

COUNCIL MEMBERS PRESENT: Councilmember Happe
Councilmember Peterson
Councilmember Wallace
Mayor Pro Tem Andrade
Mayor Welch

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT Doug Schulze, City Manager
Kevin Ennis, City Attorney
Daryl Betancur, Deputy City Clerk
Matthew Hamner, Police Chief
Heidi Meraz, Community Services Director
Tom Miller, Electric Utility Director
Art Vela, Public Works Director/City Engineer
Suzanne Cook, Deputy Finance Director
Adam Rush, Community Development Director
Ted Shove, Economic Development Manager
Laurie Sampson, Executive Assistant
Leila Lopez, Office Specialist

I. CALL TO ORDER

A regular meeting of the Banning City Council was called to order by Mayor Welch on May 14, 2019, at 5:00 p.m. at the Banning Civic Center Council Chamber, 99 E. Ramsey Street, Banning, California.

Jim Price, Church of Jesus Christ of Latter Day Saints offered the invocation.

Mayor Welch led the audience in the Pledge of Allegiance.

II. APPROVAL OF AGENDA

A motion was made by Councilmember Wallace, seconded by Councilmember Peterson to approve the agenda as presented. Electronic roll call vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch
NOES: None
ABSTAIN: None
ABSENT: None

III. PRESENTATION

1. Introduction of New Fire Chief, Bill Otterman..... **ORAL**

Todd Hopkins, Battalion Chief, Introduced Fire Chief Bill Otterman

2. Proclamation for Former Mayor/Councilmember Don Smith **ORAL**

Presentation was tabled until the family of the late Don Smith is able to attend.

IV. REPORT ON CLOSED SESSION

1. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Paragraph (1) of subdivision (d) of Section 54956.9

Name of Case: *Southern California Edison Company v. RRM Properties, Ltd., et al. (Riverside County Superior Court)*

Case No. RIC 1813789. **Direction given to legal counsel on this item.**

2. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** Pursuant to paragraph (1) of subdivision (d) of Section 54956.9

Name of Case: *City of Banning and People of the State of California v. Go Green Calming Solutions, et al.*

Case No. RIC 1806731. **Direction given to legal counsel on this item.**

3. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** Pursuant to paragraph (1) of subdivision (d) of Section 54956.9

Name of Case: *Williams v. City of Banning*

DFEH Case No. 201805-02183508. **Direction given to City Manager and City Attorney with respect to this matter. Approved settlement agreement on a vote of (4-1) with Mayor Pro Tem Andrade voting no.**

V. PUBLIC COMMENTS, CORRESPONDENCE, AND APPOINTMENTS

Mayor Welch opened Public Comment for items not on the Agenda.

Public Comments

Diego Rose addressed the City Council regarding several issues such as beautification; he reported on multiple dead trees along San Gorgonio Avenue; he offered to donate a tree to beautify the City for every hour Director of Public Works/City Engineer Art Vela could spend with him in order for him to show Mr. Vela some easy fixes for the City; commented about an article in the record gazette entitled, *“Conduct Unbecoming at Banning Council meeting”*, in which staff writer Trevor Cadell offer his opinion on the proceedings; Mr. Rose asserted that it was not the job of the press or journalist to offer opinions but to report what happens and remain objective; he commented that political disagreements and dissenting opinions should not be categorized as a form of bullying.

Jack Anderson thanked the Council for assisting in the clean-up of the homeless encampments; spoke about the empty buildings on eighth and Lincoln and asked if there was a status on what was going to happen to clean this site and if there was a plan.

Douglas Schulze, City Manager explained that the property was in receivership, meaning that it was not City owned nor controlled by the City, but controlled by the receiver; that there was a new judge assigned to that process with mediation set up for July 15th, and that at this point, this matter was in the hands of the Court to determine what happens with the property.

