the conduct described, conversely a failure by the Council to censure Councilman Welch shall equate to an approval of his conduct.

Council Member Andrade had nothing to report.

Council Member Franklin reported on the following:

- Attended the Healthy Cities Committee Meeting on June 1<sup>st</sup> and discussed the Health Fair and 5K Run.
- A Teen CERT class was held last week and 11 students attended.
- Attended the WRCOG Executive Committee Meeting last week, with no reportable action for the City of Banning.
- On June 23<sup>rd</sup> there will be a rededication of the Roosevelt Williams Park at 10:00 a.m. and the public is invited.

Mayor Moyer reported on the following:

- Thanked Jim Price, the board members, the coaches, and staff.
- A letter was received from Mountain Air Mobile Home Estates thanking the Electric Department staff for a job well done.
- Attended the Finance Committee Meeting and made recommendations to considerably cut the deficit. They also recommended some housing programs the Economic Development Committee recommended.

Council Member Peterson added that Sears closed down due to their landlord raising rent. However, they commended the Utility Department on their good rates.

Council Member Welch had nothing to report.

## REPORT BY CITY ATTORNEY

City Attorney Ennis did not have anything to report.

## REPORT BY CITY MANAGER

Interim City Manager Clayton did not have anything to report.

## CONSENT ITEMS

1. Minutes – Special Meeting – 5/22/2018 (Workshop)

Recommendation: Approve the Minutes from May 22, 2018 Special Meeting of the Banning City Council (Workshop).

2. Minutes – Special Meeting – 5/22/2018 (Closed Session)

Recommendation: Approve the Minutes from the May 22, 2018 Special Meeting of the Banning City Council (Closed Session).

3. Minutes – Regular Meeting – 5/22/2018

Recommendation: Approve the Minutes from the May 22, 2018 Regular Meeting of the Banning City Council.

4. Minutes – Special Meeting – 6/4/2018

Recommendation: Approve the Minutes from the June 4, 2018 Special Meeting of the Banning City Council.

5. List of Contracts Approved Under City Manager's Signature Authority

Recommendation: Receive and file list contracts approved under the City Manager's signature authority.

6. Report of Cash, Investments, and Reserve Report for the Month of February 2018

Recommendation: Receive and file report of cash, investments, and reserve report for the month of February 2018.

7. Ordinance 1522, Adopting by Reference Title 6, Animals, of the Riverside County Code as the City's Animal Control Ordinance, and Amending the Banning Municipal Code

Recommendation: Ordinance 1522 pass its 2<sup>nd</sup> reading.

8. Resolution 2018-74, Approving Amendment No. 1 to the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District for Street Repairs on Hargrave Street

Recommendation: Adopt Resolution 2018-74.

9. Notice of Completion for Project No. HSIPL-5214(010) – Traffic Signal System Improvements on Ramsey Street



Recommendation: Accept Project No. HSIPL-5214(010) – Traffic Signal System Improvements on Ramsey Street as complete.

10. Executive Order B-40-17 to Lift Drought Emergency in All but Four Counties

Recommendation: Receive and file update.

11. Resolution 2018-73, Repealing Resolution 2018-45, Declaring the Intention to Levy and Collect Assessments, Approving the Revised Engineer's Report, and Setting the Revised Date for Public Hearing for Landscape Maintenance District No. 1

Recommendation: Adopt Resolution 2018-73.

The Mayor opened Consent Items 1 through 11 for public comment. Seeing none, closed public comment.

**Motion Peterson/Andrade to approve Consent Items 1 through 11. Motion carried, 5-0.**

The Mayor recessed the Regular Meeting and called to order a joint meeting of the Banning City Council and the Banning Utility Authority.

#### REPORTS OF OFFICERS

1. Resolution 2018-01 HA, Approving Housing Programs and Appropriation of Funding

Community Development Director Patty Nevins, presented the Staff Report as contained in the Agenda packet.

Council Member Franklin indicated the City did a Housing Fair around 2006 and it was very successful.

Mayor Moyer encouraged the City working with Community Action Partnership to get even more help.

The Mayor opened the item for public comment.

Don Smith expressed support of the City getting back into Housing. He suggested the City also look into a program that helps homeowners who may be losing their homes that just need some repairs. He also asked about waiving City fees and pointed out that when the City waives fees, it loses money.

Seeing no further comments, the Mayor closed public comment.

**Motion Franklin/Andrade to adopt Resolution 2018-01 HA, approving housing programs and appropriations for Fiscal Years 2018/19 and 2019/20. Motion carried 5-0.**

The Mayor recessed the joint meeting and reconvened the regular meeting.

#### REPORTS OF OFFICERS

1. Resolution 2018-58, Approving an Agreement for One (1) Year with an Option to Renew for Two (2) Additional Years with Riverside County Fire Department

Battalion Chief Tim Chavez presented the Staff Report as contained in the Agenda packet.

Council Member Peterson questioned Section 5. City Attorney Ennis clarified the section is only relevant should the City decide in one year to extend this agreement instead of approving another one year agreement in one year.

The Mayor shared his concern with Section 3D. He is not in favor of signing a contract that doesn't have a set amount and the legislature or Board of Supervisors is able to raise the rates.

Dan Talbot, Acting Chief of Riverside County Fire Department, explained the contract being considered by the Council is their standard approved template. The County is only able to provide an estimate and according to the law must bill actual costs.

There was some discussion and clarification regarding the estimate including the highest pay grade (step) for a position, but that the billing includes the actual step of the individual that performs the work.

The Mayor opened the item for public comment.

David Ellis requested the Council put something in the contract requiring CalFire improve landscaping of the Fire facilities.

Seeing no further comments, the Mayor closed public comment.

**Motion Peterson/Franklin to adopt Resolution 2018-58, approving an agreement for one year with an option to renew for two additional years with Riverside County Fire Department to provide medical, fire protection and other emergency response services.. Motion carried, 5-0.**

2. Resolution 2018-63, Approving a Three Year Enterprise Licensing Agreement with Microsoft (through Software One)

Interim City Manager Clayton presented the Staff Report as contained in the Agenda packet.

City Attorney Ennis advised there is a correction to Section 1 of the Resolution in the Agenda packet. The amount has been changed from \$534,560.15 to the correct amount of \$54,560.15 and the final version that will be executed has been corrected.

Mayor Moyer opened the item for public comment. Seeing none, closed public comment.

**Motion Franklin/Andrade to adopt Resolution 2018-63, approving the Enterprise Licensing Agreement with Microsoft (through Software One) and authorize the Interim City Manager to execute the agreement. Motion carried, 5-0.**

3. Resolution 2018-75, Approving the Agreement with Cybertime Network Communications for Citywide Looped Microwave Backbone System and Data Circuit to the Water Plant, and Provision of 10.0 Mbps Internet Feed to City Hall for Fiscal Year 2018-2019 in the Amount of \$31,188

Interim City Manager Clayton presented the Staff Report as contained in the Agenda packet.

Council Member Peterson expressed concern this provider owns everything resulting in the City only being able to utilize their services. He asked if the City had considered other providers like Verizon or Hughes.

Eric Brown, Information Technology Manager, explained that based on their analysis there are some better options, but more expensive. With the current budget, this is the best option available.

The Mayor opened the item for public comment.

Richard Rutherford requested the City explore banding together with other cities to get other options.

Manager Clayton advised staff will explore the possibility of working with neighboring cities.

David Ellis mentioned a cell tower was recently approved and due to potential interference, he suggested looking into fiber optic even though it may be a little pricier

Seeing no further comments, the Mayor closed public comment.

**Motion Andrade/Franklin to adopt Resolution 2018-75, approving the agreement with Cybertime Network Communications for citywide looped microwave backbone system, data circuit to the water plant, provision of 10.0 Mbps internet feed to City Hall, and authorizing the Interim City Manager to execute the agreement. Motion carried, 5-0.**

4. Resolution 2018-76, Authorizing the California Statewide Communities Development Authority to form a Community Facilities District (CFD) in the City of Banning

Interim City Manager Clayton presented the Staff Report as contained in the Agenda packet.

Mayor Moyer opened the item for public comment.

Chris with Pardee Homes advised he is available to answer any questions.

Don Smith would like to know what fees would be included in the CFD.

Manager Clayton advised she can bring the information back to Council for information and Pardee Homes is required to disclose that information to each homebuyer.

Seeing no further comments, the Mayor closed public comment.

