

AGENDA
REGULAR MEETING OF THE BANNING CITY COUNCIL, AND THE CITY COUNCIL
SITTING AS THE BANNING UTILITY AUTHORITY
CITY OF BANNING
BANNING, CALIFORNIA

September 10, 2019
5:00 p.m.

Banning Civic Center
Council Chamber
99 E. Ramsey Street

The following information comprises the agenda for the regular meeting of the City Council, and a joint meeting of the City Council and the Banning Utility Authority.

Per City Council Resolution No. 2016-44 matters taken up by the Council before 10:00 p.m. may be concluded, but no new matters shall be taken up after 10:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.

I. CALL TO ORDER

- Invocation – Elder Ralph Bobik, Church of Jesus Christ of Latter-Day Saints.
- Pledge of Allegiance
- Roll Call – Council Members Happe, Peterson, Wallace, Mayor Pro Tem Andrade and Mayor Welch

II. AGENDA APPROVAL

III. PRESENTATION

1. Proclamation Declaring the Month of September as Childhood Cancer Awareness Month in the City of Banning **ORAL**

IV. REPORT ON CLOSED SESSION

V. PUBLIC COMMENTS, CORRESPONDENCE, AND APPOINTMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

A five-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public. (Usually, any items received under this heading are referred to staff for future study, research, completion and/or future Council Action. See last page.) PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

CORRESPONDENCE:

Items received under this category may be received and filed or referred to staff for future research or a future agenda.

APPOINTMENTS:

VI. CONSENT ITEMS

(The following items have been recommended for approval and will be acted upon simultaneously, unless a member of the City Council wishes to remove an item for separate consideration.)

Motion: Approve Consent items 1 through 6: Items _____, _____, _____, to be pulled for discussion. *(Resolutions require a recorded majority vote of the total membership of the City Council)*

• Mayor to Open Consent Items for Public Comments

| | | |
|----|--|----|
| 1. | Approval of Special Meeting – 8/27/2019 Planning Commission Interviews. | 9 |
| 2. | Approval of Special Meeting – 8/27/2019 (Closed Session) | 11 |
| 3. | Approval of Regular Meeting – 8/27/2019 Minutes | 15 |
| 4. | Receive and File Contracts Approved Under the City Manager’s Signature Authority for the Month of August 2019 | 73 |
| 5. | Findings of General Plan Conformity for Real Property Acquisition of Approximately 1.21. Acres of Land..... | 75 |
| 6. | Adopt Resolution No. 2019-116, Establishing a Pre-Approved Professional Engineering Vendor List for Remainder of Fiscal Year 2020 Through Fiscal Year 2022 | 77 |

VII. PUBLIC HEARINGS:

| | | |
|----|--|----|
| 1. | Adopt Resolution No. 2019-113, Approving the Comprehensive User Fee Study Report, dated January 2, 2019 and Adopting an Updated Master User Fee Schedule for the Following City Departments and Fee Groups: Finance and Administration; Animal Control; Community Services; Airport; Building; Planning; Utility Billing; Electric Utility; Police; Fire; and Engineering, Making a Finding for Exemption under CEQA, and Introducing Ordinance No. 1553, Proposing Amendments to Chapter 3.36 “Fee and Service Charge Revenue/Cost Comparison” of the Banning Municipal Code (BMC) (“Code Amendment”), and Making Findings Pursuant to CEQA (<i>First reading and introduction</i>)..... | 81 |
|----|--|----|

(Staff Report – Adam Rush, Community Development Director)

Recommendation: Staff recommends that the City Council: 1) Adopt Resolution No. 2019-113, a Resolution of the City Council of the City of

Banning, California, Approving the Comprehensive User Fee Study Report, dated January 2, 2019 and adopting an updated Master User Fee Schedule for the following City departments and fee groups: Finance and Administration; Animal Control; Community Services; Airport; Building; Planning; Utility Billing; Electric Utility; Police; Fire; and Engineering; and 2) Waive further reading, and introduce as read by title only, Ordinance No. 1553, An Ordinance of the City of Banning California, amendments to Chapter 3.36 "Fee and Service Charge Revenue/Cost Comparison" of the Banning Municipal Code (BMC) ("Code Amendment"), and Making Findings Pursuant to CEQA.

Mayor asks the City Clerk to read the title of Ordinance No. 1553

"Ordinance No. 1553, An Ordinance of the City Council of the City of Banning, California, amending Chapter 3.36 'Fee and Service Charge Revenue/Cost Comparison' of the Banning Municipal Code ("Code Amendment") and making findings pursuant to CEQA." (First reading and Introduction).

Motion: I move to waive further reading of Ordinance No. 1553
(Requires a majority vote of the Council)

Motion: I move that Ordinance No. 1553 pass its first reading

2. Waive first reading and introduce Ordinance No. 1552, An Ordinance of the City Council of the City of Banning, California, Approving Zoning Text Amendment No. 19-97503 Amending Section 17.108.020 "Permitted Uses" of Chapter 17.108 "Temporary Use Permits", Table 17.12.020 of Section 17.12.020 "Permitted, Conditional and Prohibited Uses" of Chapter 17.12 "Commercial and Industrial Districts" and Adding a New Section 17.24.180, "Commercial Cargo/Storage Containers" Establishing Regulations for Commercial Cargo/Storage Containers, of Title 17 "Zoning" of the Banning Municipal Code and Making Findings Pursuant to CEQA. (*First reading and introduction*) 85
(Staff Report – Adam Rush, Community Development Director)

Recommendation: The Planning Commission recommends that the City Council: 1) Make a determination under CEQA Guidelines Section 15060(c)(3) that the Zoning Text Amendments are not subject to CEQA because the amendments are not a "project" as defined by the CEQA Guidelines Section 15378; and 2) Waive further reading and introduce, as read by title only, Ordinance No. 1552 (Attachment 3), an Ordinance of the City Council of the City of Banning, California, Approving Zoning Text Amendment (ZTA) No. 19-97503 amending Section 17.108.020 "Permitted Uses" of Chapter 17.108 "Temporary Use Permits," Table 17.12.020 of Section 17.12.020 "Permitted, Conditional and Prohibited Uses" of Chapter 17.12 "Commercial and Industrial Districts and adding a new Section 17.24.180, "Commercial cargo/storage containers" establishing regulations for commercial cargo/storage containers, of Title 17 "Zoning" of the Banning Municipal Code.

Mayor asks the City Clerk to read the title of Ordinance No. 1552

"Ordinance No. 1552, an Ordinance of the City Council of the City of Banning, California, Approving Zoning Text Amendment 19-97503, amending Section 17.108.020 ("Permitted Uses") of Chapter 17.108 amending Table 17.080.020 of Section 17.080.020 ("Permitted, Conditional and Prohibited Uses") of Chapter 17.08 ("Residential Districts"), amending Table 17.12.020 ("Permitted, Conditional and Prohibited Commercial and Industrial Uses") of Section 17.12.020 ("Permitted, Conditional and Prohibited Uses") of Chapter 17.12 ("Commercial and Industrial Districts"), and adding a new Section 17.24.180 ("Commercial Cargo/Storage Containers") to Chapter 17.24 ("General Standards") of Title 17 ("Zoning") of the Banning Municipal Code to Establish Zoning and Design Standards for Commercial Cargo/Storage Containers, and making a Determination of Exemption under CEQA Guidelines Section 15060(c)(3) (First reading and Introduction).

Motion: **I move to waive further reading of Ordinance No. 1552**
(Requires a majority vote of the Council)

Motion: **I move that Ordinance No. 1552 pass its first reading**

3. Ordinance No. 1554 - An Ordinance of the City Council of the City of Banning, California Considering Proposed Amendments to Chapter 5.24 "Commercial Solicitors" and Chapter 17.108 "Temporary Use Permits", Section 17.108.020 "Permitted Uses", and Section 17.108.070 "Requirements and Prohibitions for Mobile Vending" Amending the Banning Municipal Code (BMC) ("Code Amendment") to be Consistent with SB 946 Related to Local Regulation of Street Vendors..... 91
(Staff Report – Adam Rush, Community Development Director)

Recommendation: Staff recommends that the City Council: Continue the Ordinance off calendar without discussion.

4. Adopt Resolution No. 2019-112, Approving the Development Impact Fee Update Study Dated August 7, 2019, Approving the Update of [the] Traffic Fee Component of the Development Impact Fee Program Dated May 2019, Adopting New and Amended Development Impact Fees, Making a Finding for Exemption under CEQA, and Repealing Resolution No. 2006-75 in its Entirety; and Waiving further reading and introducing Ordinance No. 1551, Updating the City's Development Impact Fee Program, Amending the City of Banning Municipal Code, and Making Findings Pursuant to CEQA. *(First reading and introduction)*..... 95
(Staff Report – Art Vela, Director of Public Works/City Engineer)

Recommendation: Staff recommends that the City Council: 1) Adopt Resolution 2019-112, A Resolution of the City Council of the City of Banning, California, Approving the Development Impact Fee Update Study Dated August 7, 2019, Approving the Update of [the] Traffic Fee Component of the Development Impact Fee Program Dated May 2019, Adopting New and Amended

Development Impact Fees, Making a Finding of Exemption under CEQA, and Repealing Resolution No. 2006-75 in its Entirety; 2) Waive further reading, and introduce as read by title only, Ordinance No. 1551, An Ordinance of the City of Banning California, Updating the City's Development Impact Fee Program, Amending the Banning Municipal Code, and Making Findings Pursuant to CEQA; and 3) Authorize the Deputy City Clerk to certify the adoption of this resolution and have said resolution filed in the book of original resolutions.

Mayor asks the City Clerk to read the title of Ordinance No. 1551

"Ordinance No. 1551, An Ordinance of the City of Banning California, Updating the City's Development Impact Fee Program, Amending the Banning Municipal Code, and Making Findings Pursuant to CEQA; and 3) Authorizing the Deputy City Clerk to certify the adoption of this resolution and have said resolution filed in the book of original resolutions." (First reading and Introduction).

Motion: I move to waive further reading of Ordinance No. 1551
(Requires a majority vote of the Council)

Motion: I move that Ordinance No. 1551 pass its first reading

5. Hearing on Proposal by Councilmember Wallace to Censure of Councilmember Peterson. 103
(Staff Report – Kevin G. Ennis, City Attorney)

Recommendation: Staff recommends that the City comply with the procedures set forth in Section 2.04.060 of the Banning Municipal Code and Section 10.5 of the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning ("Manual of Procedures") by conducting a hearing on the proposed censure of Councilmember Peterson based on the Statement of Charges presented by Councilmember Wallace. A copy of Banning Municipal Code Section 2.04.060 and of Section 10.5 are attached hereto as Attachment 1.

6. Hearing on Proposal by Councilmember Peterson to Censure of Mayor Welch. 107
(Staff Report – Kevin G. Ennis, City Attorney)

Recommendation: Staff recommends that the City Council comply with the procedures set forth in Section 2.04.060 of the Banning Municipal Code and 10.5 of the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning ("Manual of Procedures") by conducting a hearing on the proposed censure of Councilmember Welch based on the Statement of Charges presented by Councilmember Peterson. A copy of Banning Municipal Code Section 2.04.060 and Section 10.5 of the Manual of Procedures are attached hereto as Attachment 1.

VIII. ANNOUNCEMENTS AND REPORTS

CITY COUNCIL COMMITTEE REPORTS

REPORT BY CITY ATTORNEY

REPORT BY CITY MANAGER

REPORT OF OFFICERS

1. Budget Adjustment and Update Job Description for Community Development – Associate Planner..... **111**
(Staff Report – Douglas Schulze, City Manager)

Recommendation: Staff recommends that the City Council: Authorize the City Manager to initiate a budget adjustment with the Finance Department, update the job description through the Human Resources Division and begin the recruitment process for an Associate Planner as an additional staff member to the Community Development Department.