Inge Schuler addressed the City Council regarding the posted speed limits, which were changed sometime ago; she stated that Councilmember Peterson and her had been concerned about the increasing speed limits on Westwood Avenue; reported that on Sunset going south and north the posted speed limit was 35 miles per hour, however, when they make a left hand turn onto Westwood and go east it was 40 miles per hour; that at that point, they can really step on it and keep going; commented that there were some repair items between Twelve Street and April Street, and then west of April Street some pavement had been repaired and now it was sinking, which will slow them down a little bit; but they pick up speed again, but if they do not see anybody coming south on April towards the stop sign, they just go through the stop sign; commented that this was something that needed to be observed by somebody who can do something about it; commented on the issues of concern Mr. Rose had been saying with respect to trees; commented that people may not know that a mature tree absorbers, 22 Kilograms of co2 (Carbon Dioxide) per day thereby cleaning up the air and hoped more trees could be planted.

Sandra Reed spoke on the issue of City beautification and urged the Council to make Banning beautiful and asked people to join her in this effort by contacting her at 951-325-0471.

Jerry Westholder commented also on the record gazette newspaper article stating that the paper should not be lecturing, instead, they should be reporting the news; stated that he had received two electric bills in one week, one for \$415 and the other for \$418, that these were received within one week; inquired about why he was getting two bills in a week's period; stated that this simply reflected bad management and that the billing for the City's electric company should be accurate and consistent, which never has been. He stated that he wanted to know when the forensic audit was to be conducted to have these issues taken care of; he further commented on the Coffee with the City Manager events around town and that they had not had one in District 4, he would gladly let the City Manager use his building; lastly, Mr. Westholder spoke about people being afraid to come down to these meetings, and that at a recent meeting with Diversified Pacific, 80 percent of the people had spoken against that project.

David Ellis stated that he wanted to let the public know that one of the best things that had happened in years downtown came about a couple of weeks ago; that he wanted to thank Councilmember Peterson; that two years ago, we started an effort to try to

get the city to pay attention to the people that were jay walking on Ramsey Street from the Courthouse; that it took two years to get a sidewalk to serve the people; he stated that it amazed him to think that a sidewalk was the only good thing that has happened downtown in all these years; he reported on the 17 or 19 dead Cyprus located as you drive up on San Gorgonio from Wilson Street to Summit; and lastly, spoke on the issue of water rates.

Frank Burgess also spoke on the issue of the electric utility bill, which was also inconsistent with respect to the billing cycle.

Araceli Carranza spoke with respect to finally getting a Chief of Police; commented that in terms of the police department she had not seen a lot of police department presence in the community yet; inquired as to what the City is doing regarding community safety; spoke about concerns about crime; stated that as an avid runner using City streets, she had witnessed several accidents due to high speed on City streets; made reference to speed, cross walks, traffic enforcement on Hemmerling School.

CORRESPONDENCE

Deputy City Clerk, Daryl Betancur stated that a letter had been received from Mr. Brent Bumpus, Kjrstsen Haaland, and Sandice Alaska articulating opposition to the Cedar Hills Apartment project.

VI. CONSENT ITEMS

Mayor Welch asked if the Council wished to pull any items. Councilmember Peterson requested that item No. 6 be pulled for a separate discussion.

Mayor Welch open public comment on consent items.

Inge Schuler stated that on the agenda, the minutes for the last City Council meeting were not included; stated that whenever there had been correspondence submitted, these should be attached to the minutes.

Diego Rose spoke regarding consent item No. 6, which had been pulled.

A motion was made by Councilmember Wallace, seconded by Councilmember Happe to approve the rest of the consent calendar as presented. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch
NOES: None
ABSTAIN: None
ABSENT: None

1. Approval of Special Meeting – 4/23/19 Minutes (Closed Session)

Action: Approved by Minute Order No. 2019-067

2. Approval of Special Meeting – 4/23/19 Minutes (Workshop)

Action: Approved by Minute Order No. 2019-068

3. Receive and File Contracts Approved Under the City Manager's Signature Authority.

Action: Approved by Minute Order No. 2019-069

4. Adopt Resolution Supporting Balanced Energy Solutions and the Maintaining of Local Control of Energy Solutions.

Action: Adopted Resolution No. 2019-50

5. Adopt Ordinance No. 1541, An Ordinance of the City Council of the City of Banning, California, Approving the Zone Change from General Commercial (GC) to Business Park (BP) and to the Business Park Zoning District for property located at 1897 West Lincoln Street, 1661 West Lincoln Street, 1589 West Lincoln Street and Vacant Parcels to the East (APNs: 538-230-014, 538-220-002, 538-220-003, 538-220-004, 540-180-041, 540-180-042, 540-180-043, 540-180-044 & 540-180-045). (**Second reading and adoption**)