City Attorney Ennis explained that under Exhibit H of the approved document caps the CFD amount of the assessment at 2% of the projected initial sales price.

**Motion Andrade/Peterson to adopt Resolution 2018-76, authorizing the California Statewide Communities Development Authority to form a Community Facilities District within the City of Banning to finance certain public improvements and public safety services for the development project known as Atwell by Pardee Homes. Motion carried, 5-0.**

5. City Policy Development on the Negotiation and Execution of Agreements with other Agencies

Interim City Manager Clayton presented the Staff Report as contained in the Agenda packet.

Council Member Franklin requested a section be added to include how the public will benefit.

Council Member Peterson referred to the 2009-10 Grand Jury Report's (see Exhibit "E"). He would like to use their recommendation number six, but add that it must include an "independent certified Member of the Appraisal Institute (MAI) appraisal" ordered by the redevelopment agency or City. He would also like to use their recommendation number

eight. He then referred to the 2015-16 Grand Jury Report (see Exhibit "F") and requested their recommendation number one be followed as well.

The Mayor opened the item for public comment. Seeing none, closed public comment.

6. Potential Ballot Measure to be Placed on the November 2018 Ballot by the City Council to Allow Retail Cannabis Businesses to Operate in the City Subject to a City Gross Receipts Tax and Various Zoning and Other Regulations

Community Development Director Patty Nevins presented the Staff Report as contained in the Agenda packet along with a PowerPoint Presentation (see Exhibit "G").

The Mayor asked how zoning was chosen. Director Nevins indicated a limited area was selected based on current uses. He asked for a timeline for Council approval in order to get this on the ballot. City Attorney Ennis advised it would have to be approved at either the June 26<sup>th</sup> or July 10<sup>th</sup> City Council Meeting.

Council Member Franklin asked if the Committee had discussed the space between two businesses and the distance requirements from residential. Director Nevins explained the only distance requirement is from residential and because of that the north side of Ramsey would probably not be an option.

The Mayor opened the item for public comment.

Don Smith recalled he and Council Member Andrade suggested this over a year ago, and now feels the City is not allowing enough time to review and make recommendations correctly. He also informed the Council that similar measures were defeated in Moreno Valley and Yucca Valley. He recommended educating the public in order to pass the measure.

Seeing no further comments, the Mayor closed public comment.

**Motion Peterson/Franklin to place a second City Council proposed ballot measure on the November 2018 ballot to allow and tax retail cannabis businesses in the City and provide direction to staff. Motion carried, 5-0.**

7. Resolution 2018-57, Accepting the 2018 Supplemental Law Enforcement Services Allocation (SLESA) in the Amount of \$100,000

Interim Police Chief Fisher presented the Staff Report as contained in the Agenda packet along with a PowerPoint Presentation (see Exhibit "H").

Council Member Franklin asked what the money would be used for this year. Interim Chief Fisher indicated it would be the same as last year; vehicles, uniforms, and equipment.

The Mayor opened the item for public comment. Seeing none, closed public comment.

**Motion Welch/Peterson to adopt Resolution 2018-57, authorizing the acceptance of the 2018 SLESA in the amount of \$100,000 and authorizing the Banning Police Department to apply the funds towards the purchase of front line law enforcement related equipment, services, and supplies. Motion carried, 5-0.**

8. Resolution 2018-61, Adopting the San Gorgonio Integrated Regional Water Management Plan (IRWM) for the Newly Created San Gorgonio IRWM Region

Public Works Director Art Vela presented the Staff Report as contained in the Agenda packet.

The Mayor pointed out that when the State makes mandates, the local agencies have to pay for them.

The Mayor asked who determines the priority of the projects. Director Vela explained the committee determines priority groups and within that group, there is not a set priority even though one may be listed before another.

The Mayor opened the item for public comment.

David Ellis explained that he shared his concern regarding the Sustainable Groundwater Management Act (SGMA) at the last meeting. He would like to know how housing projects can be approved over water basins.

Seeing no further comments, the Mayor closed public comment.

Council Member Franklin thanked Director Vela for his work on this.

**Motion Franklin/Andrade to adopt Resolution 2018-61, adopting the San Gorgonio IRWM Plan. Motion carried, 5-0.**

9. Resolution 2018-67, Approving the Water Supply Verification (WSV) for Tentative Tract No. 37298

Public Works Director Art Vela presented the Staff Report as contained in the Agenda packet.

Council Member Peterson asked for clarification on whether or not the figure in the report regarding storage is the new figure based on Council's direction to reduce the amount of water. Director Vela clarified that the Council directed staff to reduce the City's water order from the San Gorgonio Pass Water Agency, and this pertains to water the City already has stored.

Council Member Franklin suggested that since the City cut the amount they are able to buy, maybe some of the developers would be able to work out a plan to purchase and

dedicate water to their developments, ensuring the water allocation to the City stays the same. Director Vela confirmed he believed that is something that could be done.

The Mayor opened the item for public comment. Seeing none, closed public comment.

**Motion Peterson/Franklin to adopt Resolution 2018-67, approving the WSV prepared by KWC Engineers for Tentative Tract No. 37298, also known as Atwell Specific Plan Phase 1 and previously known as Butterfield Specific Plan Phase 1. Motion carried, 5-0.**

The Mayor recessed the Regular Meeting of the Banning City Council and called to order a joint meeting of the Banning City Council and the Banning Utility Authority.

### CONSENT ITEMS

1. Resolution 2018-08 UA, Approving an Increase of \$10,218 to Purchase Order 28567 with Quinn Company for Repairs to the City of Banning's CAT D-6 Dozer

Recommendation: Adopt Resolution 2018-08 UA.

2. Water Enterprise Revenue Bonds Refunding and Improvement Projects, 2015 Series; Requisition No. 1 Bond Project Funds Drawdown

Recommendation: Receive and file report.

3. Wastewater Enterprise Revenue Bonds Refunding and Improvement Projects, 2005 Series Project Funds Drawdown

Recommendation: Receive and file report.

The Mayor opened the item for public comment. Seeing none, closed public comment.

**Motion Peterson/Welch to approve Consent Items 1 through 3. Motion carried, 5-0.**

### REPORTS OF OFFICERS

1. Ordinance 1525, Adopting Water and Wastewater Rate Increases

Interim City Manager Clayton presented the Staff Report as contained in the Agenda packet.

Mayor Moyer opened the consent item for public comment.

Ellen Carr felt the City only did the bare minimum to make the notice legal.



Jerry Westholder asked the City to reconsider the rate increase and reject the proposal and find another way to fund projects.

Maggie Scott shared her surprise that only 300 protests were received of the 14,000 mailed, as it does not make sense to her.

Seeing no further comments, the Mayor closed public comment.

Manager Clayton explained the average customer should see approximately \$1.50 per month increase. She also explained that the legal requirement is to only mail the notice to property owners only (approximately 10,000). The City mailed 14,560 because the notice was mailed to property owners and every customer on record.

Council Member Peterson pointed out that water rates have been increased 66% since 2011.

Council Member Andrade asked where the City of Banning falls in their water rates according to rate studies. Manager Clayton shared that in a comparison with various surrounding cities and agencies, the City of Banning has the fourth lowest water rates, with an average of \$49 per month.

The Mayor asked the Deputy City Clerk to read the title of Ordinance 1525.

The Deputy City Clerk read the title of Ordinance 1525; "*Ordinance 1525, an Ordinance of the City of Banning, California, Amending Chapter 13.08 of the Banning Municipal Code Approving the Water and Wastewater Rate Schedules.*"

**Motion Welch/Franklin waive further reading of Ordinance 1525. Motion carried, 4-1, with Council Member Peterson voting against.**

**Motion Welch/Franklin that Ordinance No. 1525 pass its first reading. Motion carried, 4-1, with Council Member Peterson voting against.**

The Mayor adjourned the joint meeting and called to order a scheduled meeting of the Banning Financing Authority.

Board Members Present: Board Member Andrade  
Board Member Franklin  
Board Member Peterson  
Board Member Welch  
Chairman Moyer

Board Members Absent: None

## CONSENT ITEMS

1. Refunding Revenue Bonds (Electric System Project), 2015 Series; Requisition No. 1 Bond Project Funds Drawdown

The Mayor opened the item for public comment. Seeing none, closed public comment.

**Motion Franklin/Peterson to approve Consent Item 1. Motion carried, 5-0.**

The Mayor adjourned the scheduled meeting of the Banning Financing Authority and reconvened the Regular City Council Meeting.