2. Adopt Resolution No. 2019-115, Approving an Employment Agreement with Parks and Recreation Director Ralph Wright **115**
(Staff Report – Douglas Schulze, City Manager)

Recommendation: Staff recommends that the City Council: Adopt Resolution 2019-115, authorizing the City Manager to enter into an Employment Agreement with Ralph Wright as Parks and Recreation Director.

3. Authorize the City Manager to Submit Application for City of Banning Tree City USA Designation..... **119**
(Staff Report – Douglas Schulze, City Manager)

Recommendation(s): Staff recommends that the City Council: Authorize the City Manager to submit an application to the Arbor Day Foundation for Tree City USA designation.

4. Adopt Resolution 2019-114, Authorizing the City Manager to Execute a Cooperative Agreement between the City of Banning, City of Beaumont and Riverside County Transportation Commission for the Preparation of the Highland Springs Interchange Project Study Report Highland Springs Interchange Agreement **121**
(Staff Report – Art Vela, Director of Public Works/City Engineer)

Recommendation: Staff recommends that the City Council: Adopt Resolution 2019-114, authorizing the City Manager to execute a Cooperative Agreement between the City of Banning (“Banning”), City of Beaumont (“Beaumont”) and Riverside County Transportation Commission (RCTC) for the preparation of the Highland Springs Interchange Project Study Report (PSR).

5. Discuss and Consider Approving Draft Language and Release of Request for Proposals ("RFP") for Commercial Redevelopment for City-Owned Real Property Consisting of +/-5.55 Acres, Downtown Banning **123**
(Staff Report – Ted Shove, Economic Development Manager)

Recommendation(s): Staff recommends that the City Council: Approve the draft language and tentative schedule for Request for Proposal ("RFP") – Commercial Redevelopment for City-Owned Real Property Consisting of +/-5.55 Acres, Downtown Banning.

IX. DISCUSSION ITEM

None

CITY COUNCIL – Next Meeting, September 24, 2019, 5:00 p.m.

X. ITEMS FOR FUTURE AGENDAS

1. Website Redesign
2. Wildfire Mitigation Plans
3. 553 E. Ramsey Receivership

XI ADJOURNMENT

NOTICE: Any member of the public may address this meeting of the Mayor and City Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion, which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item, which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (951)-922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II]

Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Friday, 8 a.m. to 5 p.m.

***THIS PAGE
INTENTIONALLY LEFT
BLANK***

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

08/27/2019
SPECIAL MEETING- INTERVIEWS

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Daryl Betancur, Deputy City Clerk

I. CALL TO ORDER

A special meeting of the Banning City Council was called to order by Mayor Welch on August 27, 2019 at 2:02 p.m. at the Banning Civic Council Chambers, 99 E. Ramsey Street, Banning, California.

II. COMMISSIONERS INTERVIEWS

Planning Commission Interviews

2:00 p.m. Frank Diaz

2:20 p.m. Alberto Sanchez

2:40 p.m. Sandra Reed

The Mayor and City Council interviewed Mr. Frank Diaz, followed by Sandra Reed who withdrew her application, followed by Mr. Alberto Sanchez.

III. PUBLIC COMMENTS – Opportunity for the public to address items on the agenda.

Public Comments.

Inga Schuler, Planning Commissioner spoke about the candidates and offered strong support for Mr. Alberto Sanchez' application; urged the City Council to consider appointing Mr. Sanchez to the Planning Commission to fill the remainder of the term vacated by former Planning Commissioner Jim Price.

Adam Rush Community Development Director addressed the City Council with respect to the process, and indicated that the appointment of a Planning Commissioner was entirely up to the Council's discretion. Mr. Rush offered no

recommendations relative to the applicants' fitness or skills to be appointed as Planning Commissioner

Following the conclusion of the interviews, the City Council deliberated on the process and adjourned to Closed Session.

IV. ADJOURNMENT

By consensus, the meeting adjourned at 3:15 p.m.

Minutes Prepared by:

Daryl Betancur, Deputy City Clerk

The following information comprises the agenda for the regular meeting of the City Council, and a joint meeting of the City Council and the Banning Utility Authority.

In accordance with City Council Resolution No. 1995-21, the minutes of meetings of the City Council and the Boards, Commissions, and Committees of the City shall be prepared as Action Minutes.

The entire discussion of this meeting can be found by visiting the following website: <http://www.banning.ca.us/ArchiveCenter/ViewFile/Item/2149> requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.

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

OTHERS PRESENT: Douglas Schulze, City Manager
Kevin G. Ennis, City Attorney
Ginetta Giovinco, Deputy City Attorney (via teleconference)
Paula Gutierrez-Baeza, Deputy City Attorney (via teleconference)
Daryl A. Betancur, Deputy City Clerk
Art Vela, Director of Public Works/City Engineer

I. CALL TO ORDER

A special meeting of the Banning City Council was called to order by Mayor Welch on August 27, 2019 at 3:25 p.m. at the Banning Civic Council Chambers, 99 E. Ramsey Street, Banning, California.

II. CLOSED SESSION

Mayor Welch opened the closed session items for public comments.

There were no public comments.

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Paragraph (1) of subdivision (d) of Section 54956.9
Name of Case: James Arthur Algea II and Cali Emerald Care, Inc. v. City of Banning, Case No. RIC 1903009. **Status report was provided. No reportable action was taken.**

2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Paragraph (1) of subdivision (d) of Section 54956.9
Name of Case: The City of Banning, et al. v. Cali Emerald Care, Inc., et al., Case No. RIC 1904157. **Status report was provided. No reportable action was taken.**

3. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to Paragraph (1) of subdivision (d) of Section 54956.9
Name of Cases: Sierra Club v. City of Banning, Case No. RIC 1900544; and Golden State Environmental Justice Alliance v. City of Banning, Case No. RIC 1900654 (Banning Distribution Center Project). **Direction given to legal counsel.**
4. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to Paragraph (1) of subdivision (d) of Section 54956.9
Name of Case: Supporters Alliance for Environmental Responsibility (SAFER) v. City of Banning, et al. (Lawrence Equipment Project), Case No. RIC 1903059. **Report was provided. No final reportable action.**
5. **CONFERENCE WITH LABOR NEGOTIATORS**
Pursuant to Government Code Section 54957.6
City designated representative: Douglas Schulze, City Manager
Unrepresented employee: Candidate for Administrative Services Director position. **Report was provided. No final reportable action.**
6. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
Pursuant to Government Code Section 54956.8
Properties and Owners/Negotiating Parties: 1909 E. Ramsey Street, APN 532-120-011 – Ramirez Family Living Trust; 1933 E. Ramsey Street, APN: 532-120-012 – Liang; 1679 E. Ramsey Street, APN 532-120-019 – Tierra Firma Enterprise, LLC; *Northeast corner of Ramsey Street and North Hathaway Street*, APN 532-120-020 – Frank J. Burgess and Lorna D. Burgess, Trustees; *Southeast corner of Ramsey Street and Hathaway Street*, APN 532-140-005 – Frank Burgess; 1483 E. Ramsey St, APN 541-170-019 – Raymond Ngoc Huynh and Lucy Nguyen Huynh, as Trustees of the Raymond and Lucy Huynh Revocable Trust; 1573 E. Ramsey St, APN 541-170-021 – Jen H. Huang
City's Negotiators: Ted Shove, Economic Development Manager
Under Negotiation: Price and terms for acquisition of street right of way and temporary construction easements. **Direction given with respect to potential acquisition of properties.**
7. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Potential initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9 (seven (7) potential cases). Direction was provided.
8. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Potential initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9 (one case). Direction was provided.

The meeting convened to closed session at 3:00 p.m. and adjourned to open session at 5:02 p.m.

City Attorney Kevin G. Ennis reported that the City Council had met in closed session regarding the matter listed on item No. 1 of the agenda and that there was no final and reportable action.

III. ADJOURNMENT

By consensus, the meeting adjourned at 5:02 p.m.

Minutes Prepared by:

Daryl Betancur, Deputy City Clerk

The entire discussion of this meeting and related documents can be found by visiting the following website: or by requesting a CD or DVD at <http://www.banning.ca.us/ArchiveCenter/ViewFile/Item/2149> Banning City Hall located at 99 E. Ramsey Street.

***THIS PAGE
INTENTIONALLY LEFT
BLANK***

In accordance with City Council Resolution No. 1995-21, the minutes of meetings of the City Council and the Boards, Commissions, and Committees of the City shall be prepared as Action Minutes.

MINUTES
CITY COUNCIL

08/27/2019
REGULAR MEETING

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT Douglas Schulze, City Manager
Kevin G. Ennis, City Attorney
Daryl Betancur, Deputy City Clerk
Matthew Hamner, Police Chief
Scott Foster, Interim Parks & Recreation Director
Tom Miller, Electric Utility Director
Carla Young, Management Analyst
Jason Young, Electric Utility Operations Manager
Art Vela, Public Works Director/City Engineer
Suzanne Cook, Interim Administrative Services Director
Adam Rush, Community Development Director
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 August 27, 2019, at 5:25 p.m. at the Banning Civic Center Council Chamber, 99 E. Ramsey Street, Banning, California.

Deacon Bob Pawlin of Mountain Avenue Baptist Church offered the invocation.

Councilmember Colleen Wallace led the audience in the Pledge of Allegiance.

II. APPROVAL OF AGENDA

A motion was made by Councilmember Wallace, seconded by Mayor Welch, to approve the agenda. Electronic vote was taken as follows:

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

III. PRESENTATION – None

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: James Arthur Algea II and Cali Emerald Care, Inc. v. City of Banning, Case No. RIC 1903009. **Status report was provided. No reportable action was taken.**

2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

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

Name of Case: The City of Banning, et al. v. Cali Emerald Care, Inc., et al., Case No. RIC 1904157. **Status report was provided. No reportable action was taken.**

3. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

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

Name of Cases: Sierra Club v. City of Banning, Case No. RIC 1900544; and Golden State Environmental Justice Alliance v. City of Banning, Case No. RIC 1900654 (Banning Distribution Center Project). **Direction given to legal counsel.**

4. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

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

Name of Case: Supporters Alliance for Environmental Responsibility (SAFER) v. City of Banning, et al. (Lawrence Equipment Project), Case No. RIC 1903059. **Report was provided. No final reportable action.**

5. CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6

City designated representative: Douglas Schulze, City Manager

Unrepresented employee: Candidate for Administrative Services Director position. **Report was provided. No final reportable action.**

6. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8

Properties and Owners/Negotiating Parties: 1909 E. Ramsey Street, APN 532-120-011 – Ramirez Family Living Trust; 1933 E. Ramsey Street, APN: 532-120-012 – Liang; 1679 E. Ramsey Street, APN 532-120-019 – Tierra Firma Enterprise, LLC; *Northeast corner of Ramsey Street and North*

Hathaway Street, APN 532-120-020 – Frank J. Burgess and Lorna D. Burgess, Trustees; Southeast corner of Ramsey Street and Hathaway Street, APN 532-140-005 – Frank Burgess; 1483 E. Ramsey St, APN 541-170-019 – Raymond Ngoc Huynh and Lucy Nguyen Huynh, as Trustees of the Raymond and Lucy Huynh Revocable Trust; 1573 E. Ramsey St, APN 541-170-021 – Jen H. Huang
City's Negotiators: Ted Shove, Economic Development Manager
Under Negotiation: Price and terms for acquisition of street right of way and temporary construction easements. **Direction given with respect to potential acquisition of properties.**

7. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Potential initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9 (seven (7) potential cases). **Direction was provided.**
8. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Potential initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9 (one case). **Direction was provided.**

V. PUBLIC COMMENTS, CORRESPONDENCE, AND APPOINTMENTS

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

Public Comments

Frank Burgess spoke in disagreement with how the Grand Jury items were listed last on page 8 of tonight's agenda; requested that these items be moved up.