Action: Adopted Ordinance No. 1541

6. Adopt Resolution No. 2019-13, Approving and Authorizing the City Manager to Execute an Improvement and Credit/Reimbursement Agreement with Pardee Homes, Inc., for the Transportation Uniform Mitigation Fee Program Related to Improvements Along Highland Springs Avenue. (Pulled)

Councilmember Peterson stated that his understanding was that the City was to receive the TUMF fees for the Pardee project from WRCOG and then as they need the funds to improve Highland Springs, then, the City Manager will disburse those funds.

Art Vela, Public Works Director/City Engineer explained that the purpose of the TUMF credit agreement was to give Pardee the opportunity to get it to credit by building the improvements, that they won't get the credit until the improvements are 100 percent complete, therefore, they are going to upfront the money, they are going to pay for the design, engineering, construction, and construction management until that process is completed and they submit all of the required documents at that point, it will be converted to a TUMFs credit; in essence, there was no exchange of funds, that the TUMF share was about \$5,128,000, which is the maximum amount of credit that they can for this one project.

A brief discussion ensued with respect to the TUMF fee distribution and other project relates specifics. Councilmember Peterson asked if possible at the next council meeting come back with a brief staff report and let us know where we are at as far as the waived developer fees for the first 500 homes.

Councilmember Happe asked if the TUMF project goes to Oak Valley Parkway and why not all the way up to Highland Springs Avenue. Director of Public Works/City Engineer Art Vela stated that in order for that to happen the project needed to meet certain criteria of ratio and volume and capacity of the road; that threshold was met in that segment of road.

Public Comment

Frank Burgess commented that he was confused with respect to the TUMF fee and stated that in the absence of the TUMF fee, who would then pay for that street under our program in the City of Banning.

Director of Public Works/City Engineer Art Vela stated that if there were no TUMF fee the developer would be conditioned to construct the improvements.

City Attorney Kevin Ennis further clarified the financial structure by which the TUMF fee was collected, and how it was subsequently distributed, which essentially, through the proposed mechanism of the credit/reimbursement agreement will stay completely in Banning.

Diego Rose stated that what he had just heard through the dialogue was more political double speak; that rather than issues being clear cut and concise, they were complicated in such a manner; he commented that the structure of how the money was to come back to the City was confusing; that he had to question the reason we were doing this.

A motion was made by Councilmember Happe, seconded by Councilmember Wallace to approve the item as presented. Electronic vote was taken as follows:

AYES:	Happe, Peterson, Wallace, Andrade, & Welch
NOES:	None
ABSTAIN:	None
ABSENT:	None

Action: Adopted Resolution No. 2019-13

7. Adopt Resolution, Declaring Opposition to the 2019 Budget Trailer Bill Language and Assembly Bill 217 Unless Amended to Remove the Proposed Statewide Water Tax.

Action: Adopted Resolution No. 2019-51

8. Adopt Resolution, Requesting Approval of Stipulation for Entry of Interlocutory Judgement Between Southern California Edison Company and City of Banning in Connection with Southern California Edison Company v. RRM Properties, LTD., et al. (Riverside County Superior Court Case No. RIC 1813789).

Action: Adopted Resolution No. 2019-52

VII. PUBLIC HEARING(S)

1. Cedar Hills Apartments (The Project), Ordinance No. 1543, Adopting Zone Change No. No. 18-3503, City Council Resolution, Adopting a Mitigated Negative Declaration and Mitigation Monitoring Report and Approving General Plan Amendment No. 18-2504, and Design Review No. 18-7001 for the Proposed Development of a 96-Unit Apartment Facility and Associated Infrastructure on 7.08 Acres of Land Within the Low Density Residential (LDR) Land Use District (APN:534-283-011 and 534-283-014).

Mayor Welch opened the public hearing at 6:10 p.m.

Adam Rush, Community Development Director stated that on April 3, 2019, the Planning Commission had conducted a duly noticed public hearing on this project, and as such, it had recommended adoption of the Mitigated Negative Declaration and thus approval of the project that was before the Council

Mr. Rush commented that in terms of the project, the applicant was proposing a General Plan Amendment and Zone Change in order to change the zoning and land use designation from Low Density Residential (LDR) to High Density Residential; and they applicant was also seeking a Design Review application approval for the construction of a 95-unit apartment complex, which contained a club house, swimming pool, and all purpose recreation court on 7.04 acres of land located south of East Hoffer Street and west of North Hathaway Street.