## ITEMS FOR FUTURE AGENDAS

Council Member Franklin suggested the City consider making the internet and Wi-Fi part of its infrastructure.

Council Member Franklin would like a proposed position on AB1912; pension liabilities for JPAs.

Mayor Moyer would like to know if the City is looking into the Mills Act. Community Development Director Nevins advised it is on the Senior Planner's list of things to do.

Mayor Moyer pointed out the Armory Lease update has been pending for a while as well.

## ADJOURNMENT

By common consent the meeting was adjourned at 7:25 P.M.

Minutes Prepared by:



Sonja De La Fuente, Deputy City Clerk

**These Minutes reflect actions taken by the City Council. The entire discussion of this meeting can be found by visiting the following website: <https://banninglive.viebit.com/player.php?hash=8ZsntlBUknWQ> or by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.**

## **Exhibit “A”**

**to the June 12, 2018, Regular Meeting Minutes**

X'

5-23-18

Dear Mayor + Council -

My daughter + I went  
to your meeting yesterday  
even because my daughter  
wanted to hear about Animal  
Control.

Well we left at break  
time because of all the  
rude people speaking.  
Also we sat in front of  
the westholders (the preacher)  
& they talked the entire  
time & shouted out too.  
Also people with cell phones  
on.

When at a meeting people  
should be more considerate  
& turn phones off & do not

-2'  
Shout out & talk. Make  
them go outside. It's  
just plain rude!! And a  
so called "man of God"  
should know better.

Also you should limit  
speaking time to 3 mins  
instead of 5.

per Water is getting expensive,  
& we have homeless people,  
and illegals, & I had no  
problem sending the paper  
back to you I received in the  
mail.

I have been in Banning since  
1942 & have seen the town at  
it's best & worse. And at  
least it's clean now. And  
I read in the paper about how

3-

Good after Schools are - &  
Thank you for fixing the  
parking lot at Community  
Center. Looks Good!

Vera Macias  
385 W. Wilson  
Banning Ca.

92220

951-849-7003

P.S. You have my  
permission To read at Council  
Meeting.

## **Exhibit “B”**

**to the June 12, 2018, Regular Meeting Minutes**



Rec'd. 6/12/18 (D)

## Watermark Development Inc.

1838 North Valencia Avenue, Placentia, CA 92870. Telephone 714-879-3569 Email: watermarkinc@earthlink.net  
CA State License # 741507

June 12, 2018

City of Banning City Council

99 E Ramsey Street  
Banning, CA 92220

### Banning Work Lofts Project -

Project Address : 1450 E. Lincoln Street - Banning, CA 92220

Honorable City Council Members and City staff

We are writing this letter to bring it to your attention that we are very disappointed that the Airport Industrial ( AI ) Zone is being excluded from the current cannabis indoor cultivation zone per last weeks Planning Commission meeting. We would have attended but we received no notification of the meeting.

Back in April of 2018 a map graphic was released that we interpreted included our zoning. See attached Map 1. Our approximate location is shown by the 'Red X' within the designated oval shaped area.

After review of the map from last weeks Planning Commission meeting the new map graphic clearly shows the exclusion of the AI zone. See attached Map 2.

As you may recall, our project, the Banning Work Lofts ( BWL ) is shovel ready with all permits pulled. I have explained in previous Council Meetings that the benefit to our BWL project to be in the cultivation zone would be that the increased land value would then allow more favorable construction loan financing to occur and the project to break ground.

If a future cannabis related business were to request occupancy in our building all State and City processes would be faithfully executed to the satisfaction of the City of Banning staff, Planning Commission and City Council as well as applicable codes and ordinances.

We purchased the land with the intent to develop about 14 years ago. We have invested many hundreds of thousands of dollars into plans and approvals. We would really like the opportunity to get started with the project and bring which would bring jobs, housing, new development, business to local merchants and retail, not to mention City business licensing, tenant improvement permits, utility service requests and the like.

This past April 2018, our project was granted an 2 year Entitlement Extension via unanimous approval from the Planning Commission. The project is currently in an approved state.

The AI zone intent was created to support the Banning Airport quite a long time ago. But, no airport related businesses exist in the zone. Currently the AI zone is comprised of 11 parcels of land. And we have spoken to most of the owners ( and are in the process of obtaining signatures ) and they are in favor of supporting the extending or a zone overlay to include the AI zoning.

The designated cultivation zone is to the West and to the South of the AI zone. With the airport being to the North and East. It is our opinion that if this is not done then we will be left with a zoning hole type situation whereby adjacent and neighboring properties will appreciate within the cultivation zone. But the AI zone would be left without the enhanced real estate values and further loss of development opportunities of the 11 lots within the zone.

We are committed to developing our project as approved. We are waiting for leases and land values to increase so that we can obtain construction financing at a reasonable rate. The inclusion of the AI Zone into to indoor cultivation zone would allow that to happen.

If included our project, being already approved, could be one of the first to get off the ground and begin the revitalization of this under utilized area of the City.

We also realize that the voters have the final approval of this in November. And we realize that is may get voted down. But we need the chance, the opportunity for this to happen for the benefit of our project, the AI zone and this area of the City of Banning.

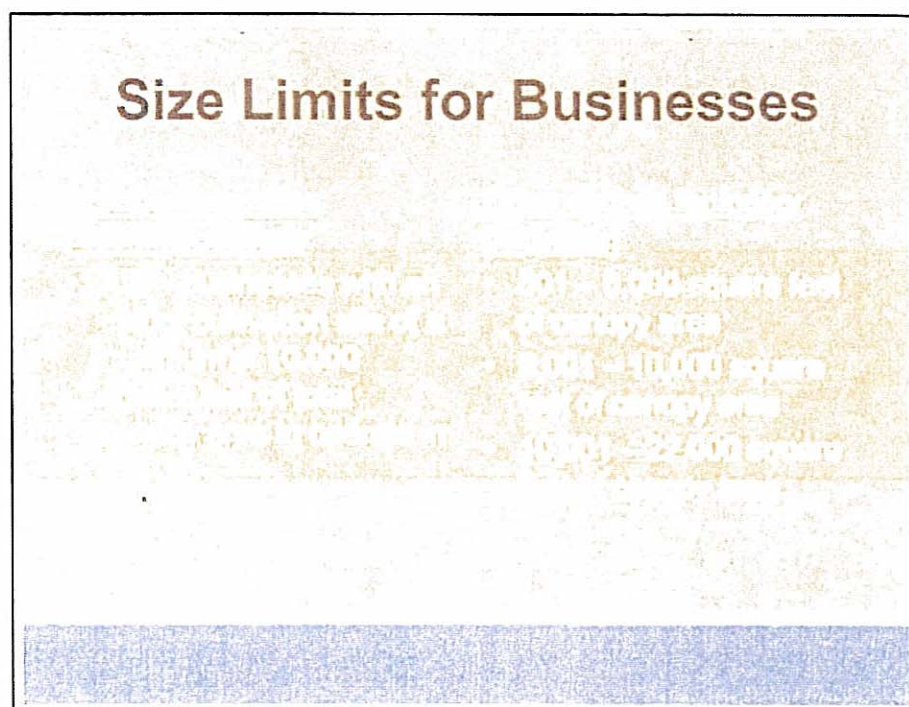
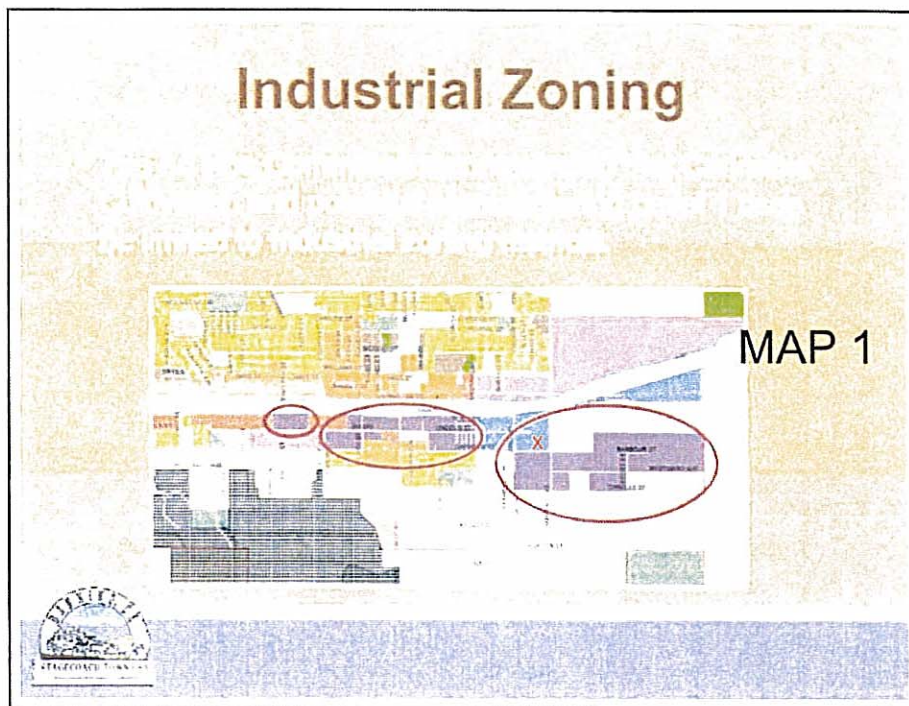
We are willing to be involved with whatever may be necessary to make this a reality. And are hopeful that the City Council will assist us to make it happen.