Inga Schuler thanked Art Vela, Director of Public Works/City Engineer for the repairs of the potholes in her area; commented that the striping was phenomenal; made comments relative to the low increase in population of only 3,000 people in the last 10 years, which affects income level statistics.

John Hagen apologized to Mayor Pro Tem Andrade for the comment he made at the last meeting whereby he stated that she had called the Grand Jury Report of 2018 incompetent; stated he had viewed the tape; spoke about the fact that the City was not attracting businesses; commented on the conduct of Councilmembers off-duty.

Jerry Westholder spoke on the subject of the Grand Jury report; Robert's rules of order; that respect was earned; definition of integrity; and that the Council had chosen to ignore the people's wishes.

Unknown speaker inquired about what the City was doing to clean-up vacant properties; spoke about the empty warehouse on Hathaway and claimed that it was an eyesore.

Mark Wallace with Riverside Transportation Commission (RCTC) remained the audience about the closures on the I-60 Freeway westbound; asked people to be careful driving through that area due to the on-going construction.

Unknown speaker addressed certain members of the City Council on doing something about their own complaints; stated that the Council was accountable to the people; expressed frustration with the way the City is going.

Diego Rose commented about some issues raised at the last meeting; spoke of the Grand Jury report.

Rita Chaperosa stated that she had viewed some items online that were posted in response to a Public Records Act request and noticed that a document had someone's social security, and asked this to be corrected immediately.

CORRESPONDENCE – None

APPOINTMENTS:

1. Request to Appoint One (1) Council Member to the Budget & Finance Committee.

A motion was made by Mayor Welch, seconded by Councilmember Wallace, to appoint Councilmember Happe to the Budget and Finance Ad-Hoc Committee. Electronic vote was taken as follows:

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

Action: Approved by Minute Order No. 2019-105

2. Request to Appoint Two (2) Members to the CDBG AD-HOC Committee **13**

A motion was made by Mayor Welch, to appoint Mayor Pro Tem Andrade and Councilmember Wallace to the CDBG- Ad-Hoc Committee. Mayor Pro Tem Andrade declined due to other commitments. Motion failed for a lack of a second.

A motion was made by Mayor Pro Tem Andrade, seconded by Mayor Welch, to appoint Councilmember Wallace and Councilmember Happe to the CDBG- Ad-Hoc Committee. Electronic Vote was taken as follows:

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

ABSTAIN: None
ABSENT: None

Action: Approved by Minute Order No. 2019-106

3. Request to Appoint One (1) Planning Commissioner

A motion was made by Mayor Welch, seconded by Councilmember Wallace, to appoint Mr. Alberto Sanchez to the Planning Commission to fill the remainder of the term vacated by former Planning Commissioner Jim Price. Electronic vote was taken as follows:

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

Action: Approved by Minute Order No. 2019-107

VI. CONSENT ITEMS

Mayor Welch asked if the Council wished to pull any items. Councilmember Peterson requested that items 15 and 16 be pulled for a separate discussion.

Public comments on consent items.

Frank Burgess spoke relative to item 7 asking about how often the City got sales and tax revenue numbers from the State of California. Staff responded that it does quarterly.

A motion was made by Councilmember Happe, seconded by Mayor Pro Tem Andrade, to approve the rest of the consent calendar items 1-14 and 17-20 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 – 7/09/5/19 Minutes (Closed Session)

Action: Approved by Minute Order No. 2019-108

2. Approval of Special Meeting – 7/09/19 Minutes (Workshop)

Action: Approved by Minute Order No. 2019-109

3. Approval of Regular Meeting – 7/09/19 Minutes

Action: Approved by Minute Order No. 2019-110

4. Approval of Special Meeting – 7/30/19 Minutes (Closed Session)

Action: Approved by Minute Order No. 2019-111

5. Approval of Special Meeting – 8/07/19 Minutes

Action: Approved by Minute Order No. 2019-112

6. Receive and File Contracts Approved Under the City Manager's Signature Authority for the Month of June and July 2019.

Action: Approved by Minute Order No. 2019-113

7. Approval and Ratification of Accounts Payable and Payroll Warrants Issued in the Month of June 2019.

Action: Approved by Minute Order No. 2019-114

8. Approval and Ratification of Accounts Payable and Payroll Warrants Issued in the Month of July 2019.

Action: Approved by Minute Order No. 2019-115

9. Receive and File Cash, Investments and Reserve Report for the Month of June 2019.

Action: Approved by Minute Order No. 2019-116

10. Receive and File Cash, Investments and Reserve Report for the Month of July 2019.

Action: Approved by Minute Order No. 2019-117

11. Receive and File Public Works Capital Improvement Project Tracking List for June & July 2019.

Action: Approved by Minute Order No. 2019-118

12. Adopt Resolution No. 2019-101, Approving the Third Amendment to the Contractual Services Agreement with Siemens Industry, Inc. for Two Additional Years Beginning September 1, 2019 and Ending August 31, 2021 and Increasing the Agreement Amount to Establish a not-to-exceed Budget of \$25,000 for Each Year.

Action: Adopted Resolution No. 2019-101

13. Receive and File Police Department Statistics for June and July 2019.

Action: Approved by Minute Order No. 2019-119

14. Receive and File Fire Department Statistics for June and July 2019.

Action: Approved by Minute Order No. 2019-120

15. Ordinance No. 1543 - An Ordinance of the City Council of the City of Banning, California, Approving the Zone Change 18-3503 to Allow the Rezoning of 7.04 Acres of Land from Low Density Residential (LDR) to High Density Residential (HDR) for the Associated Development of an 80-Unit Apartment Complex. (APN's 534-283-011, 534-283-014). (**Second Reading and Adoption**). (**Pulled**)

Councilmember Peterson made comments relative to the history of the project noting how much people were against it; stated that the City was chopping up parcels and changing the land use designations in certain areas to satisfy developers.

Adam Rush Community Development Director addressed questions from the City Council on the issues raised.

Public Comment

Inga Schuler, Planning Commissioner provided a narrative of what transpired with respect to how this item was originally presented to the Planning Commission and stated her opposition.

Diego Rose and Unknown speaker also spoke in opposition to the project due to the impacts to the community and the surrounding neighborhood.

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

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

Action: Adopted Ordinance No. 1543

16. Ordinance No. 1548 - An Ordinance of the City Council of the City of Banning, California, Approving the Zone From General Commercial (GC) to Industrial (I) and to the Industrial Zoning District for Property located 200 South Eighth Street and 679 West Lincoln Street (APNs:540-220-0130 and 540-220-007).
(Second Reading and Adoption). (Pulled)

Councilmember Peterson inquired about the reason for the rezoning on West 8th Street and Lincoln and the other parcel on 679 relative to the zoning change and inquired about West 8th and Lincoln 679 West Lincoln Street; asked whether or not a cannabis business will go there.

Adam Rush, Community Development Director answered Council's questions in terms of the rezoning and stating that these parcels had different property owners.

Public Comment – None

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

VII. PUBLIC HEARING(S) – None

VIII. ANNOUNCEMENTS AND REPORTS

CITY COUNCIL COMMITTEE REPORTS

Councilmember Happe attended the Banning Chamber of Commerce Ribbon Cutting Ceremony for a new business in town; spoke relative to comments relative to demeanor and body language made previously; stated that he does not appreciate hyperbole, fallacy, assumptions, or name-calling; stated that he was here to cooperate, listen and to learn.

Councilmember Peterson – None

Mayor Pro Tem Andrade stated that she had not attended any committee meetings during the summer since they were all dark; commented that at the Downtown Ad-Hoc Committee meetings issues regarding vacant lots, weeds and upkeep of vacant properties have been addressed and invited those interested to attend.

Councilmember Wallace reported on having attended the 2x2 meeting of the School Board and discussed several events such as the chalk art and the Halloween theme

event; spoke about the building of Pardee homes and that the new homes should be part of the Banning Unified School District; announced the School Board Street Fair scheduled for September 3 on First Street; stated that the Riverside County Action Committee will be at the Senior Center in Banning on September 5 to provide help with utilities.

Mayor Welch thanked the Thursday night Concert Committee; commented that the concerts this year had been outstanding; reminded the audience about the Stagecoach days September 5 through 8; stated that he had invited Mr. Rick Wallace president of the Second Opportunity program to come to Banning to make a presentation about his program regarding education for High School drop-outs.

REPORT BY CITY ATTORNEY – None

REPORT BY CITY MANAGER

City Manager Douglas Schulze reported on:

- Provided update on the Banning Business Center
- Reported on the Dysart Park Improvements
- Spoke about enforcement on the homeless encampments and enforcement on shopping carts
- Reported that an offer of employment had been extended to Jennifer Christensen as the new Administrative Services Director who is scheduled to start work on Monday, September 9
- Provided update on the recruitment for the Parks and Recreation Director

REPORT OF OFFICERS

1. Adopt Resolution No. 2019-95, Approving Draft Employment Agreement for Administrative Services Director Jennifer Christensen.

City Manager, Douglas Schulze presented the staff report describing the terms of the agreement and answering Council's questions.

Mayor Welch read a statement into the record pertaining to the employment terms contained in the Agreement in accordance with Government Code provisions.

Public Comment

Diego Rose spoke in favor of the three-month severance deal point as opposed to a one-year severance as in other employment agreements.

City Manager Douglas Schulze clarified that there was no employee in the City who has severance of one year.

A motion was made by Councilmember Happe, seconded by Mayor Pro Tem Andrade, 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. 2019-95

2. Discuss and Consider Adopting Resolution 2019-110, "Approving the City of Banning Electric Utility Power Content Label for Calendar Year 2018 and Accepting for Review the California Energy Commission's Renewables Portfolio Standard Verification Results Report for Compliance Period 2 (2014-2016)."

Tom Miller, Electric Utility Director presented the staff report and answered questions from the City Council on the staff report.

Public Comment – None

A motion was made by Councilmember Wallace, 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. 2019-110

3. Adopt Resolution No. 2019-99, Authorizing the Police Department to Use Innovative Emergency Equipment to Equip Three New Police Patrol Vehicles with Emergency Equipment in an Amount not-to-exceed \$34,020 Under Riverside County Contract No. #SHARC-005516-006-09/19.

Police Chief Matthew Hamner presented the staff report.

Public Comment – None

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. 2019-99

4. Adopt Resolution No. 2019-102, Awarding a Five (5) Year Professional Services Agreement to Wells Fargo Bank for Government Banking Services).

Suzanne Cook, Interim Administrative Services highlighted the main elements of the process staff took with respect to the awarding of the Professional Services Agreement; she addressed questions from the Council accordingly.

Public Comment – None

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

Mayor Welch called for a brief recess.

The City Council recessed to a short break at 7:35 p.m.
The City Council reconvened the regular meeting at 7:45 p.m.

Action: Adopted Resolution No. 2019-102

5. Adopt Resolution, Approving: Mid-Cycle Budget Adjustments for Fiscal Year 2019-2020 for the City of Banning and Banning Utility Authority; the Capital Improvement Program for Fiscal Year 2019-2020; the Gann Limit (Appropriations Limit) Fiscal Year 2019-2020; and amending the Classification and Compensation Plan

Suzanne Cook, presented the staff report and answered Council's questions.

Public Comment

Diego Rose, Jerry Westholder and Cindy Barrington spoke on the proposed budget stating that we need to cut and stay within our means.