He pointed out that this project has been going through the approval process for the past year and a half, with the applicant incurring significant approval and application expenses; that the project will have a positive financial impact on the City of Banning through the increase in the assessed land value for the subject parcel; that in addition to these benefits, the project will improve an area that had a vacant property for many years. (<https://banninglive.viebit.com/player.php?hash=LK1SNGfvKyX1>)

Councilmember Peterson stated that this project went beyond a Mitigated Negative Declaration and what fitted into the community profile with three apartment complexes in close proximity to each other; he expressed that this area was zoned for Low Density Residential (LDR), and that the neighbors expected to see single family homes in that area; he expressed concerns with the inconsistent swapping between high and low density zoning areas; spoke about the shrinking of lots, which were becoming small and smaller; stated that the City needed to stick to the general plan; that Wilson Street was supposed to come through and that was not shown on the plans. In addition to these concerns, there was a substantial discussion on affordable housing and the affordability of these apartments.

Councilmember Happe inquired about the General Plan and stated that this project per se did not fall into the guidelines of the General Plan because it was not an affordable housing project; inquired about other areas that were suitable for affordable housing; and what was the status on the City's affordable housing element; stated that there was a lack of affordable housing units for families starting up; expressed that he saw a need for this type of project;

Public Comment

Inge Schuler stated that she was on the Planning Commission that had approved this project; stated that she wanted to address the safety issue, that by looking at the map, the roads were of great concern because the roads are only 26 feet wide meaning that there can be no parking on these roads; that there was no driveway to any place thus the parking had to be in the perimeter in the designated parking spots.

Ms. Schuler articulated that another issue of concern was the number of occupants well over 400 in 7.04 acres; that these were families with children there was no playground; she inquired about the fire zone in this area; and she found out that the area is designated as a high fire zone, which meant that there are certain restrictions; she stated that she had pleaded to add a condition of approval that they have to have an evacuation plan, she stated that she checked with three people at Calfire, with the County animal rescue system; they all confirmed that anything that is in a high fire zone had to have an evacuation plan, and yet still it had not been put in the plan; in the event of a fire these people had to go through these narrow streets to two exits and this was a problem that needed to be addressed.

Jerry Westholder stated that some years ago the City had gone from low density at Wilson Street and Sunset Street to high density at a developer's request; that he was on the City Council when they had to make the decision on a similar issue on Bobcat Street and Sunset Street to make that high area a high density residential area; spoke about the people who reside in that area saying that they those folks do not want to see apartments across the street; also addressed the traffic coming in and out of Robinsons in the area; stated that he did not think this was the best place for that project.

Diana Hannah Project Developer addressed the City Council to clarify a few concerns with respect to the project; stated that at the very inception of the project the first thing they did was to come up with an idea, which they had presented it to the City Planners and they asked them whether or not this was a project that was good with the City and they were told that this project fitted with their Plan; they were told that this is what the City needed and to go ahead and move forward.

Ms. Hannah commented that this had been a long process that it took them a year and four months to get to this point; and that many studies and many surveys to make sure that this is good for the City had been conducted; she stated that with respect to the tot lot; they were fine with that condition and she thought that would have been

included in the conditions of approval; she asserted that thus far they have to abide by almost 100 conditions that have been required, which too benefit the City; stated that the fees for developing alone were 1.6 million dollars; accordingly through this project the City will have funds for the Police Department; and to not forget that one of the requirements was security cameras, which feed to the Police Department.

In summary, Ms. Hannah address the issue of the alternatives stating that leaving the property undeveloped would not provide a benefit to anyone; that building homes would not provide a benefit either and on the issue of the truck traffic that they are moving that mill because they may be top out soon; thus she urged the City Council to approve the project.

Councilmember Wallace commented that she was not against it, but that her concern was that the majority of the apartments were located on the East side; she inquired as to whether or not the developer had asked the people residing in the area about how they felt about the project.