Thank you for the opportunity to present this request to your honorable panel for your continued support of our project.

Respectfully Submitted

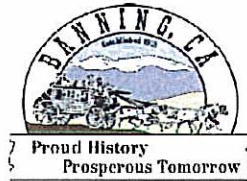
Ed Quental (310) 261-1242 cell

Mark Quental (310) 261-1243 cell





# CITY OF BANNING GENERAL PLAN WITH ZONING OVERLAY



## Legend

- Centerlines
- Specific Plan
- Banning City Boundary
- ZONING OVERLAY**
  - RL-10,000
  - RL-14,000
- GENERAL PLAN**
  - Airport Industrial
  - Business Park
  - Downtown Commercial
  - General Commercial
  - High Density Residential (11-16 du/acre)
  - High Density Residential 20/Affordable Housing Opportunity (20-24 du/acre)
  - Highway Serving Commercial
  - Industrial
  - Industrial-Mineral Resources
  - Low Density Residential (0-5 du/acre)
  - Medium Density Residential (0-10 du/acre)
  - Mobile Home Parks
  - Open Space - Hillside Preservation
  - Open Space - Parks
  - Open Space - Resources
  - Professional Office
  - Public Facilities - Airport
  - Public Facilities - Cemetery
  - Public Facilities - Fire Station
  - Public Facilities - Government
  - Public Facilities - Hospital
  - Public Facilities - School
  - Public Facilities - Railroad/Interstate
  - Rural Residential (0-1 du/acre)
  - Rural Residential - Hillside (0-1 du/acre)
  - Ranch/Agriculture (10 ac min.)
  - Ranch/Agriculture - Hillside (10 ac min.)
  - Very Low Density Residential (0-2 du/acre)

## MAP 2

### General Plan Amendments - GPA

GPA 07-2502 - Ordinance 1305  
GPA 07-2503 - CC Resolution 2008-16  
GPA 08-2501 - Ordinance 1397  
GPA 08-2502 - Ordinance 1399  
GPA 11-2501 - Ordinance 1450 & 1451  
GPA 13-2505 - Ordinance 1475  
GPA 14-2501 - Ordinance 1484  
GPA 14-2502 - Ordinance 1482  
GPA 14-2503 - Ordinance 1495

### Specific Plans

Pardee Specific Plan - Ordinance 1450 & 1451  
Loma Linda Specific Plan - Ordinance 1330  
Little Europe Specific Plan - Ordinance 984  
Sun Lakes Specific Plan - Ordinance 899  
Sun Lakes North Specific Plan - Ordinance 899  
Rancho San Geronimo Specific Plan - Pending

Scale = 1:22,883

0 0.25 0.5  
Miles

Nobel Systems  
City of Banning GIS Zoning Map  
January 01, 2010 Update

## **Exhibit “C”**

**to the June 12, 2018, Regular Meeting Minutes**

## **10.5 Censure of Legislative Body Members**

(a) It shall be a violation of this section for any sitting member of a Legislative Body to violate any general law or regulation, and any, rule, law, ordinance or resolution of the City of Banning. It shall also be a violation of this section for any sitting member of a Legislative Body to violate an administrative policy of the City which has been adopted following a vote of the Legislative Body or the City Council on the matter and which by its terms is expressly made applicable to the Legislative Body.

(b) Any violation of the foregoing paragraph by a Legislative Body member may be punished through the administration of a public censure of the member by the member's Legislative Body. Such censure may be in addition to any other punishment applicable to the violation. For purposes of this section, "censure" shall mean the adoption of a motion setting forth a statement of disapproval of a Legislative Body member's conduct.

(c) When evaluating a request for defense made by the censured member in litigation arising from the censured conduct, the record of the censure shall be considered by the Legislative Body. Such record shall not be determinative. Failure of the Legislative Body to censure the conduct of a member does not constitute waiver of the Body's right to refuse to defend the member in an action.

(d) A Legislative Body member may not be made the subject of a motion for censure without first being given notice of the violation and an opportunity to correct the violation, if it can reasonably be corrected. Upon a continued violation or failure to correct, the charged member shall be given notice and an opportunity to be heard as follows:

- (i) Only a sitting member of the Legislative Body whose member commits the violation may initiate proceedings for the censure of one of its members.
- (ii) Proceedings shall be commenced by the presentation of a written statement of charges to the subject Legislative Body member with a copy delivered concurrently to the Clerk/Secretary by the member initiating the charge. Initiation shall not require the prior approval of the Legislative Body. The statement of charges shall be given at least ten days prior to the meeting at which the censure motion is proposed to be brought. The notice shall contain, at a minimum, the designation of the specific rule, law regulation, etc.

which the member is claimed to have violated and a statement of the date, place and time at which the violation occurred. The statement shall further contain a description of the conduct of the member which is alleged to constitute the violation. The statement of charges shall be delivered to all other Legislative Body persons.

- (iii) Within seven (7) days after delivery of the statement of charges, the charged member should deliver a written response to the other members of the Legislative Body unless the charged member chooses to defer to response to the hearing.

(e) The motion for censure shall be agendized and considered at the first regular meeting occurring 10 days following the delivery of the statement of charges to the member and Clerk/Secretary. The hearing may not be continued except upon the absence from the meeting of a member of the Legislative Body other than the member bringing the charge or the member who is the subject of the charge.

- (i) The hearing shall be conducted in an open session by the Presiding Officer unless the Presiding Officer is a party to the action, in which case the Vice Chair or some other member shall conduct the proceedings.
- (ii) The hearing shall generally proceed by a reading of the charges by the charging member. The charging member may present witnesses; the charged member may answer in rebuttal; members of the public may speak in favor or opposed to the charge; and the remaining members may speak to the charges in that order.
- (iii) Passage of the motion for censure shall require a majority vote of the members of the Legislative Body. The voting members shall not go into closed session for deliberation.

(f) If the motion for censure does not pass the proceedings shall be at an end. A new motion for censure on the same grounds of violation may not thereafter be commenced against the same Legislative Body member for a period of 1 calendar year from date of the vote. However, new proceedings may be commenced on the same charges within the 1 year period on the vote of 4 members of the Legislative Body.



(g) If the motion for censure does pass, such motion shall become a part of the public record a copy of which shall be made available upon demand to any member of the public and notice of same shall be placed in the administrative file of the Legislative Body member.

**Exhibit “D”**

**to the June 12, 2018, Regular Meeting Minutes**

Rec'd 6/12/2018 Glen K  
②

## STATEMENT OF CHARGES AGAINST COUNCIL MEMBER ART WELCH

### COUNT 1: VIOLATION OF ETHICS – DECEPTIVE LETTER TO GRAND JURY

On July 19, 2016 Councilman Welch sent a letter to the Riverside County Grand Jury in response to their 2016 report. The letter was authorized by unanimous direction given by council, without there being any dissent on record by any council member.

In the letter Welch implied that the City of Banning will no longer conduct business via undocumented handshake agreements. However, only 9 months later, Welch engaged in yet another handshake agreement, this time for brush removal to the benefit of a private business, Diamond Hills Chevrolet.