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. 2019-108 (Mid-Cycle City)
Action: Adopted Resolution No. 2019-15 UA (Mid-Cycle UA)
Action: Adopted Resolution No. 2019-103 (Gann Limit)
Action: Adopted Resolution No. 2019-109 (Class & Comp)

6. Adopt Resolution, No. 2019-100, Approving a Professional Services Agreement with Webb & Associates for the Preparation of CEQA Documentation and Environmental Services for the Ivy Substation Approving a Professional Services Agreement with Dude Solutions for the Purchase of SmartGov Software and Licensing for the Streamlining of Permitting, Planning/Zoning, and Permit Inspections Services.

Tom Miller, Electric Utility Director presented the staff report.

Public Comment – None

A motion was made by Councilmember Happe, seconded by Mayor Pro Tem Andrade, 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. 2019-100

7. Resolution 2019-98, Directing Staff to complete the Southern California Edison (SCE) – Combined System Impact and Facilities Study for Banning Electric Utility's (BEU) Stagecoach Substation.

Tom Miller, Electric Utility Director presented the staff report and answered questions from the City Council.

Public Comment – None

A motion was made by Councilmember Happe, seconded by Mayor Welch, 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. 2019-98

8. Adopt Resolution 2019-111 - Data Analytics Installation and Implementation

Tom Miller, Electric Utility Director presented the staff report.

Public Comment – None

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. 2019-111

9. Adopt Resolution No. 2019-106, Awarding a Construction Agreement for Project No. 2014-16, 'Ramsey Street Pavement Rehabilitation, Hargrave Street to West of Hathaway Street' to Hardy & Harper, Inc. of Santa Ana, CA (STPL 5214 (011)) in the Amount of \$239,000, Establishing a Total Project Budget of \$262,900, Which Includes a 10% Contingency and Rejecting all Other Bids

Art Vela, Director of Public Works/City Engineer presented the staff report and addressed questions asked by the City Council relative to the project.

Public Comment – None

A motion was made by Mayor Pro Tem Andrade, 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. 2019-106

10. Adopt Resolution No. 2019-104, Awarding a Professional Services Agreement to KWC Engineers, Inc. for the Design of Drainage and Street Improvements at

the Intersection of Ramsey Street and Sunset Avenue, in the Amount of \$45,210, Which Includes a 10% Contingency.

Art Vela, Director of Public Works/City Engineer presented the staff report and addressed questions by the City Council relative to the scope of services to be provided.

Public Comment - None

There was no public comment.

A motion was made by Mayor Pro Tem Andrade, 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. 2019-104

11. Discuss and Consider Options for the City's Compressed Natural Gas Fueling Facility and Authorize the Public Works Department to take the Necessary Steps to Move Forward with the Selected Option.

Art Vela, Director of Public Works/City Engineer presented the staff report along with Banning Unified School District Superintended Robert T. Guillen.

Public Comment – None

A motion was made by Councilmember Happe, seconded by Councilmember Wallace, to approve option B in two parts: first rebuild the 50 HP compressor and then wait to see if BUSD is awarded funds. If they were not awarded grant funds then the City would move with the second part of Option B, which is to replace the second 50 HP compressor with a 100 HP compressor. If BUSD were awarded funds then the City would not move forward with the second part of Option B. Electronic vote was taken as follows:

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

Action: Approved by Minute Order No. 2019-121

12. Adopt Resolution 2019-14 UA, Approving the Purchase of Automatic Metering Infrastructure (AMI) Water Meters, Communications Equipment, Software and

Hardware from Zenner USA in the Amount of \$1,619,100.94; Approving the Purchase of Seba Leak Sensors from WCT Products, Inc. in the Amount of \$16,618.50; Approving the Purchase of Hydro Generators and PRV Flowmeters from Cla-Val in the Amount of \$71,875.00; and Approving a Blanket Purchase Order with Core & Main for the Purchase of Meter Boxes and Lids in an Amount Not-to-Exceed \$456,482.88, for a Total Smart Water Meter Conversion Project Budget of \$2,164,077.32

Art Vela, Director of Public Works/City Engineer presented the staff.

Public Comment – None

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

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

Action: Adopted Resolution No. 2019-14 UA

The City Council by unanimous consent agreed to extend the meeting by one (1) hour to continue deliberating.

13. Adopt Resolution No. 2019-13 UA, of the Banning Utility Authority, Approving Amendment No. 3 to the Agreement for Water and Wastewater Laboratory Testing Services with Babcock Laboratories, Inc. for Fiscal Year 2019/2020

Art Vela, Director of Public Works/City Engineer presented the staff report.

Public Comment – None

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. 2019-13 UA

14. Adopt Resolution No. 2019-97, Approving Amendment #9 to Agreement for Contractual Services Between the City of Banning and Romo Planning Group

Adam Rush, Community Development Director presented the staff report.

Public Comment – None

A motion was made by Councilmember Wallace, 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. 2019-97

Mayor Welch called for a brief recess.

The City Council recessed to a short break at 10:11 p.m.

The City Council reconvened the regular meeting at 10:17 p.m.

15. Review of City Council's Draft Letter Response to the Riverside County Grand Jury's Report entitled, "2018-2019 Civil Grand Jury 'City of Banning Council and City Manager Relationship'

Kevin G. Ennis, City Attorney presented the staff report and provided a summary of both the charges, and the Grand Jury findings, in addition to the process that the Council will need to follow in order to provide a response in accordance with legal provisions.

Councilmember Peterson provided a written summary in response to the charges stating that he emphatically disagree with all the findings of the 2018-2019 Grand Jury report; said summary is attached herein as part of the record.

The City Council by unanimous consent agreed to a second extension at 11:20 p.m. to continue the discussion.

Public Comment

Don Hagen, Dorothy Hamilton McLean, Jerry Westholder and Diego Rose spoke relative to the Grand Jury report and in support of Councilmember Peterson.

City Manager Douglas Schulze spoke relative to some of the comments raised during public comment with respect to the hiring of the Police Chief; Department Directors not being represented by labor unions; assumptions made about him relative to the reference in the Grand Jury report naming the City Manager; a public records request about a police complaint filed by the

City Manager; an assumption in relation to the City Manager being accused of spousal abuse, which is false and slander.

There was a substantial discussion relative to the item in question resulting in Councilmember Wallace calling for the censure of Councilmember Peterson. In turn, Councilmember Peterson called for the censure of Mayor Welch for the charges that were raised in the previous Grand Jury report dated 2018.

A motion was made by Councilmember Wallace, seconded by Councilmember Happe, to send the letter with the response to the Grand Jury as written. Roll call vote was taken as follows:

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

IX. DISCUSSION ITEM

None

CITY COUNCIL – Next Meeting, September 10, 2019, 5:00 p.m.

X. ITEMS FOR FUTURE AGENDAS

1. Website Redesign
2. Wildfire Mitigation Plans
3. 553 E. Ramsey Receivership

XI. ADJOURNMENT

By consensus, the meeting was adjourned at 11:55 p.m.

Minutes Prepared by:

Daryl Betancur, Deputy City Clerk

The following information comprises the agenda for the regular meeting of the City Council, and a joint meeting of the City Council and the Banning Utility Authority.

In accordance with City Council Resolution No. 1995-21, the minutes of meetings of the City Council and the Boards, Commissions, and Committees of the City shall be prepared as Action Minutes.

**The entire discussion of this meeting can be found by visiting the following website:
<http://www.banning.ca.us/ArchiveCenter/ViewFile/Item/2149> requesting a CD or DVD at
Banning City Hall located at 99 E. Ramsey Street.**

The City of Banning has received a Grand Jury report indicating that a member of this City Council has been accused of bullying and improper behavior. The Record Gazette has incorrectly printed that I acknowledged that I was the Council member so accused. That is totally incorrect. I offhandedly responded to a request from that newspaper for a comment about the Grand Jury Report, and I indicated that I believed the other Council members would accuse me of this behavior.

The Grand Jury report did not specify which Council Member was accused of these improper actions. Because of the obvious and repeated disagreement between the other Council Members and me, it was obvious that, the rest of the Council would accuse me of these actions.

I vehemently deny and have denied any improper actions while a member of this Council. At the last Council meeting I read many letters written by past members of our staff, and past Police Chiefs. All of those letters stated clearly that they did not witness any actions of mine that would correspond with the actions described in the Grand Jury report.

These letters emphasized that no improper behavior on my part has occurred. Many members of this community spoke before the Council at the last meeting on 8-7-19, stating their approval of my performance as a member of this city council, and my continued focus as a Council Member solely to improve our city. All indicated that they could not believe that I was responsible for any improper behavior as a Council member.

The only person to speak against me was the wife of the current City Manager Doug Schulze. That is truly remarkable, and a statement by a family member of the City Manager can only be taken as coming from the City Manager himself. Such a direct attack on a Council member by a city manager is unheard of and is normally grounds for immediate dismissal. Of course, that will not happen in this case, as such an attack had to be approved by the other 4 Council Members beforehand.

Despite this large number of positive letters, and the lengthy presentations by City residents denying any possibility that this Grand Jury report could be directed at my actions, the Council members proceeded immediately to attempt to apply a motion to censure me, without any evidence that the Grand Jury report was directed at my behavior.

Each Council member read from a prepared statement attacking me and asking for my censure. Councilmember Happe even went so far as to distort the record, when he falsely and deceptively inserted my name when he read from the Grand Jury report when in reality no names whatsoever are mentioned in the report.



This clearly showed that these Council members were not interested in any evidence, or the comments of the public about this report.

A complete lack of interest in what the residents say or think was evident, and that lack of concern is one of the many aspects of disagreement between me and the other Council Members.

That action taken so swiftly and without evidence can be taken as, an indication that, the other Council members have banded together to protect the person or persons actually guilty of these actions. Since a previous Grand Jury report declared that Council Member Art Welch has been responsible for improper use of influence over the city manager, and improper use of city personnel and city assets, it is most likely that he is the person that these charges refer to. I have no evidence that he is the person that this Grand Jury report refers to, but just as equally, there is no evidence presented to this Council that I am the person referred to in the current Grand Jury report.

I therefore state that before this City Council takes any action with respect to censure, that the Council generate a thorough investigation of its own to determine which member of this Council was the one referred to in the Grand Jury report. That is precisely what the City Attorney said at the beginning of the previous Council meeting on 8-7-19. However, that legal opinion was ignored by the Council in their rush to judgment.

In addressing the Grand Jury's Finding No. 1.

quote - "City Council Member Circumvents City Manager Relationship"

1. The 2018-2019 RCCGJ investigation discovered recent incidents where one City Council Member frequently circumvented the authority of the City Manager and dealt directly with Department Heads and City Employees. In one example, a Council Member directed a Police Officer to open a criminal investigation into the water use activities of a private citizen. - **Unquote**

The City Council's response to Finding No. 1 is as follows:

Quote - The City Council generally agrees with this finding. The Council believes that Councilmembers should abide by Banning Municipality Code Section 2.08.110 and deal with the Administrative Services of the City through the City Manager and not give orders to any subordinate of the City Manager.

A decision by the City Manager to hire a Department Director that is not someone universally supported by all Council Members should not then become a basis for a Council Member to not talk to the City Manager about issues directly with the City Manager. - unquote

My Response to Grand Jury's Finding No. 1, and to the City Council's response to Finding No. 1 is as follows:

I adamantly oppose the findings by the 2018-2019 RCGJ and the response made by the Banning City Council. I have attached a personal statement prepared by former Interim Police Chief Robert Fisher, whereby he CLEARLY states that, I did not give a Police Officer direction. To quote Interim Chief Fisher he said, “ The City Manager reached out to me to have the Police Department assist with investigating a private citizen’s water use and possible theft of utilities. I am the one who assigned this task to a police officer to further investigate.” (**see Exhibit A**)

Although, the Grand Jury says nothing about, “ A decision by the City Manager to hire a Department Director that is not someone universally supported by all Council Members should not then become a basis for a Council Member to not talk to the City Manager about issues directly with the City Manager.”