Val Westholder spoke against the project stating that some home owners may want to sell their homes because of the impact of the project in the area; spoke about the high concentration of people in only 7.04 acres.

Frank Burgess spoke about the City's income demographics and stated that the City needs to bring income up collectively; that the City of Banning has too many apartment complexes currently; and that we need first class growth.

David Ellis spoke in favor of the project stating that this was the reason Banning is where is at today; stated that we have a developer, people that want to build in our City; that they spend a year and four months going through the process to get everything ready and at the very end they are turned down because people do not like it; stated that we need housing of all kinds; he concurred that this was a good project for the City.

Don Haggan spoke against the project for a variety of reasons including the rezoning low density for high density areas; that when these type of projects are built, they are beautiful, but that over time they become dilapidated; that if homes were built there, property owners had a more vested interest in maintaining their properties, that renters do not have such an incentive.

Jim Price commented that one of his concerns was the amenities for the small children and inquired as to whether or not they had been areas designated for children to play.

Councilmember Happe commented that people came up and expressed their opinion that they do not want an apartment complex in their backyard; that they don't want anything in their backyard because it may bring people as if people were bad; he stated that people need a place to live and that he would like to bring a nice place for them to live and this was a nice plan.

Councilmember Happe inquired as to whether or not in light of the concerns, if we could make changes to the documents presented to address some of the concerns raised during the public hearing.

Mayor Welch closed the public hearing at 7:12 p.m.

Deputy City Clerk, Daryl Betancur read the title of Ordinance No. 1543 into the record.

City Attorney Kevin G. Ennis stated that if the Council was ready to proceed with the Ordinance as presented or if it desired to make revisions by adding conditions, that he and staff could add those conditions tonight.

Mayor Welch reopened public hearing at 7:22 p.m.

The City Council recessed to a short break at 7:30 p.m.

The City Council reconvened the meeting at 7:46 p.m.

Mayor Welch asked City Attorney Kevin G. Ennis to report on the progress of the sidebar discussion.

City Attorney Kevin G. Ennis reported that Mr. Adam Rush, Community Development Director and him were able to come up with language to address the concerns raised, however, in that discussion staff identified the issue involving Wilson Street, and specifically, the fact that this project was not designed to provide an offer of dedication for a future potential expansion of the right-of-way involving Wilson Street; staff understood that there was a problem with the southerly side of Wilson being already developed, but in light of that issue, staff believed more time was needed at the staff level to think through the ramifications of either suggesting that the Council vacate or eliminate that segment of Wilson from the circulation plan or require this project to be redesign to accommodate that future right-of-way. Therefore, he stated that staff and the applicant needed more time to work that issue through.

Mayor Welch stated that for the record, he was once again reopening the public hearing, and continuing this item and the public hearing to the June 11, City Council meeting.

A motion was made by Councilmember Wallace, seconded by Mayor Pro Tem Andrade to continue the item and the public hearing to June 11. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch
NOES: None
ABSTAIN: None
ABSENT: None

Action: Item continued to June 11, 2019 by Minute Order No. 2019-070

VIII. ANNOUNCEMENTS AND REPORTS

CITY COUNCIL COMMITTEE REPORTS

Councilmember Happe. No report.

Mayor Pro Tem Andrade reported on having attended the grand opening for Route 66, following the grand opening, the Council proceeding to judge the chili cook off and that the Banning Police Department had won first place; attended the WRCOG meeting where it was announced that Banning schools had surpassed other cities with respect to their performance and that they had moved from Bronze to Silver status thereby inferring that Banning schools were continuing to make progress; spoke about the Ad-hoc Committee having its first meeting where a lot of important issues were discussed including the coordination of a community clean-up.

Councilmember Wallace reported that on May 21 at Nicolette school gym we will be having the Clergy and vs Coss Basketball game that will start at 5:00 pm; on July 24 at the Rick Valero Park, we will be giving out back packs for kids; reported on having received the raising start award from the women of the Democratic Party of the Desert.

Councilmember Peterson. No report.

Mayor Welch. No report.

REPORT BY CITY ATTORNEY

City Attorney Kevin G. Ennis reported on having attended the League of California Cities, City Attorney's spring conference where he had heard about the new housing laws, small wireless facility regulations and enforcement actions against Cannabis, homeless issues, Brown Act and regulations of scooters.