In the council meeting of May 22, 2018, Welch is on video stating that just because he signed the letter, this *"does not mean (he) agreed with it"*. This means Welch intentionally mislead the Grand Jury into believing that he as Mayor – as well as the City – fully agree with the Grand Jury's recommendation that handshake agreements shall no longer be used in Banning, when in fact he had every intention to continue the practice.

At a very minimum, Welch had an ethical obligation to formally express his dissent with the response, not only to the Grand Jury, but also to the public. Welch failed to do so not only when the response was formulated, but also at the time he signed the letter. This violated the ethical standards set forth in Sec. 9.10 of the "Manual of Procedural Guidelines" of the City of Banning, which reads : "A member of a Legislative Body shall maintain the highest ethical standards and shall adhere to all laws and the ordinances and regulations of the City in carrying out their duties".

## **COUNT 2: VIOLATION OF ETHICS – GIVING DIRECTION TO CITY MANAGER WITHOUT KNOWLEDGE OR CONSENT OF THE CITY COUNCIL**

In their 2018 report, the Grand Jury found that Councilman Welch “directed” the City manager (Michael Rock) to provide brush clearing services for Diamond Hills Chevrolet. This is believed to have occurred in March of 2017. Welch gave the direction as a single councilmember, without knowledge or consent of the rest of the council.

In the council meeting of May 22, 2018 Welch is on video stating that “he never gave direction, but merely made a suggestion”.

However, Welch's denial deserves no consideration as it is irrelevant under the law. The Grand Jury's investigation into the matter lasted for over 9 months, and included the testimony of nine witnesses, including Rock and Welch. With their report, the Grand Jury has acted as a “finder of fact”. The factual finding by the Grand Jury was that Welch indeed gave direction to the City manager.

Pursuant to Sec. 11.9 of the “Manual of Procedural Guidelines”, the Banning City council **must** (not “may” or “should”) consider “legally mandated findings applicable to a matter”. Such findings include those of a Grand Jury. Therefore, this section mandates that the council frame their decision solely based on the factual findings of the Grand Jury. They must not consider their denial by Welch.

It was unethical for Welch to use his position as Mayor and throw his weight around by directing a Staff member, in this case the City manager himself, without first consulting with the rest of the City council.

Welch violated the ethical standards as set forth in Sec. 9.10 of the “Manual of Procedural Guidelines” of the City of Banning. His actions also went against the spirit and intent of City Ordinance 2.08.110, which specifically prohibits council from micromanaging staff.

In a council session of April 11, 2017, Welch is on video admitting wrongdoing when he said: *“Did we go around the idea of bringing it to council, to get a project like that approved? - Probably”*.

## **Exhibit “E”**

**to the June 12, 2018, Regular Meeting Minutes**

# **2009-2010 GRAND JURY REPORT**

## **Community Redevelopment Agency of the City of Banning**

### **Background**

Banning, California is located midway between Riverside and Palm Springs. Incorporated in 1913, the city has a population of fewer than 30,000 residents. The city is governed by a five-member city council that also sits as the board for the Community Redevelopment Agency of the City of Banning (the "Redevelopment Agency"). The redevelopment agency is charged with eliminating blight in designated areas of the city.

Economic activity in Banning is concentrated among the motels, gasoline stations and restaurants that service Interstate 10 motorists and truckers. In 1978 the city council created the Downtown Project Area in order to begin a redevelopment process for the city. A second project area (the Midway Project Area) was formed six years later. In February 2002, the two areas, along with some new territory, were merged to form the present boundaries of the redevelopment area.

Authority for formation and operation of a redevelopment agency is found in the California Community Redevelopment Law, contained in the California Health and Safety Code, beginning with Section 33000. Article XVI, Section 16 of the California Constitution, adopted in 1952 by the voters, provides for tax increment financing. Banning's redevelopment agency is financed through tax increment revenue and tax allocation bonds. The tax increment revenue is calculated using this formula: when a redevelopment project area is formed, the assessed values of all of the properties within the area are frozen; the total assessed value becomes the base-year valuation; real estate taxes associated with any growth in the base-year valuation are considered tax increment revenue. Most of the revenue is allocated to the redevelopment agency.

The redevelopment agency is required to spend the tax increment revenue only on redevelopment purposes, including a 20 percent set-aside restricted to low-income housing.

The redevelopment agency supported a non-profit organization called the Banning Cultural Alliance (the "Alliance"). Formed in 2005, the Alliance obtained tax-exempt status under Section 501c(3) of the Internal Revenue Code. According to the Alliance website, its mission is to provide education about and support for arts and culture in Banning.

## Findings

1. In 2007 the redevelopment agency floated a bond issue that netted approximately \$24 million to fund projects in the redevelopment area. The official statement listed three general categories of planned expenditures: revitalization of downtown, economic incentives and public improvements. Little specificity was included in the official statement. Investigation revealed that the redevelopment agency board had not formulated detailed, prioritized plans for the use of the proceeds.
2. Testimony revealed that the city's and the redevelopment agency's planning and project implementation have been hampered by key employee turnover. Since 2008, three city managers have left, and a fourth is scheduled to begin work in February 2010. Since 2004 five community development directors/consultants have come and gone, and the sixth is now in place. Since 2004, four redevelopment managers have left, and the fifth is now in place. Additional investigation revealed that allegations of micro-managing have been leveled against members of the city council/redevelopment agency board.
3. One of the programs of the redevelopment agency is called Façade Improvement. Property owners are given grants or forgivable loans to improve the exteriors of their buildings in the project area. It was found that the redevelopment agency board has committed funds for improving the appearance of vacant, unrented property while ongoing businesses are made to wait for assistance.
4. Onsite visits and sworn testimony revealed East Banning to be a blighted area in need of priority attention from the redevelopment agency. There is a paucity of sidewalks, streetlights and parks. Old furniture is strewn about the neighborhood; trash and weeds are plentiful. Aside from some low-income housing expenditures, the redevelopment agency has neglected this blighted area of the city.
5. Redevelopment agencies are required by law to prepare five-year plans. The 2004-2009 Banning plan notes the need for an additional staff person to assist the one agency employee devoted exclusively to redevelopment. Deadlines have been missed, and programs and contracts have not been monitored and administered adequately. Without the additional person or the hiring of outside consultants, the plan notes, "it is not probable that the agency will be able to implement the programs and projects in the time periods identified herein."



6. In July 2009, the redevelopment agency bought property in the western side of the city without acquiring its own independent certified appraisal. Witnesses testified that the price paid, \$1,200,000, was above market value. Since the purchase, the redevelopment agency board has budgeted an additional \$800,000 to make the property more desirable.
7. On August 4, 2005 the city council voted to give the Alliance \$10,000. In the course of the next four years, the city council and the same people acting as the redevelopment agency board voted to give the Alliance a total of \$806,503.08 in public funds for a variety of uses (see appendix for a breakdown on the funds). On August 21, 2006, the first and largest contract between the redevelopment agency and the Alliance was approved for \$343,000 over a two-year period. While this contract called for the Alliance to stage arts and cultural events, it also required the Alliance to perform specific redevelopment activities. The following redevelopment activities were never performed: development of a downtown Property-Based Improvement District (PBID) and a campaign to market Banning with advertising on billboards, radio, television and infomercials.
8. The first two contracts, covering the period between 2006 and 2009, followed the same format. The Alliance was given a check for the total at the beginning of the each contract year. The agreements contained no means to measure success or failure of the efforts by the Alliance, and they contained no criteria to determine whether the obligations were indeed fulfilled.
9. An examination of the relationship between the Alliance and the redevelopment agency revealed a willingness by the board to fund the group without any measure of accountability, without measures of success or failure and without demands for return of funds not spent on contractual obligations. No other outside organization in Banning has been treated this way by the board of the redevelopment agency.