Let me explain this. When Doug Schulze arrived for duty on October 8, 2018, he already had it in his mind to bring his personal Police Chief with him, problem is, he needed to figure out how to accomplish this.

At the time, the City of Banning had already interviewed 9 potential candidates for the Chief’s job, and narrowed it down to three. The final candidates were from the following departments: Anaheim PD, Hawthorne PD and Yakima County Sheriff’s Dept in Washington State.

Schulze, in order to bring his personal Police Chief to Banning, looked at the three candidates scores, and decided to Disqualify the lowest scoring applicant, which happened to be a Captain from Anaheim Police Dept. This action opened the door for Schulze to insert his personal Chief into the process.

I discussed Doug’s decision and actions with him and I personally told him that what he is doing is unfair to the existing applicants, but most of all his actions are unethical. I further suggested that he re-start the entire process, so everyone is on a level playing field.

Well, you see the outcome of that talk, as Doug's personal Chief of Police is in Banning today. Personally, and in my opinion, I believe Doug Schulze is unethical and is just another crony marching to the beat of his own drum. This is just one of many reasons why I do not speak to him.

Secondly, his wife Lisa accused me of stalking her and threatening her on social media. Lisa took her fantasy so far, that she attempted to file a restraining order against me. Mind you, I had only seen and spoken to this woman one time in my life, and she accuses me of criminal acts. It is unbelievable.....

However, it seems that Judge Furbush saw through her many lies, accusations, and nonsense and made the following closing statement at our Court Hearing:

"I am denying the restraining order. There is no evidence of physical abuse or threats or violence. There's a course of conduct, but that course of conduct is free speech under the First Amendment. There's been no threats that would be, not protected speech, and I cannot restrain speech other than threats, so I do not find by clear and convincing evidence that this qualifies as civil harassment and the order is denied."

And lastly, I will not sit down with this City Manager because he filed a Criminal Police Report naming me as a Suspect. I have been given the following piece of information:

"On January 30, 2019, at approximately 2:30 p.m., at Banning City Hall, the Banning Police Department received a complaint regarding threats made via social media. A Banning Police Detective responded to City Hall on that date and at that time. The victim's name is Doug Schulze."

The above statement explains the comments made by, the City Manager's wife Lisa at the Riverside County Superior Court hearing in Hemet. Lisa Schulze said in and after court, "that I was being investigated by the Banning Police Department and that I would be arrested soon." Now where would she get that information? Could it have come from their personal Police Chief? Obviously, Doug has the inside connections and there is every indication that he abuses our Police Department to target me.

I can assure the public of this: I have never threatened anyone on Social Media, let alone the City Manager or his wife. The definition of Penal Code Section 422 states:

(a) Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose

and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

Once again, I never made any threats or posts on any social media site. And, for City Manager Doug Schulze to report such nonsense as a crime, he should be charged with filing a false police report. Just as his wife should be sued for malicious prosecution for her fictitious and fabricated allegations. These are the reasons why I DO NOT want anything to do with this self-serving and narcissistic City Manager.

Again, I want to remind the public that I am not the *Banning Informer* or the *SunLakes/Banning Tattler*, and I do not make threats on the internet.

The allegations and opinions in Finding No. 1 are false and do not refer to me.

The Grand Jury's Finding No. 2 was as follows:

Quote - "Council Member's Independent Actions"

2. One Council Member's actions created a destructive culture within the city government. Interviews of Banning employees revealed that several city employees resigned from city employment in response to improper, unprofessional and inappropriate contact and actions by this Council member. Another such action was directing in Interim Police Chief on the Day to Day functions in the Police Department. This interim Police Chief regularly adopted these directions as his own and appeared to not make independent decisions." - **unquote**

The City Council's response to Finding No. 2 is as follows:

Quote - The City Council agrees with this Finding with respect to (1.) one Council Members actions has created a destructive culture within the city government; (2.) the need to improve the culture between the City Council and City employees; (3.) that no Council member should engage in improper, unprofessional or inappropriate contact with City employees; and (4.) that the Police Chief is under the direction of the City Manager and that the City Manager, not the City Council or any on Council member, should direct the actions of the Police Chief. - **Unquote**

My Response to Grand Jury's Finding No. 2, and to the City Council's response to Finding No. 2 is as follows:

Once again, I adamantly oppose the findings by the 2018-2019 RCGJ and the response made by the Banning City Council.

I am attaching a number of personal statements made by 20+ year employees that state, that they have never seen me conduct myself in the ways described in the GJ report. For example:

Michelle Green, a 27 year employee who supports me, says: **quote -** How about the previous Mayor (Moyer) and Council Member (Welch) who were aware of discrimination by the previous City Manager (Rock) and previous Administrative Services Director (Clayton) against myself and two other long term employees – forcing us to retire, who just sat by and allowed it all to happen. The Mayor and I had mutual friends and had known each other for years, but even after admitting to our faces that he was aware of the discrimination he chose to remain silent. **Michelle Green's statement continues - quote -**

Then there was the time that a previous Council Member (Debbie Franklin) (at the urging of a prior Department Head and possibly the previous City Manager) came to my home to try to get me to file **FALSE SEXUAL HARASSMENT CHARGES** against Mr. Peterson. I think that was the subject of an investigation, but was any censure type action taken?" - **unquote -**

This is for real folks, yet this City Council made the following recommendations to the Grand Jury:

Quote - The City Council agrees with this Finding with respect to (1.) one Council Members actions has created a destructive culture within the city government; (2.) the need to improve the culture between the City Council and City employees; (3.) that no Council member should engage in improper, unprofessional or inappropriate contact with City employees - **Unquote**

Whom are they talking about here? Could it be Debbie Franklin, going to employee's homes and asking them to file False Reports. Or was it George Moyer and Art Welch who ignored blatant discrimination, workplace harassment and a variety of other charges?

Here is an example of Rita Chapparosa's personal statement she worked for the City for 37 years:

- quote - "I made a decision to retire due to the concerns with former City Manager (Michael Rock) and Administrative services Director (Rochelle Clayton). It was very difficult to work under these conditions.

Don supported me, former Finance Manager Michelle Green and City Clerk Marie Calderon after we expressed our concerns on the above staff.

I had the pleasure of knowing Council Member Don Peterson during my tenure. He always respected me and my staff in a professional manner. - unquote -

Here are a few comments from Heidi Meraz a 25 year employee of the City; quote - I have had the privilege of knowing and working with Mr. Don Peterson since 2012, when he became a member of the city council. Mr. Peterson always treated me with courtesy, respect, and professionalism during my interactions with him. I am appreciative for his dedication to our City and his commitment to making it a better place to live. - unquote - Heidi retired a few months ago.

I might add, that City Manager Doug Schulze prompted and expedited Heidi's decision to retire. And, as the old saying goes: Nuff said.

So, once again, whom are we talking about, when the Council says: no councilmember should engage in improper, unprofessional or inappropriate contact with city employees? Are we talking about Michael Rock, Rochelle Clayton, Debbie Franklin, George Moyer, or Art Welch? One thing is for sure, I do not believe it is me.

The Grand Jury's Finding No. 2 also says: **Quote -** Another such action was directing an Interim Police Chief on the day-to-day functions in the police department. This interim Police Chief regularly adopted these directions as his own and appeared to not make independent decisions. **-Unquote**

Interim Police Chief Robert Fisher says in his personal statement that: **quote -** "The findings on this are not accurate. I never took directions from you, or any other Council Member, on the day-to-day operations and function of the police department. Any decisions I needed to make as Interim Police Chief were mine, based on concrete details, knowledge, and experience. Furthermore, I have never seen you conduct yourself in any other way than ethical, accountable, thorough, confident, fair and professional towards any city employee." **- unquote**

Police Chief Alex Diaz says in his personal statement that: **quote -** "I was never pressured by any councilmember to make biased decisions on police matters. I was never approached by members of the council for special favors or any matters that went against the ethics of law enforcement and my position of Police Chief.

Specifically, I was never approached nor pressured by Councilmember Don Peterson to make decisions based on favoritism or his explicit request. Decisions that were made under my tenure as Chief of Police were my own decisions, not based on favoritism, cronyism, or pressure from Councilmember Peterson. “ - **unquote**

Doug Schulze ordered an “Internal Audit” of the Police Department in January of this year. Although, his stated reasons for pursuing the audit, seems reasonable, my theory about his intentions is quite different. Nevertheless, here is an email he sent his personal Police Chief Matt Hamner on February 19, 2019 at 4:06 pm.

Quote - : Chief, Titan Investigations has completed the Audit of the department (final report attached). I am pleasantly surprised by the findings because the Department has not had stable leadership for many years. The positive findings are truly an indication that, even with the instability and turnover in the Chief’s office, those employees involved with administration of the Department have done an excellent job. I intended to share this report with the City Council and community, but want the employees of the department to have opportunity to review it first.” - **unquote**

WOW, so Doug says: **I am pleasantly surprised, The Positive findings, and the Admin has done an excellent job.** If this is the case, and I have been accused of vicariously running the police department, then why am I not commended for a job well done? They can’t have it both ways, which is it?

Nevertheless, I am truly amazed and shocked by the Grand Jury findings and the City Council’s blind acceptance of their findings. I have submitted as undeniable truth that the finding are inaccurate and false. By reading personal statements from two Police Chiefs, The Human Resources Manager, the Assistant Finance Director, the Parks and Rec Director, the former Assistant Utility Director and many others, to include Doug’s email. This makes a person wonder about the thoroughness of the Grand Jury’s fact finding mission.

Obviously, the findings appear to be biased and based solely on the opinions of my adversaries. Nevertheless, I would like to look at a missing puzzle piece. As most people know, every employee in this city except for the City Manager is a member of a labor union.

Now, if this unknown and un-named councilmember was so out of control, and disrupting the city government as stated, and terrorizing the city employees wouldn’t the Unions have stepped in for protection? Where are the Union and Labor Grievances? Are there any complaints, if so, where are they?

There has been an insurmountable amount of support from the community and employees of the city. Many employees would love to speak on my behalf, but are afraid of retaliation by Doug Schulze, for which I don't blame them. Many are young with families to feed.

We all know that this Grand Jury Fact Finding and their recommendations is the Good Old Boys way of trying to shut me up. They do not like the transparency that I bring to the table, and they do not like the light shining on their conduct.

Years ago, there was a gentleman from Sun Lakes who used to accuse the council of hiding information in Closed Session. He used to call it "The Secret Session". Well, I can tell you, he is correct. There are many things that go on in Closed Session that SHOULD NOT be in closed session. The Council has hidden their agendas and dirty little deeds in the Secret Session, just as Debbie Franklin attempted to discredit me by fomenting a bogus complaint against me, with the intent to falsely accuse me of sexual misconduct. This incident is a matter of record – it was formally investigated by the City of Banning and the investigation was sustained, meaning the incident occurred as I describe it here to you today. This episode should tell you a little about the level of backstabbing that is going on behind the scenes on the Banning City council. It is absolutely despicable.

The Good Old Boys and developer Diversified Pacific who supports David Happe would love to have me off the Council. But guess what, I will go at my time, not theirs. And if I choose to run another term, I guarantee you that I will win.