REPORT BY CITY MANAGER

City Manager, Douglas Schulze stated he had several items to report, including the new webpage for opportunity zones within the City's website, which contains information on the two opportunities that are designated in Banning; provided an update on the cannabis dispensary lottery stating that the appeal hearing was heard on Monday, May 6; that the Hearing Officers' decision had been received a week earlier than anticipated; that there were two applicants that had appeal the decision to disqualify them from the lottery with one of them providing additional information prior to the hearing which staff analyzed and consequently determined that the applicant would be allowed to participate in the lottery; he reported that the second applicant went through the hearing process and that the decision that the Administrative Law judge rendered was to uphold the city's decision to disqualify that applicant; Mr. Schulze indicated that lottery was scheduled to take place on Thursday, May 23 at 5:30 p.m.

City Manager Douglas Schulze stated that he wanted to remind everyone of the community workshop that had been planned for the former San Gorgonio end property to seek information, which will be used to inform the RFP as directed by Council previously; he explained the process that staff will undertake with respect to the RFP submittal and review process; he announced that the workshop will be held at the Banning Boys and Girls Club facility located at 240 W. Ramsey Street on June 4, from 5:30 p.m. to 7:30 p.m. Lastly, Mr. Schulze reported on the ransomware attack and provided detail on what had transpired; with the help of agency partners, the City was able to restore some systems and that staff was working diligently to restore all systems.

In response to a comment made earlier relative to police presence in the community, Mr. Schulze provided an update on current and future police department recruitment efforts; as it related to police department matters, he reported that some good news was that the police department had identified about \$700,000 in grant funds that had been awarded to the City, and the funds had not been spent and they continue to be carried over; stated that staff will be bringing a report to the City Council to explain what purposes those grant funds can be used for.

REPORT OF OFFICERS

1. Ordinance No. 1545, An Ordinance of the City Council of the City of Banning, California, Amending Chapter 3.18 (Mining Tax and Mining Impact Fund) of Title 3 (Revenue and Finance) of the Banning Municipal Code to specify the Use of Different Consumer Price Indexes Commencing Fiscal Years 2019 and 2020 to Address Cost of Living Adjustments for the Mining Tax and Making a Determination Pursuant to CEQA. (*First reading and introduction*)

City Manager, Douglas Schulze reported that in November of 2014 voters approved Measure J setting a tax of 80 cents per ton of mine aggregate; in September 2016 the City entered into a Memorandum of Understanding (MOU) with Robertson's to resolve existing and potential legal actions and disputes, said MOU reduced the tax to 25 cents per ton; was unanimously approved by the City Council with part of that MOU including a percentage change to the tax that was based on the Los Angeles-Anaheim-Riverside Consumer Price Index (CPI), the U.S. Bureau of Labor Statistics changed the index area from Los Angeles-Anaheim-Riverside to two different indexes, one was the Los Angeles-Long Beach-Anaheim and the one we are now in the Riverside-San Bernardino-Ontario Index.

In summary, Mr. Schulze stated that the action staff was recommending was to make sure this language reflects the current index that we are in for Fiscal Year 2020 and beyond.

There was no public comment.

A motion was made by Councilmember Peterson, seconded by Mayor Pro Tem Andrade to waive further reading and introduce Ordinance No. 1545 as presented. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch
NOES: None
ABSTAIN: None
ABSENT: None

A motion was made by Councilmember Peterson, seconded by Mayor Pro Tem Andrade ordering that Ordinance No. 1545 pass its first reading. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch
NOES: None
ABSTAIN: None
ABSENT: None

Action: Waive further reading and introduced Ordinance No. 1545

2. Adopt Urgency Ordinance No. 1546, An Urgency Ordinance of the City of Banning, California, Regarding Small Wireless Facilities in the Public Right-of-Way, Amending the Banning Municipal Code Regarding the Same, and Declaring the Urgency and Immediate effectiveness of the Ordinance, and Approving California Environmental Quality Act Exemptions; and Approving a Resolution Adopting a Citywide Policy Regarding Permitting Requirements and Development Standards for Small Wireless Facilities in the City, Including Public Rights-of-Way. (*Urgency Ordinance*).