## **Recommendations**

### **City Council, City of Banning Community Redevelopment Agency, City of Banning**

1. The redevelopment agency should develop a prioritized list of redevelopment projects to justify any future funding through the bonding process. Further, projects and their prioritization should be widely publicized and then reviewed by members of the community for their input prior to the issuance of future bonds.
2. The Banning City Council and the redevelopment agency should consider retaining an outside consultant to ascertain from employees their attitudes toward their work environment and their relationship with policymakers. Further, the leaders in Banning should take the initiative to establish ongoing workshops on the role of policymakers and employees and how to improve relations.
3. The redevelopment agency board should prioritize how façade improvement money is spent. First priority should be given to owners of buildings where businesses are operating; second priority should go to building owners who have a commitment to rent a vacant structure; and lowest priority should be instances where a building owner seeks redevelopment money for a vacant building.
4. The redevelopment agency should commit now to a major improvement program over the next 10 years to reduce the blight in East Banning.
5. The redevelopment agency board should consider the hiring of an additional staff person to help in monitoring current projects and administering programs.
6. All future development property purchases by the redevelopment agency must include an independent certified appraisal ordered by the redevelopment agency staff.
7. The redevelopment agency board should enforce the immediate return of \$162,000 of public money from the Banning Cultural Alliance in accordance with the terms of the contracts. The amount arises from the Alliance failing to meet its contractual requirement to use \$34,000 to develop a PBID; to use \$110,000 for a marketing program between 2006 and 2008; and \$18,000 to develop a PBID between 2008 and 2009. A reasonable rate of interest on the amount should also be included.

8. The redevelopment agency board should include in all of its contracts with personal services suppliers and outside organizations provisions for measurement of success or failure and of fulfillment or nonfulfillment of the obligations assumed. Penalties and/or termination provisions for nonperformance should be included.
9. The redevelopment agency board should immediately cease and desist awarding any redevelopment funds to the Cultural Alliance.

## Appendix

### Breakdown of city or redevelopment money paid to the Banning Cultural Alliance

Date	Amount	Description
8/4/05	\$10,000	This is a Community Development Block grant from the city council to provide access to cultural activities for underprivileged children and their families.
9/13/05	\$5,000	This is a city council donation to help the Alliance stage a fundraiser on behalf of the victims of Hurricane Katrina in the Gulf Coast.
3/30/06	\$10,000	This is for a two-month agreement between the redevelopment agency and the Alliance. The money is used to stage an "Art Hop" along North San Geronio Avenue.
6/1/06	\$19,800	This is for a three-month agreement for Phase II of the Arts District planning proposal, begun with the previous contract.
8/21/06	\$343,000	<p>This is the original two-year contract with the redevelopment agency. The Alliance is paid:</p> <ol style="list-style-type: none"> <li>1. \$48,000 to stage Art Hops in 2007 and 2008.</li> <li>2. \$42,000 for a Western art show during the city's annual Stage Coach Days celebration in 2007 and 2008.</li> <li>3. \$68,000 for a marketing and promotional campaign called Brush with Banning.</li> <li>4. \$11,000 to facilitate a Youth Arts Council.</li> <li>5. \$30,000 to develop a five-year downtown revitalization implementation plan.</li> <li>6. \$34,000 to organize a downtown property-based improvement district.</li> <li>7. \$110,000 to buy billboards, radio, television advertising, and infomercials promoting Banning.</li> </ol>
1/27/07	\$100,000	This is a redevelopment agency façade improvement grant that was used for the Alliance headquarters building at 175 West Hays Street. Other businesses in Banning received similar amounts.
3/29/07	\$1,000	This is a Community Development Block Grant from the city council to the Alliance for its Youth Arts Council.
8/5/08	\$171,500	<p>This is a one-year contract between the redevelopment agency and the Alliance. The group is paid:</p> <ol style="list-style-type: none"> <li>1. \$50,400 to stage special events.</li> <li>2. \$41,500 for marketing.</li> <li>3. \$16,500 for operating the Center for the Arts at 128 North San Geronio Avenue.</li> <li>4. \$30,100 to operate a youth program.</li> <li>5. \$18,000 to organize a downtown property-based improvement district.</li> <li>6. \$15,000 for "overhead" expenses.</li> </ol>

Date	Amount	Description
2/5/09	\$14,678.08	This is a Community Development Block Grant from the city council to make the restrooms at the group's headquarters on Hays Street compliant with the federal Americans with Disabilities Act.
5/14/09	\$25	This is a fee for a city council member to attend the dedication ceremony for the group's sculpture garden at its Hays Street headquarters.
6/23/09	\$131,500	<p>This is the third contract between the redevelopment agency and the group. The Alliance has proposed that it should be paid:</p> <ol style="list-style-type: none"> <li>1. \$63,550 for downtown promotion events. About 60 percent of the amount is for the salary of a coordinator.</li> <li>2. \$14,500 for the Center for the Arts operations. About half of the amount is for the salary of a manager.</li> <li>3. \$32,550 for the operation of the Youth Council. About 80 percent of the amount is for the salary of a program director.</li> <li>4. \$9,000 to organize the Banning Business Association, which will be an entity "active in all aspects of downtown planning and activities." The entire amount of money will be spent on the salary of an executive director.</li> <li>5. \$11,900 for "overhead."</li> </ol>
Total	\$806,503.08	

## **Exhibit “F”**

**to the June 12, 2018, Regular Meeting Minutes**

# **2017-2018 GRAND JURY REPORT**

## **City of Banning**

### **Background**

The city of Banning (City) is located in the San Geronimo Pass, between Mt. San Geronimo to the north and Mt. San Jacinto to the south in Riverside County, approximately 30 miles east of the city of Riverside. The City has been rapidly growing in size and population since the 1990s. According to the 2010 U.S. Census Bureau report, the City has a population of 29,603 residents with a median income of \$38,919. It is primarily a small working-class city with an annual operating budget of approximately \$16 million.

Banning was incorporated in 1913 as a General Law City. General Law cities operate under the general laws of the State of California and have less autonomy than those that adopt their own charter. General Law cities follow laws set forth in the State of California Government Code §34102.

Banning has a Council-Manager form of government with five elected Councilmembers. The City is transitioning from an at-large council election system to one where Councilmembers are elected from individual districts. The City Councilmembers serve four-year terms which are staggered, with three members chosen during one election cycle and two at another. Three of the five Councilmembers were elected from individual districts (Districts 1, 2 and 3) in 2016. The other two will be elected from the remaining districts (Districts 4 and 5) in 2018. Every year, the City Council appoints one of its members as Mayor. Elections are consolidated with general elections in November during even-numbered years. City Councilmembers serve as the legislative branch of city government and vote on laws and proposals relating to various community issues. Councilmembers make legislative decisions dealing with topics such as allocating funds to provide for public services, community development projects, issues of land use, and budget matters.

The City Manager is the Chief Administrative Officer, hired by the City Council and retained on an "at-will" negotiated contract. The City Manager is responsible for the day-to-day operations of Banning. This includes, but is not limited to, the preparation and monitoring of the City's budget. The City Manager supervises the City Departments and staff through department heads, and provides oversight of recruitment, dismissal and disciplining of employees. In addition, the City Manager serves as the main professional and technical advisor to the City Council on government operations.

## Methodology

The Riverside County Grand Jury (Grand Jury) obtained information for this report through the review of documents, testimony of officials, and site visitations.

The Grand Jury reviewed the following documents/items:

- a. City of Banning, Council meeting video, April 17, 2017
- b. Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning
- c. Banning City Biennial Budget, Fiscal Years 2013-14 and 2014-15
- d. Banning City Biennial Budget, Fiscal Years 2016-17 and 2017-18
- e. 2015-2016 Riverside County Grand Jury Report (City of Banning-Banning Chamber of Commerce)
- f. Sales Tax Sharing and Operating Agreement between the City of Banning and an auto dealership, February 2017
- g. California Government Code §34102, General Law Cities
- h. State of California, Department of Transportation, Standard Encroachment Permit Application (Form TR-0100, REV. 03/2015), January 18, 2017
- i. Banning Informer article, "Your Tax Dollars at Work: City Workforce Used to Clear Vegetation for Private Business," April 5, 2017 [www.thebanninginformer.com/?page\\_id=9923](http://www.thebanninginformer.com/?page_id=9923)
- j. The Press-Enterprise article, "Questions raised over use of Banning crews for business benefit," Gail Wesson, April 29, 2017, updated May 2, 2017
- k. California Assembly Bill (AB) 1234, Article 2.4, Ethics Training §53235.1(b)
- l. Letter from the City of Banning Finance Department to the auto dealership to request payment, April 10, 2017
- m. Letter from the City of Banning Finance Department, May 2, 2017, to amend the payment request of the April 10, 2017 letter



- n. Banning, California – Code of Ordinances/Title 2 – Administration/Chapter 2.08 – City Manager/2.08.110 – City council to deal only with city manager

The Grand Jury conducted the following interviews:

- a. City of Banning, Director of Public Works
- b. City of Banning, Interim City Manager/Chief of Police
- c. City of Banning, Director of Administrative Services/Deputy City Manager
- d. City of Norco, City Manager
- e. Three Banning City Councilmembers, individually
- f. City of Cathedral City, City Manager
- g. City of Banning, former City Manager

The Grand Jury conducted a site visit to the Interstate 10 Freeway right-of-way (brush removal site).