The Grand Jury's Finding No. 3 was as follows:

Quote - One Council Members inappropriate actions contributed to low employee retention and difficulty in filling open positions with qualified personnel. An acting city manager, a department head, and several other city employees left city employment following continuous harassment. The word "Bully" was frequently used to describe this Council Member's interactions with former and current city employees. This hostile work environment has resulted in litigation settlements from the City of Banning which totaled nearly two million dollars. - **Unquote**

The City Council's response to Finding No. 3 is as follows:

Quote - The City Council generally agrees with this Finding with respect to one Council Members inappropriate actions and the high level of turnover in management staff at the City. The City Council also believes it is not in the interests of the City, and would be inappropriate for the City Council from a risk management perspective, to

specifically comment upon on work environment at the City except to affirm the City's goal of maintaining a professional, safe and legally compliant workplace. - Unquote

Obviously, this entire Finding is ridiculous and unfounded. Although, my adversaries are splitting hairs in an attempt to assassinate my character.

Let's begin with the Staff that has departed the City's employment since my election in 2012.

1. City Manager Andy Takata. A Majority Vote by the entire City Council terminated Andy's contract. Not a single Council Member's decision.
2. Public Works Director Duane Burk. His employment ended as a result of Interim City Manager Jim Smith. Not a single Council Member's decision.
3. Police Chief Leonard Purvis. His employment ended as a result of City Manager Andy Takata's decision. Not a single Council Member's decision.
4. Administrative Services Director June Overholt. Resigned after not being selected for the City Managers position. June is now the City Manager for the City of Rialto. Not a single Council Member's decision.
5. Economic Development Director Bill Manis. Resigned and took a position with the City of San Bernardino. Later he became the City Manger for South Pasadena and the City of Upland. After Manis had departed from Banning, the Banning Informer uncovered that Manis had been arrested and convicted of solicitation of prostitution before he came to Banning. We should consider ourselves lucky that we no longer employ a sexual deviant like Bill Manis, but if it was up to former Mayor Debbie Franklin, nevertheless Manis would be the City manager today. In any event, Manis' departure was clearly not a single Council Members decision.
6. Human Resources Manager Rita Chapparosa. Retired after job harassment and discrimination from Michael Rock and Rochelle Clayton, and a condonement of these actions by Mayor Moyer and Council member Welch.
7. Assistant Finance Director Michelle Green. Retired after job harassment and discrimination from Michael Rock and Rochelle Clayton, and a condonement of these actions by Mayor Moyer and Council member Welch. I should also add, the previously mentioned request by Debbie Franklin to create a False Sexual Harassment Complaint heavily influenced her decision to retire.

8. City Clerk Marie Calderon. Retired after job harassment and discrimination from Michael Rock and Rochelle Clayton, and a condonement of these actions by Mayor Moyer and Council member Welch.
9. Heidi Meraz. Retired after job harassment, lack of communication and lack of support from Doug Schulze.
10. Police Chief Alex Diaz, Retired from Law Enforcement altogether as he was looking for a career change.
11. Administrative Services Director Rochelle Clayton. What can I say. Everyone that has attended or watched a display of her incompetence at a City council meeting or on TV can understand her departure. Rochelle was passed over three times for Banning's City Manager. She is now the Assistant City Manager for the City of Menefee.
12. City Manager Michael Rock. Again, everyone that has attended or watched a council meeting on TV can understand his departure as well. After conducting a formal investigation, the city council unanimously found Rock had been actively meddling in Banning's city council election, for the purpose of preventing my re-election. Rock since accepted a position as City Manager when he left Banning with the City of Santa Paula. Recently he resigned from Santa Paula and is now the City Manager of Yuba City.
13. And now we have Doug Schulze as our City manager. It turns out he has been less than forthcoming at his job interview: Schulze failed to inform us that he had been charged with spousal abuse - aka wife beating – in Washington State. He also avoided to tell us that he had a total of 3 foreclosures on his record, had filed for bankruptcy twice, and had an IRS filed against him. – how did this man ever pass our background check ? I have no idea. Are you appalled ? I am. But you can see 4 of my colleagues sitting here unfazed, they see nothing at all wrong with Doug Schulze. Clearly they are accepting of the way he deceived us all. This is how business is done in Banning.

So now, let's talk numbers: Since 2012 there have been:

Three Police Chiefs. One resigned and went to the Sheriff's Dept. the other retired and went to the private sector. The third was brought in this year.

Two Public Works Directors: One resigned and went to work for another city's Parks and Rec. The second one is Art Vela and Thank God he is here today.

Two Administrative Services Directors, both have left for career advancement.

Two Economic Development persons, one left for advancement, the other is still here.

Three City Managers: one had his contract terminated by unanimous vote of the city council, the other left for another city, and the third one is here now. Regardless of the number of interim city managers, they were exactly that, Interim. And let's keep in mind, Interim means: provisional, temporary, short-term, fill-in, acting, intervening, or transitional. Interims were never permanent contracted City Managers, nor were they ever intended to ; so for the Grand Jury to include them in the total count of employee turnover shows a complete lack of understanding of the role or purpose of interim employees.

One Park and Rec Director; Retired due to job dissatisfaction and harassment by the current City Manager.

Two Electric Utility Directors; one retired, the other is here now.

Two Human Resources Managers: One retired, the other left for a better position.

Two Deputy Finance Directors: one retired due to job discrimination, the other is still here.

I stated at the August 7 City council meeting, the exact reasons the above persons left the City. And, quite honestly, I think it was better that a few of the above employees left, as most of them were replaced by better employees.

Although, I am saddened by the departures of Rita Chapparosa, Marie Calderon, Michelle Green and Heidi Meraz. Collectively among these women there are more than 100 years of experience in the city, and it is sad that they are gone. And, again, let me emphasize once more that none of them blame me for their departures.

Nevertheless, and moving on. I guess there are a few crybabies out there that have labeled me as a bully. I don't get it, I don't go to City Hall, and I do not speak to staff outside of the council chamber. I have, however, sent emails to the city manager containing some very uncomfortable questions for a few of our incompetent Staff members, but that is about it.

What you hear me say is televised and on the record. There are times when I may speak in a gruff tone, but we are all adults, and adults have expectations, and when an adult provides sub-standard or incomplete work, I just do not find that acceptable, particularly given their pay grade.

As I said at the last meeting. I have never screamed and yelled and intimidated any city employee as I have witnessed George Moyer to do.

Again, I have personally witnessed George Moyer scream, intimidate and humiliate city staff. I have personally seen George Moyer verbally attack, yes, an all-out verbal in your face attack on Public Works Director Art Vela, not once, but on two separate occasions.

And quite frankly, I was shocked that Art Vela could hold his composure and temper the way he did. I also feel Art Vela should receive a commendation for not knocking George out, as he would have been completely justified.

I have also witnessed George Moyer in another out of control yelling frenzy, whereby he screamed at, and intimidated our former Parks & Rec Director Heidi Meraz. Heidi told me later, that in all of her years of marriage not even her husband had ever spoken to her in that manner and tone. And I also understand that, Ted Shove has experienced the George Moyer wrath as well.

George Moyer is not the only person that has made it hard for employees working at the City. Former City Manager Michael Rock, former Finance Director Rochelle Clayton created a toxic work environment for at least six 25 year plus employees and caused their resignations.

By the way, I never mentioned the time that, the Utility Payment Personnel complained about Debbie Franklin being in City Hall and interfering with their work. It was reported that Debbie would work the counter and accept cash payments from the utility customers. The employees felt as if they were not doing their job correctly, which included accounting for the money being taken in. At the end of the day, the employees could not be sure that all cash payments were properly accounted for, because the Council Member had taken over the collection of the funds. Needless to say, once exposed, Franklin's conduct came to screeching halt.

When it comes to the interference of the employee's work inside City Hall, we need to take a look at each Council Member and ask them, "What are you doing in City Hall?"

It should be known that, the City Council DOES NOT have an office inside City Hall – and this also includes the Mayor. He does not have an office there either. So, if there is a Council Member at City Hall, then they MUST be in an employee's office or cubicle, or with the City Manager.

Let's take a look at the City Hall appearances by each Council member:

January 2019, there were 21 working days:

Art Welch 37 visits, Colleen Wallace 23 visits, Daniela Andrade 21 visits, David Happe 3 visits and me 5 visits

February 2019, there were 20 working days:

Art Welch 33 visits, Colleen Wallace 23 visits, Daniela Andrade 20 visits, David Happe 11 visits, and me 6 visits

March 2019, there were 21 working days:

Art Welch 32 visits, Colleen Wallace 16 visits, Daniela Andrade 18 visits, David Happe 2 visits, and me 6 visits

April 2019, there were 22 working days:

Art Welch 38 visits, Colleen Wallace 14 visits, Daniela Andrade 20 visits, David Happe 1 visit, and me 3 visits

May 2019, there were 23 working days:

Art Welch 38 visits, Colleen Wallace 24 visits, Daniela Andrade 17 visits, David Happe 1 visit, and me 2 visits

June 2019, there were 20 working days:

Art Welch 29 visits, Colleen Wallace 14 visits, Daniela Andrade 13 visits, David Happe 0 visits, and me 0 visits

July 2019, there were 21 working days:

Art Welch 32 visits, Colleen Wallace 14 visits, Daniela Andrade 6 visits, David Happe 2 visits, and me 0 visits

Out of 148 working days:

Art Welch 239 visits, Colleen 128 visits, Daniela 115 visits, David 19 visits, me 24 visits

The Public needs to ask each councilmember, what are they doing there? Stealing Staff time, interfering with their work, making demands, or just bothering the workers.

With 239 visits in just 148 working days, Art Welch made himself a permanent fixture at city hall, engaging in a pattern that clearly indicates he literally hangs out at city hall on a daily basis.

By definition; this means he is in contact with certain city employees multiple times every single day, keeping them from doing their job and stealing their time. Add to that the visits of the other three council members, and the employees virtually have no time left to work on city business. With this behavior pattern, interference with city staff is virtually guaranteed.

In summary, I feel the Grand Jury got it all wrong. It seems that George Moyer, Art Welch, Debbie Franklin, Michael Rock, Rochelle Clayton and Doug Schulze tried to deflect the many stated charges stated against them and redirect them at me.

Nice try, but the many people that spoke in my defense and the innumerable letters outlining the injustices against a group of long time employees say it all.

Regarding Council Member Wallace's and Council Member David Happe's statements, they are filled with nothing more than opinion, conjecture and fabricated information to incite the public. Considering that they became sworn in council members only during the second half of the Grand Jury investigation and had no part in the filing of the report it seems odd that they are the most vocal.

The recent "Record Gazette" article written by David Heiss about me is nothing more than his customary hallucinogenic rambling because of a post on a local blog that referred to him as a pedophile. Heiss' slanderous article was nothing more than retaliation to the blogger's social media posting.

The public should also note that Heiss is accepting money from my political enemies in order to write these smear pieces against me in the Record Gazette. Those payments, which amount to thousands of dollars, were being disguised as charitable donations and were made to a bogus, unregistered charity at the time, which Heiss runs on the side.

Let me briefly address the August 16th Record Gazette's article about me ; it is full of inaccuracies, deception and lies.

The fact of the matter is, no party to the lawsuits was ever deposed, no testimony was given in court and no judge or jury ever reviewed the allegations made in the lawsuits.

Neither the City nor I ever had their day in court in any of these cases. Instead, the city's insurance company decided to settle those cases, not because they had merit, but because defending them would have cost them more than to offer a limited settlement.

It is important to understand that the City of Banning and its council members were never asked to approve these settlements. The insurance company made these decisions on their own.

I personally would have much preferred for the City to challenge the allegations, because I firmly believe we would have prevailed at trial. But again, this was not mine nor the council's decision.

The article makes it sound like liability payouts were made by the general fund of our city,. This is completely false, as all of those payouts were insurance payouts which did NOT get paid by the taxpayers. The taxpayer only paid the accrued overtime, vacation time and severance amounts, which were contractually agreed upon and were owed under California labor law.