City Attorney Kevin G. Ennis presented the staff report providing a legal perspective relative to the urgency of this Ordinance. Mr. Ennis stated that On September 26, 2018, the Federal Communications Commission (FCC) adopted a Declaratory Ruling and Third Report and Order geared toward speeding up the deployment of small wireless facilities in the public right-of-way (hereinafter the "FCC Ruling"). The FCC Ruling went into effect January 14, 2019 and sets forth limitations on state and local government regulation of small wireless facilities including facilities that are placed on existing or new utility poles and street light standards, and other City structures located in the public right-of-way.

Further, he commented that the FCC Ruling clarifies and specifically restricts the authority of state and local governments to regulate small wireless facilities in the public right-of-way. This Ruling is significant in that there are several characteristics in small "cell" wireless facilities technology and application, which set them apart from other wireless communication facilities. Although there are pending legal challenges to the Ruling, as of today it remains in effect. Therefore, it is prudent for the City to address this matter as soon as possible in order to have appropriate procedures and standards

in effect in order to immediately require permits and otherwise deal with applications for these facilities. Staff from the Public Works Department and the City Attorney's Office have prepared the Urgency Ordinance and a Policy containing special procedures and regulations (including objective aesthetic standards) to be adopted by resolution to administer applications for permits for such facilities.

There was a brief discussion with respect to the FCC regulations, which had very specific and tight deadlines that cities need to meet; limitation on rates, City not required to consider health effects due to the proliferation of these devices on the right-of-way; that these regulations had been subject to significant legal challenges. (<https://banninglive.viebit.com/player.php?hash=dUUZAtTCDzva>)

There was no public comment.

A motion was made by Councilmember Peterson seconded by Councilmember Happe to waive further reading and adopt urgency Ordinance No. 1546 as presented. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch
NOES: None
ABSTAIN: None
ABSENT: None

Action: Adopted Urgency Ordinance No. 1546

A motion was made by Councilmember Peterson seconded by Councilmember Happe to approve passage of Urgency Ordinance No. 1546 on its first reading. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch
NOES: None
ABSTAIN: None
ABSENT: None

Deputy City Clerk, Daryl Betancur read the title of Ordinance 1546 into the record.

A motion was made by Mayor Welch, seconded by Mayor Pro Tem Andrade to adopt Resolution adopting a citywide policy regarding permitting requirements and development standards for small wireless facilities. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch
NOES: None
ABSTAIN: None
ABSENT: None

Action: Adopted Resolution No. 2019-54

3. Revision and Update of Electric Utility Rule #10- Adjustments for Customer Billing.

Tom Miller, Electric Utility Director presented the staff report, indicating that the Banning Electric Utility was not a for-profit publicly-owned load serving retail electrical energy distribution utility for end-use customers; that the Utility is locally governed by the City Council of the City of Banning and has the sole rights and authorities to resolve, declare, direct, approve, adopt, and establish rules and regulation of the Utility, including amending or revising utility rules and regulations from time-to-time.

Mr. Miller further asserted that in this case, staff has caused Electric Rule #10 to be reviewed and is recommending the replacement and revision of the rule as a matter of sound business practice.

There were a number of questions from the Council with respect to how was it that this issue was never discovered; that what was being done to prevent this from happening or reoccurring and whether or not there were similar cases out there that we may not yet know about.

Electric Utility Director Tom Miller stated that staff was working diligently to potentially identified other relates issues; that protocols have been set up to prevent similar incidents; he thanked the folks from the church for their patience and for working with him on this matter while attempting to rectify the overcharge.

There was no public comment.

A motion was made by Councilmember Peterson, seconded by Councilmember Wallace to approve the item as presented. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch
NOES: None
ABSTAIN: None
ABSENT: None

Action: Adopted Resolution No. 2019-55

4. Adopt Resolution Amending the Classification and Compensation Plan to Delete the Position of Community Services Director, Create a New Position of Parks and Recreation Director, and Approving a Job Description for the Parks and Recreation Director (attached).

City Manager Douglas Schulze stated that with the recent announcement of the retirement of Community Services Director Heidi Meraz scheduled for mid-June, there was a further opportunity to make additional structural changes to the administrative

reorganization; he stated that the Community Services Department was currently responsible for parks, recreation and community transit services. However, transit services was planned to be assigned to Fleet Maintenance within the Public Works Department when Pass Transit is dissolved on July 1, 2019, consequently, the Community Services Department will focus its resources on parks and recreation programs. The Community Services Department will then be renamed, Parks and Recreation Department.