## Findings

1. A member of the City Council verbally directed the City Manager to assist a local auto dealership by trimming the brush along the Interstate 10 right-of-way adjacent to the business. The shrubbery obscured the view of the business property. The City Manager directed the Public Works Director to arrange for the trimming of the shrubbery by City employees. The Public Works Director applied for, and received, a no-fee public agency encroachment permit from the California Department of Transportation (Caltrans), and City employees completed the project in early April 2017. There was no written agreement between the City and the auto dealership for this project.

After this use of City resources became public knowledge through the local media, the City Council directed the Finance Department to prepare an invoice for City services and submit it to the auto dealership. On April 10, 2017, the City received a check in the amount of \$3,000 prior to an invoice being prepared. Later that same day, the City calculated the cost of the project at \$3,431.66. They then prepared a Reimbursement Request for \$431.66 to cover the balance due to the City and submitted the invoice to the auto dealership for payment.

In a subsequent City Council meeting, a Councilmember questioned whether the amount billed to the dealership reflected the full cost to the City, including use of the City equipment. As a result, the Council directed that an amended invoice be prepared to include the equipment costs. The City Administrative Services Director prepared a second invoice on May 2, 2017, in the amount of \$3,549.64 for equipment use. The auto dealership then issued a second check bringing the total amount received by the City to \$6,981.30, which completed the payment of the amount billed.

A 2015-2016 Riverside County Grand Jury report identified a similar finding of undocumented, informal agreements and recommended:

*That Banning formalize its financial dealings and not utilize handshakes or past practices with other entities.*

The City continues to engage in informal and undocumented “handshake” agreements with private parties. To date, no policy has been developed or implemented to prohibit the practice of using “handshake” agreements.

2. To benefit a private party, the undertaking of the shrubbery removal project required agreement to an indemnity clause in the Caltrans permit application which was done without legal review or approval of the City Council. This action placed the City at a greater risk of financial liability.

The Caltrans Encroachment Permit Application states:

*The applicant, understands and herein agrees to the general provisions, special provisions and conditions of the encroachment permit, and to indemnify and hold harmless the State, its officers, directors, agents, employees and each of them (Indemnitees) from and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, judgments, losses and liabilities of every kind and nature whatsoever (Claims) arising out of or in connection with the issuance and/or use of this encroachment permit and the placement and subsequent operation and maintenance of said encroachment for: 1) bodily injury and/or death to persons including but not limited to the Applicant, the State and its officers, directors, agents and employees, the Indemnities, and the public; and 2) damage to property of anyone. Except as provided by law, the Indemnification provisions stated above shall apply regardless of the existence or degree of*

*fault of Indemnities. The Applicant, however, shall not be obligated to indemnify Indemnities for Claims arising from the sole negligence and willful misconduct of State, its officers, directors, agents or employees. [sic]*

3. The City has no policy addressing the use of public resources and/or equipment to provide services to private parties.
4. The City's Policies and Procedures manual is outdated. Some of the policies are 40 years old and date back to 1977. Additionally, there is no evidence policies and procedures are being reviewed on a regular basis to ensure that they are relevant and accurate.
5. In the past eight years (2010-2017), the City Council has hired seven individuals to serve as City Manager, Interim City Manager, or Contract City Manager, with some serving in that capacity on a repeat basis. Instability in the relationship of the City Council to the City Manager weakens the effectiveness of City management. This poor and *ineffective* relationship has allowed some City Councilmembers to routinely address City staff directly, thereby circumventing the authority and expertise of the City Manager.

Banning Code of Ordinances expressly states:

*The city council and its members shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry; and neither the city council nor any member thereof shall give orders to any subordinate of the city manager.*

6. In the 2016 election, two incumbent City Councilmembers were re-elected and a third individual was newly elected to the Council. Training on critical matters such as ethics, harassment, and the Brown Act, was not made available to the Councilmembers in a timely manner.

Per California AB 1234, Article 2.4, Ethics Training §53235.1(b)

- (b) *Each local agency official who commences service with a local agency on or after January 1, 2006, shall receive the training required by subdivision (a) of Section 53235 no later than one year from the first day of service with the local agency. Thereafter, each local agency official shall receive the training required by subdivision (a) of Section 53235 at least once every two years.*

7. Sales tax sharing agreements are commonly used to encourage businesses to locate and develop large sales tax-generating enterprises within a city. While these can be used to retain a business within a city, they are generally used to attract new businesses. Information obtained from interviews of several city managers revealed these agreements are generally for a short term duration of five to seven years and usually employ an equal sharing of sales tax revenues.

In Banning, a sales tax sharing agreement between the City and an auto dealership was established by the Redevelopment Agency in 2005. Extension clauses were activated and the agreement was renegotiated in 2012 for an additional five years. When the auto dealership was sold in 2016, a condition of the sale was that the City would accept terms of a new sales tax sharing agreement. This new agreement rebated to the auto dealer 85% of the sales tax due to the City up to a maximum of \$3.5 million. These payments will continue for a period not to exceed 15 years or until the auto dealership has received the maximum recoverable amount as defined in the agreement.

The City has been sharing sales tax revenue with this tax-generating business for 13 years. The agreement with the new owner would extend this substantial reduction in sales tax revenue to the City for up to an additional 15 years.

## **Recommendations**

### **Banning City Council**

1. The City immediately discontinue and prohibit the use of undocumented and informal "handshake" agreements. The City adopt strict policies for formalizing agreements and/or contracts with private parties. Stricter policies would preclude the appearance of the gifting or misuse of public funds.
2. The City Manager review all contracts and agreements to ensure any terms affecting liabilities that might be borne by the City are reviewed and evaluated by the City Attorney and approved by the City Council in order to minimize or eliminate any risks of financial liability to the City.
3. The City establish a comprehensive policy to address the use of public resources including City labor and/or equipment when providing services to private parties.

4. The City establish a policy to review and update all City Policies and Procedures on a regular basis. Policies and Procedures should be made available to the public on the City website.
5. The City carefully review and revise its hiring and recruitment processes and procedures, to ensure job objectives and responsibilities for the City Manager's position are clearly defined. The City needs to incorporate and outline expectations and performance measures into the recruitment process for the City Manager. City Councilmembers must comply with City Ordinance 2.08.110 and work with City administrative services exclusively through the City Manager.
6. The City must establish a policy for the training of the new Councilmembers in a timely manner in accordance with AB 1234. Many public and free resources are available for training, including ethics in government, Code of Conduct, proper chain-of-command, transparency in government, and Brown Act obligations. The City Manager should also implement refresher training programs for all City Councilmembers including negotiation skills, civil discourse, and team building.
7. The City should conduct a biennial review and assessment of the financial burden to the City of any tax-sharing agreements which are more than five years old, and report its findings at a regular open City Council meeting.

Continuing agreements should be monitored to ensure that future City leaders agree the City is receiving appropriate benefits in return for the forfeiture of a portion of available sales tax revenue.