This is why the Heiss article, which tries to pin all those settlements on me, is nothing more than a libelous attempt to thoroughly discredit me.

In closing, I emphatically disagree with all Findings of the 2018-2019 Grand Jury report, and I hope that the City Council rejects their findings as a whole.



May 13, 2019

Riverside County Grand Jury
P.O. Box 829
Riverside, Ca 92502

Ref Matter: Don Peterson, City Council Man of Banning
Case number unknown

Civil Grand Jury: FORWARD TO THE CORRECT DEPARTMENT

Allow me to introduce myself my name is Frank J. Burgess, a long time citizen of Banning, Ca. over 60 years as a resident, a businessman for over 55 years and a City Councilman of Banning for 12 years. In 1970's and 1980's and for the past few years I have attended the City Council meetings. I have seen this city go ^{blue}downhill for the last 15 to 20 years and go into debt over there head. My point is this.

I have learn this past weekend that the Grand Jury may be investing City Councilman Don Peterson and while I have not been interviewed by the Grand Jury on this matter nor do I know or need to know the reason for the investigation I only know that if it were not for Don Peterson reading his agenda and doing his homework this city would be even in worst state then it is.

If you will check your files, you will see where the city has been investigated other times and the present Council at that time thumb their nose at the grand jury more or less.

Go back to the years of 2009/2010.

Investigation of the Community Redevelopment Agency of the city of Banning. Ref: Cultural Alliance. Again, the City Council thumbs their nose at the grand jury. Check it and see if I am right or not. No refund ever came back to the city from the Cultural Alliance. City of Banning took no action against Cultural Alliance.

Check out the Years of 2016/2017.

Investigation by the Grand jury of the relationship between the City of Banning and the handshake with the San Gorgonio Chamber of Commerce. Citizen of Banning lost \$1000.00's of dollars. Again, Council thumbs their nose at the grand jury.

Check out the years of 2017/2018

Please read the findings of the Grand Jury on Page 3 thru page 7 and ask yourself what action did the City do to correct the request of the grand jury. Please take the time to read it and each of the others as well.

The point of all of this is because of Don Peterson doing his homework that all of these investigations became known.

Don Peterson works for the citizens of Banning not the good old boys club. Yes, he comes on strong because his fellow council people hang around with staff, one and two they do not read the agency or do their homework which happen throughout the country to often. The trouble with people who becomes a city council person it goes to their head and they forget the reason they are there. I do not mean that Staff is wrong all of the time but you do need to do your homework, as a councilperson and check out staff from time to time and you must read your agency and do your homework. That the way **Business is run.**

To explain how I learn of this investigation was through the city Manager wife. She has a case HEC1900829 against Mr. Peterson and she states on CH-100 form, page 2 of 6 under Item # 7 Description of Harassment line # 1(I quite Grand Jury & Police are investigation him. End of quite.)

Now I must explain my relationship with Mr. Peterson to you the grand jury. I never knew Mr. Peterson before he became a city council person. I do not party with him nor do I go to dinner with him. I only know him as a City Councilman. He has been in my office a few times over the years. We speak at the council meeting when I go and that is about it. I judge Mr. Peterson as another Frank J. Burgess back when I was on the city council in the 70's and 80's. I would not win a personality contest but I got the work done for the citizen of Banning.

That is what I was elected to do and not worry about been elected next time around. I would read my agency and do my homework.

Mr. Peterson is a good man, He server his country in the military (~~Army~~ ^{Army} Marine Corps) and has a Purple Heart to show for that and has server in law inforce for many years as well. He now has server 6 years or more as a Banning city council member and has done his best to server the citizen of Banning. He is what you call a strong ~~Marine~~ ^{Army} and sometime come off that way but how else would you want him to come off.

Mr. Peterson represents the second District and you will find they are happy with him. The good old boys do not like him mostly in the third District at that. I was the person who put the wheels in motion to divide the cities into Districting. And the reason for it was the way the city was been run by the good old boys club and as long as that happens the city will go nowhere. I was hoping that thing were going to change but the outsiders and the weak City Council is still here in Banning as it was in our next door neighbors City of Beaumont and we all know what happen there and it will in Banning one day if we don't have City Council member like Mr. Peterson watching out for the citizen.

Check the amount of money spent by outsider in the city of Banning last election. Some hundreds of thousands of dollars were spent in two districts for unqualified candidates.

I could write a book on all of the things that have happen in Banning that was a waste of the Citizen of Banning money. The Grand Jury should be investigation the Management and asking the City of Banning Mayor and other city council people where the audit of the City is at this time. Not Mr. Peterson.

If there is anything that you are investigating Mr. Peterson for other than his job as City Councilman only you would know that otherwise this is a waste of Taxpayers money. I will agree with you he would not win a **Personality contest** but he was not elected for his **personality** but to do the job in behalf of the citizen of Banning.

Should you have any questions of me, Please feel free to ask. I may be reach by either email or phone. My email address is fburgess@burgessrelocation or by phone 951-236-1542.

**I want to think you for your time and say thank you for
volunteer your time to sever on the Grand Jury. I know it is a
lot of work for each of you and not a lot of thanks .**

Sincerely Yours



Frank J Burgess

182
July 22, 2019

Don Peterson
99 E. Ramsey Street
Banning, CA 92220

RE: Grand Jury Investigation

Dear Mr. Peterson,

I am writing this letter regarding the June 18, 2019, Riverside County Grand Jury Report, and to provide additional relevant information. Upon reviewing the report, I found it to be very disappointing and inaccurate. Regarding Allegation #1- City Council Member Circumvents City Manager Relationship. This finding is inaccurate and lacks some facts, as you never directed any police officer to open a criminal investigation into the water use activities of a private citizen. The City Manager reached out to me to have the police department assist with investigating a private citizen's water use and possible theft of utilities. I am the one who assigned this task to a police officer to further investigate.

Regarding Allegation #2 – City Council Member's Independent Actions. The findings on this are not accurate. I never took directions from you, or any other Council Member, on the day-to-day operations and function of the police department. Any decisions I needed to make as Interim Police Chief were mine, based on concrete details, knowledge, and experience. Furthermore, I have never seen you conduct yourself in any other way than ethical, accountable, thorough, confident, fair, and professional towards any city employee. In addition, for the past twenty-five years, while working for Banning Police Department, I've worked diligently and closely with nearly every Council Member, including you, to address and provide resolutions to the voiced concerns from their constituents and the community. These concerns include but are not limited to the homeless in the Sun Lakes Shopping Center, speeding vehicles on Wilson Street, plight on the Eastside of the city, charity basketball events, and health and safety concerns surrounding the Banning Business Center. The fact of the matter is, I have enjoyed working with all the City Council Members, have encouraged their opinions as a way to understand and resolve their constituents' issues effectively.

Regarding Allegation #3 – Low Employee Retention. The findings on this are inaccurate and incomplete. During my twenty-five years with the City, employee retention and attrition within the Banning Police Department has been an ongoing issue which has been attributable to salary compensation and officer workload, and not related to you or any Council Member. Furthermore, I have never observed this City Council, including you, harass, bully, or create a hostile environment with any city employee or citizen. The reality is, the City of Banning continues to be one of the lowest paying police departments in both Riverside and San Bernardino Counties. This combined with an already strong and growing economy, has allowed employees to find better paying opportunities at other cities. Also, the Banning Police Department audit from earlier in the year significantly indicated that the top two officer concerns were patrol workload stress and compensation.

In closing, the additional details provide a more comprehensive, balanced, and accurate understanding of the situation. As well as confirming value you bring to the City of Banning, and your high moral character.

Respectfully,


Robert Fisher

To whom it may concern;

My name is Alex Diaz, retired Chief of Police, Banning Police Department. During my almost 5 years as chief of police, I had the opportunity to work closely with members of the City council on numerous projects dealing with quality of life issues within the boundaries of the City of Banning. Always appreciative of the ideas brought forth by members of the council, my responsibility was to make precise, controlled and thoroughly researched decisions in matters dealing directly with the police department.

I was never pressured by any councilmember to make biased decisions on police matters. I was never approached by members of the council for special favors or any matters that went against the ethics of law enforcement and my position as chief of police. Specifically, I was never approached nor pressured by Councilmember Don Peterson to make decisions based on favoritism or his explicit request. Decisions that were made under my tenure as chief of police were my own decisions, not based on favoritism, cronyism or pressure from Councilmember Peterson or other council members I had the pleasure of serving under.

Respectfully,


Alex Diaz

7/24/2019

To whom it may concern,

I have had the privilege of knowing and working with Mr. Don Peterson since 2012, when he became a member of the Banning City Council.

I recently retired from the position of Community Services Director with the City of Banning where I had worked for over 25 years. Mr. Peterson always treated me with courtesy, respect, and professionalism during my interactions with him.

With regards to support of the Community Services Department and the employees, Mr. Peterson was supportive of existing programs and the vision for bettering the services provided and improving city parks.

As a citizen of Banning and a constituent in the district which Mr. Peterson represents, I am appreciative for his dedication to our City and his commitment to making it a better place to live.

Heidi Meraz

July 25, 2019

To Whom It May Concern:

I am a retiree of over 37 years of dedicated service to the City of Banning and assisted in overseeing the Human Resources & Risk Management Department. Also, I am a lifetime resident of Banning.

I had the pleasure of knowing Council member Don Peterson during my tenure. He always respected me and my staff in a professional manner.

He would stop by occasionally to speak to me and staff on his way to meetings since our offices were close to the lobby of the Council Chambers. This was not any different than other City Council coming to the department directly and asking questions on City issues. He always thanked us for our hard work and dedication. He knew that we were understaffed and overworked.

One day, Don asked me about my experience and background of my position in order to get a better understanding of my position. Don felt that I had the experience and knowledge to promote me to the Human Resources Director but apparently Council turned down his recommendation. This made current and former Council/Mayors uneasy of my professional relationship with Don according to my supervisors and other staff.

I made a decision to retire due to the concerns with the former City Manager and Administrative Services Director. It was very difficult to work under these conditions.

Don supported me, former Finance Manager, Michelle Green and City Clerk, Marie Calderon after we expressed our concerns on the above staff.

On another note, after reading the article in the newspaper regarding the investigation from the Grand Jury on Don Peterson, I was very upset that they did not include me and other recent retirees on the harassment allegations by him against City employees.

Sincerely,



Rita Chapparosa

Michelle M. Green
489 W. King Street
Banning, CA 92220

August 7, 2019

To Whom It May Concern:

I am writing this letter to express my support for Councilman Don Peterson. I am a 27-year veteran (now retired) of the City of Banning. As such, I was employed from the time Mr. Peterson took office until January 2017. During my tenure with the City, I had reason interact with Mr. Peterson numerous times. I also had cause to request Mr. Peterson's assistance in a personal matter after my retirement from the City.

Many people use the word "bully" when referring to Mr. Peterson. I wouldn't have used that term, to me his personality is very straight forward, albeit sometimes aggressive or forceful; I used to say he lacked bedside manner, or his delivery was rough. I always attributed this to his career in law enforcement. I was even the subject of one of his "inquisitions" when I presented an item to the council. I was a little rattled after the encounter, but did I go home crying or hate him for it? NO. One thing I had come to realize about Councilman Peterson over the years was that even though he seemed mean at times it was just his delivery that needed fine tuning, he usually had a point. He was often the only council member that researched and/or questioned items on the agenda and more often than not he was actually on the right track. I came to respect what he was *trying* to do.

He often called the other council members on the carpet and they have often challenged him. Have any of those other council members been the subject of a grand jury report or censured? There was the time that a previous council member (at the urging of a prior Department Head and possibly the previous City Manager) came to my home to try to get me to file false sexual harassment charges against Mr. Peterson. I think that was the subject of an investigation, but was any censure type action taken?