Councilmember Peterson inquired about the salary range for the Parks & Recreation Director given the fact that this person would not have Transit as part of their functions.

City Manager Douglas Schulze commented that the classification of the Parks and Recreation Director position was proposed to remain at the D92 level, which was the current classification of the Community Services Director position.

There was no public comment.

A motion was made by Councilmember Peterson seconded by Councilmember Happe to approve the item as presented. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch
NOES: None
ABSTAIN: None
ABSENT: None

Action: **Adopted Resolution No. 2019-56**

RECESS THE REGULAR MEETING OF THE CITY COUNCIL AND CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING UTILITY AUTHORITY

- Roll Call – Board Members Happe, Peterson, Wallace, Vice Chairman Andrade, and Chairman Welch

IX. REPORTS OF OFFICERS

1. Adopt Resolution of the Banning Utility Authority, Approving a Professional Services Agreement in the Amount of \$102,464 with U. S. Geological Survey for the Continued Implementation of a Stream Flow Monitoring Program Related to the San Gorgonio Flume.

Art Vela, Director of Public Works/City Engineer presented the staff report and stated that the City continues working with Banning Heights Mutual Water Company and the San Gorgonio Pass Water Agency, referred to as the Participating Entities (PE), as they had for several years, to secure control of the San Gorgonio Flume once SCE's Surrender Application has been accepted by the Federal Energy Regulatory Commission (FERC).

Mr. Vela commented that because a portion of the Flume was located on federal land, once SCE's Surrender Application is accepted by FERC, the PE's must obtain approval of a Special Use Permit (SUP), from the Forest Service for those parts of the San Gorgonio Flume system that were not currently covered by an existing right-of-way; that as part of the SUP approval process the SUP applicant, in this case the City of Banning, must conduct and provide to the Forest Service several studies and analysis to comply with National Environmental Policy Act (NEPA) requirements which includes water diversion volumes.

There was no public comment

A motion was made by Councilmember Peterson, seconded by Councilmember Wallace to approve the item as presented. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch
NOES: None
ABSTAIN: None
ABSENT: None

Action: Adopted Resolution No. 2019-08 UA

2. Adopt Resolution of the Banning Utility Authority, Awarding a Professional Services Agreement to Woodward & Curran of Los Angeles, California for Grant Application Preparation Services for the Proposition 1, Round 1, Integrated Water Management Implementation Grant Program in the Amount of 486,230.

Art Vela, Director of Public Works/City Engineer stated that the City of Banning was awarded a million dollar grant a couple of years ago to develop an Integrated Regional Water Management Plan; that the plan had been submitted to DWR and had been accepted with two primary reasons for the development of that plan; 1) being a useful planning document for the region; and 2) with an approved IRWMP the City is able to apply for funding sources that otherwise would not have available.

He stated that he was recommending an award of the professional services agreement to Woodward & Curran in the amount of \$86,000.

There was no public comment

A motion was made by Councilmember Wallace, seconded by Councilmember Peterson to approve the item as presented. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch
NOES: None
ABSTAIN: None
ABSENT: None

Action: Adopted Resolution No. 2019-09 UA

**RECESS THE JOINT MEETING OF THE CITY COUNCIL AND UTILITY AUTHORITY AND
RECONVENE THE REGULAR MEETING OF THE BANNING CITY COUNCIL**

X. DISCUSSION ITEM

None

**BANNING UTILITY AUTHORITY (BUA) – Next Meeting, May 28, 2019,
5:00 p.m.**

BANNING FINANCING AUTHORITY (BFA) – no meeting.

XI. ITEMS FOR FUTURE AGENDAS

1. Website Redesign
2. Policy on Naming Streets to Honor Landowners
3. Emergency Contingency Plan for Residents
4. Golf Carts
5. Digital Billboards

XII. ADJOURNMENT

By consensus, the meeting was adjourned at 8:53 p.m.

Minutes Prepared by:



Daryl Betancur, 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://banningca.gov/ArchiveCenter/ViewFile/Item/2073> or by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.