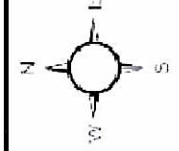
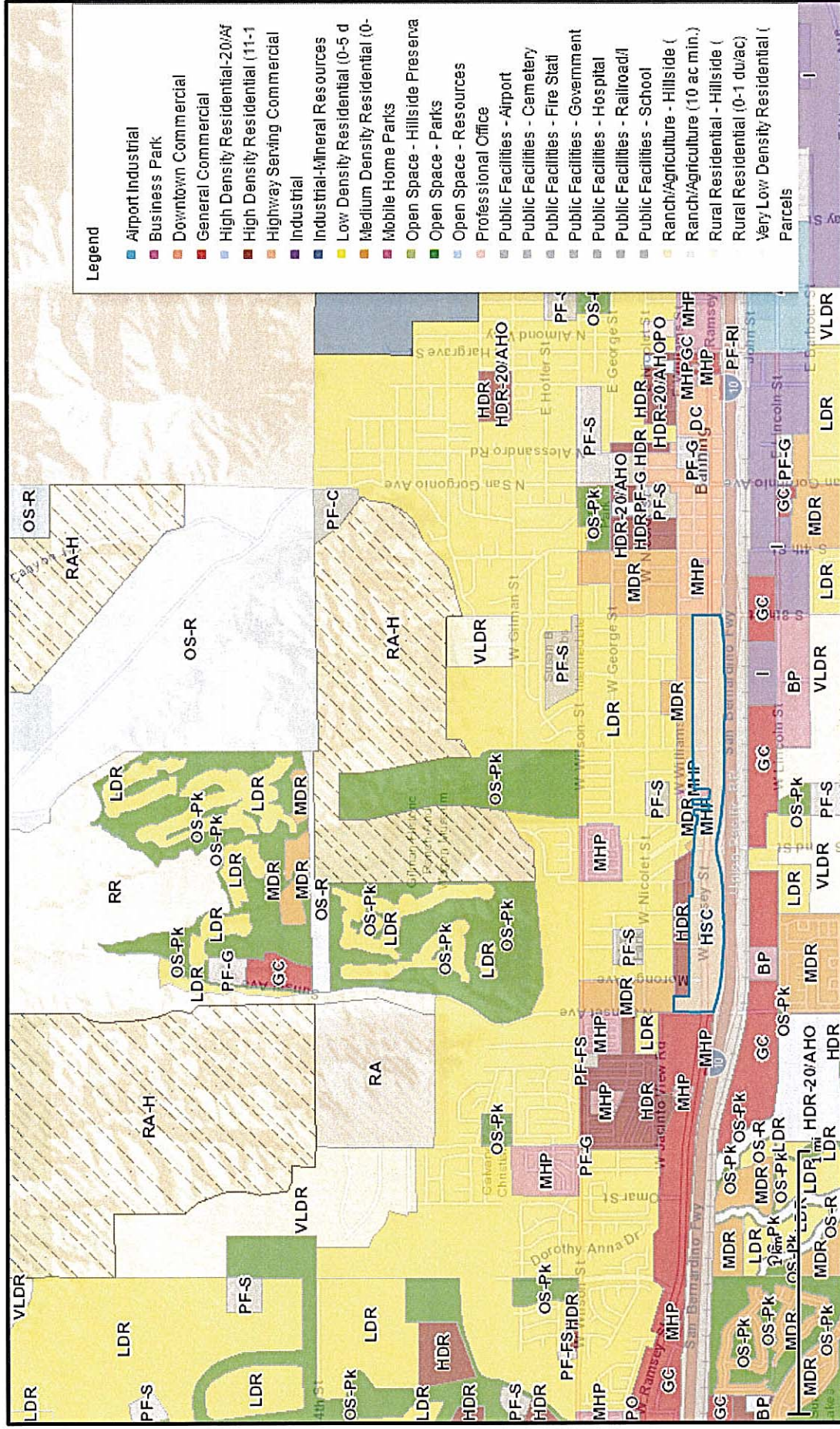
Report Issued: 4/30/2018  
Report Public: 5/2/2018  
Response Due: 7/30/2018

## **Exhibit “G”**

**to the June 12, 2018, Regular Meeting Minutes**



# HSC Zoning Overview



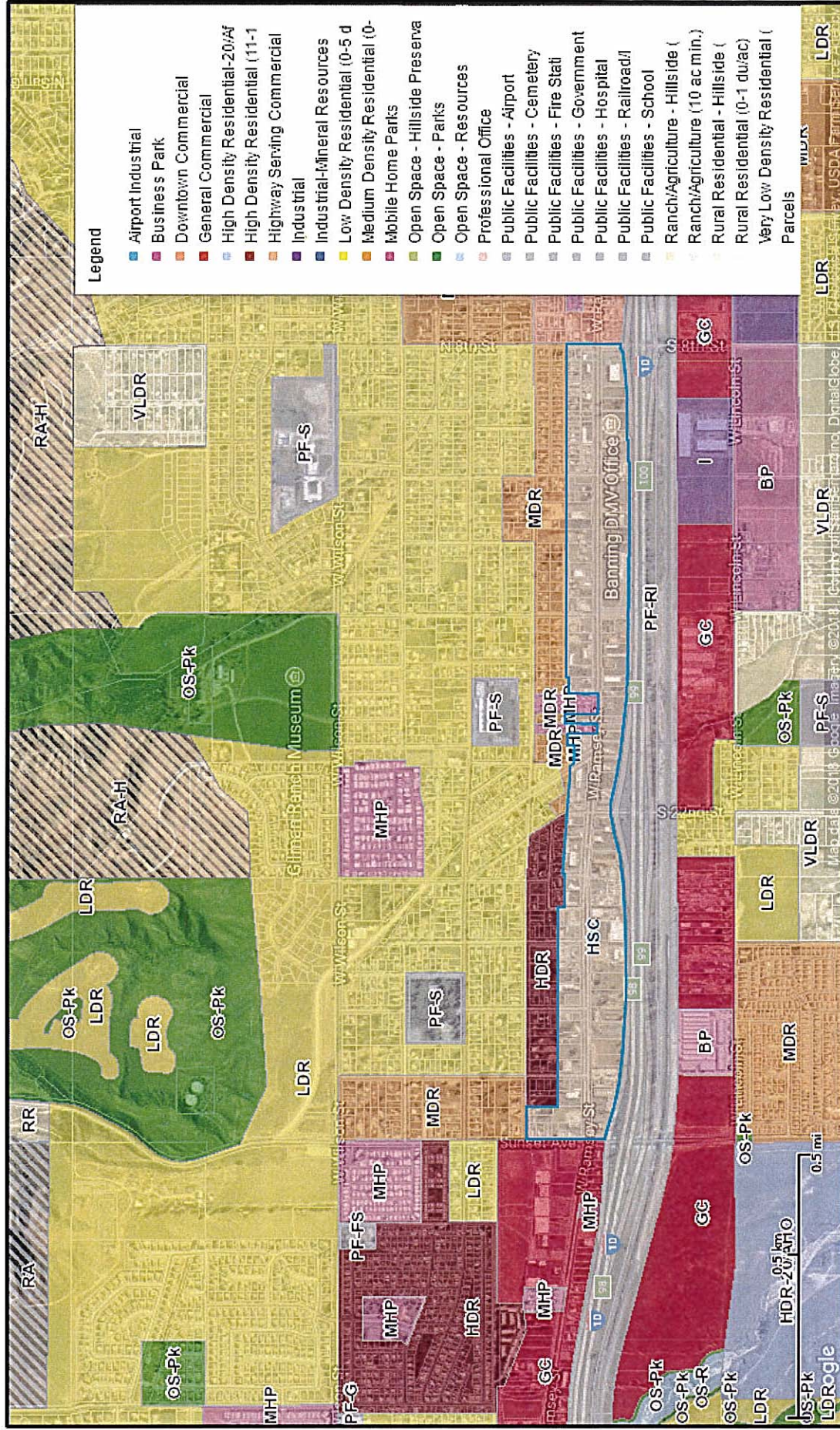
06/12/2018

1" = 3,009 ft

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.



# HSC Zone (Ramsey Street, 8th-Sunset)



<p>1" = 1,505 ft</p>	<p>Sub Title</p>	<p>06/12/2018</p>		
<p>This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information</p>				

## **Exhibit “H”**

**to the June 12, 2018, Regular Meeting Minutes**



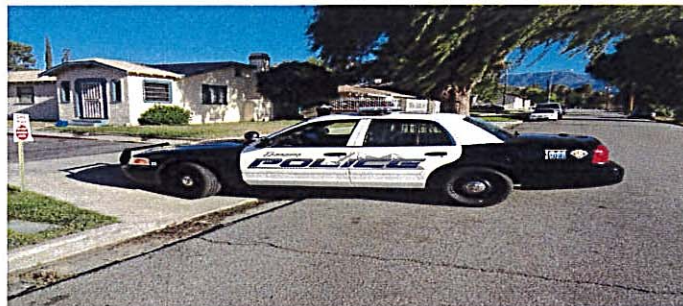


Supplemental Law Enforcement  
Services Account

Presented by:  
Interim Chief of Police  
Robert Fisher



The SLESA provides money to  
support front line law enforcement  
services.





**Senate Bill 823 amended government Code section 30061 to require that "the City Council shall appropriate existing and anticipated moneys exclusively to fund frontline municipal police services.**



Past expenditures





## Staff training



## Vehicle repair





## Lease / purchase payments



## Uniforms





## Computer Hardware & radio equipment



## Questions