How about the previous Mayor (Moyer) and Council Member (Welch), who were aware of discrimination by the previous City Manager (Rock) and previous Administrative Services Director (Clayton) against myself and two other long term employees - forcing us to retire, who just sat by and allowed it to happen? The Mayor and I had mutual friends and had known each other for years, but even after admitting to our faces that he was aware of the discrimination he chose to remain silent. Were they censured for allowing harassment of staff members? The only council member that was willing to stand up and tell others what he knew was Mr. Peterson. To me this shows that Mr. Peterson at least has a conscience and is more principled than some of the other council members I have known for many years.

Did the Grand Jury include the three of us in the count when they tallied up the "several employees that resigned from city employment in response to improper, unprofessional and inappropriate contact and

actions" by these other council members? Or were we included as "one of several city employees that left city employment following continuous harassment"? We definitely suffered from the inappropriate actions (or lack thereof) of council members and continuous harassment arising from these actions. No one interviewed the three of us so they could censure those council members for their involvement in behavior unbecoming of a council member.

I agree that the Council Members, the City Manager and Staff all need to do their jobs appropriately. How many times has each of the council members approached staff directly for one reason or another? Too many to count in my 27 years. Staff needs to be sure to report any inappropriate conduct by Council Members, the City Manager, Department Heads and other staff. All City Staff (elected and hired) should act professionally and keep the reason they are in their positions in the first place foremost in mind as they carry out their duties.

In closing, none of us are perfect; we are all human but at least Mr. Peterson has more character and concern for the City than some others I have come across.



Michelle M. Green
Former Deputy Finance Director for the City of Banning

Rick Diaz Sr.

1864 W. George St.

Banning, CA 92220

July 26, 2019

Re: Don Peterson Banning City Councilman

To Whom It May Concern;

My name is Rick Diaz Sr. and I am a City of Banning retiree with about 42 years of service. I have known Don Peterson personally now for about 5 years. Although, he has been a council member for a little over 6 ½ years now and I have seen his demeanor while in this elected position.

I know Don to be a caring & concerned citizen of Banning and he wants to see the city grow in a fashionable pace along with making the right decisions with the proper and complete documents presented before him. He has a tendency to sound loud and harsh at times, but I believe it is the law enforcement background he has that warrants a tone of authority and to be in control of situations. He does get somewhat upset when items are incomplete in their presentation. But by voting these items through he puts his signature on them in the best interests of the citizens.

I have not personally seen or witnessed anyone employed with the City of Banning harassed by Don Peterson during my employment. He had no personal contact with any individual that I know of with business matters.

Regards,

Rick Diaz Sr.

TO: The Banning City Council

VIA: Council Member Peterson

A common comment about Grand Juries is that a determined prosecutor can get a grand jury to bring an indictment against a ham sandwich. Sadly, that is precisely what has happened in the current grand jury report about Banning.

An unidentified Council member has been charged with bullying and acting in an unauthorized manner in directing actions by Banning officials. These charges were brought forward after the grand jury took testimony from 11? Individuals including two former Council members.

Who chose those witnesses? I am a former Council member, serving along-side Mr. Peterson, and well known to approve of his performance. Mr. Peterson asked the grand jury to call me as a witness, yet they did not do so. Calling only witnesses biased against one individual, and ignoring witnesses favorable to that individual is the standard way to indict anyone, or any ham sandwich, for anything.

But why would anyone want to degrade Mr. Peterson by bringing complaints against him? The answer is obvious. Mr. Peterson, from the very beginnings of his terms in office has tried to pull Banning away from its complacent acceptance of poor past practices. He questioned and continues to question everything, and has worked to assure that Banning receives just compensation from contractors and businesses for their actions in our city and their use of Banning facilities. I do not believe I need to point to the difference between Beaumont and Banning to show the necessity for change. That necessity has driven Mr. Peterson to work for needed changes in the way things were being done in Banning. I also worked for such changes, and at one council meeting read a list of our accomplishments in affecting such changes.

Of course, such change, or any change, is always met with violent opposition from those satisfied with the current conditions, and Mr. Peterson has made enemies as a result of his actions to change and improve Banning. That opposition has continued to the present. As just one example, despite the Council member not being identified in the Grand Jury report, our local newspaper, which has opposed

Mr. Peterson's attempts at change from the beginning, printed the entire grand jury report with Council member Don Peterson's picture next to the report, implying he is the one cited in the report. But there have been other grand jury reports against other Council members in the past. In none of these instances was the entire grand jury report published.

The grand jury report states that a council member bullied several employees into quitting work at Banning. To my mind, that is completely unbelievable. All employees are union members, and work under the strict protective rules of our city. If such bullying occurred, a complaint to the union head or Human Resources would have immediately stopped any such harassment.

The grand jury report also claimed that Mr. Peterson improperly asked department heads to perform some actions. I have seen ALL Council members talk repeatedly to department heads, and offer suggestions for action. Every resident of Banning has that right, and that duty. If such a request is inappropriate or impossible to accomplish, a department head need only point out that city actions are determined by the city manager, and refer the matter to that individual. The city of Banning is in a dire financial condition. The list of necessary infra- structure improvements presented by Mr. Vela last year has been tabled due to lack of available funds. The current City Manager has stated that there are several new taxes that he could impose on the residents of Banning to meet the budget requirements. Such taxes, whatever they are, would be an impossible burden to many of our residents.

Considering the antagonism shown between members of the Council at the Council meetings, it is most probable that that this grand jury investigation was initiated by a Council member. I ask (but without much hope) that the Council concentrate on solving our City's financial problems, work on bringing industry and commerce into Banning, and not concentrate on attacking each other.

Ed Miller, former Banning City Council Member

1151 Elisa Dawn Drive
Banning, CA 92220
951-378-6659

July 24, 2019

To Whom It May Concern:

I have known Councilman Don Peterson over 10 years. I have found him to be a man of integrity, honesty and to have the best interest of the City of Banning as his highest concern. You can imagine my shock to hear that he was the subject of a grand jury investigation.

Mr. Peterson distinguished himself in the army as a decorated Viet Nam War Veteran. He was awarded a Purple Heart not once, but twice. After his time in the service he spent many years working in law enforcement as various levels. He is an expert investigator and the only member of the current Council who appears to do his homework before coming to meetings.

I have been a citizen of Banning for almost 20 years. I have been involved with the city in various capacities since arriving. I remember when our City had \$6,000,000 in reserve and all bills were paid. We had a full Police Department, a low crime rate, and virtually no homeless. Councilman Peterson's views of transparency and accountability have exposed a lot of mismanagement and wasteful spending. He has proved to us how our current Council and past Councils have favored developers over the citizens of Banning.

There are a number of questions that come to mind for this alleged Grand Jury investigation. First of all, it seems that the only people who were interviewed by the Grand Jury were people that had personal differences with Mr. Peterson. Some had been the subjects of previous Grand Jury investigations themselves. Secondly, if this was a legitimate investigation, and I have observed many in my years when I worked as a Human Resource Director and in my 25 years as a Police Chaplain, both sides are to be interviewed. There is no evidence of this happening. For example, neither Mr. Ed Miller nor myself, both former Councilmen, were interviewed. Finally, previous Grand Jury investigations have been swept under the rug and I remember Mayor Welch saying they "were worthless". So now what is the big deal over this one? Why is his investigation the only one to be published in the local paper? Why is the Record Gazette appearing so one sided?

We now have to ask ourselves, "Does this Grand Jury investigation actually serve to better Banning or is it a 'witch hunt'?" Was the purpose of this investigation only to taint the reputation of a great man and one who gives of his retirement to serve his city? I feel Banning would be much better off if we had more councilmen like Don Peterson.

Sincerely,



Rev. Jerry Westholder
Highland Springs Fellowship

July 23, 2019

To whom it may concern

My name is Jeff Perry. I was a resident of the City of Banning for 40 years, until relocating out of state in 2018. I graduated from Banning High School in 1991 and was employed as a police officer with the Banning Police Department in 1994. I recently honorably retired from the San Bernardino County District Attorney's office, Bureau of Investigation on September 27, 2016 as a senior district attorney investigator.

I am writing this character reference letter for Councilman Don Peterson. I met Mr. Peterson about seven (7) years ago when I was contemplating on running for Banning City Council. During my years of living and working in Banning, I had personal knowledge of corrupt city official(s) and/or personnel and the "shady" practices that were being implemented and approved. The most recent example is, the approval of low-income housing on the southside of Banning.

This area has always been horse ranch type property(s) with beautiful scenery of undeveloped grassland. The developer, Jeff Burum who owns Diversified Pacific convinced most of the city council to rezone this area for low-income housing, also referred to as section 8 housing. Mr. Peterson was the only councilmember to vote against the rezoning ordinance.

Jeff Burum has a history of these antics as he was being prosecuted by the San Bernardino County District Attorney's office. Jeff Burum was accused of paying off city official(s) and/or having properties re-assessed at a lower price. Jeff Burum was ultimately and sadly acquitted of all charges.

Mr. Peterson is a loyal a trusted councilmember which he makes decisions on the needs and wants of the residents of Banning; such as, voting against the low income housing development.

As a retired police officer and a veteran of our armed forces, Mr. Peterson took an oath to defend and protect his county. He continues with the same philosophy as a member of the Banning city council looking after the city's best interest(s) and/or its resident(s).

I'm proud to say that Mr. Peterson is a true friend and I'm saddened to hear he is being investigated for fictitious and alleged accusations.

Best regards,

Jeff G. Perry

Letter to Banning Council Member Don Peterson

Re: Riverside County 2018-19 Grand jury Report "City of Banning and City Manager Relationship"

Although the Grand jury Report at no point states so, it is apparent from references and remarks made by council members, staff, and the general public, that the intended target of the report is council member Don Peterson.

Since his campaign for and subsequent winning the 2012 election, he has kept his promises to his constituents that he would serve with integrity, honesty, and transparency. He has kept his promises to shed light on the many abuses of power dating back to before his being on the council as well as continuing his research into the many instances of hand shake deals between a few council members and their business and financial supporter buddies. to no one's surprise, he has become a major thorn in their sides.

For the past two decades, the constant city council member and occasional mayor Art Welch, together with his close friend Jim C Smith, who has made a career of professional debtor, in the background, has managed to keep the median household income in Banning way below the poverty line.

There have been three Grand Jury Reports in the recent decade, two of which castigated the majority of the city council members, especially Art Welch, for being involved in the many shenanigans that cost the city residents substantial amounts. Council member Don Peterson was instrumental in uncovering the majority of the expensive escapades. The current Grand Jury Report is those hooligans' revenge.

For many years, the city government had been controlled by a few members of the Sun Lakes country club community that systematically depleted the city of its assets with e.g., drastic changes to the General Plan in blatant disregard to the residents' wishes and objections. This problem was somewhat alleviated when the city changed from an at-large city to five districts effective June 2016, and the deadlock of the Sun Lakes influence was broken. However, the poobahs at Sun Lakes still tried to intervene illegally in subsequent elections.

By granting the new out-of-state city manager absolute power in early 2019, over the objection of council member Don Peterson, the remaining four city council members actually abandoned their constitutional duty to their electorate; the city is now manipulated by the special interests of City Manager Doug Schulze who is blissfully ignorant of many California laws and especially the history of Banning and the San Gorgonio Pass Area.

Somehow, the three jurors who signed the Grand Jury Report, have been hoodwinked that as an example, utility theft (condoned by some council members) is not the problem, but someone like whistleblower is the problem Don Peterson who dares to ask probing and pertinent questions is and thereby might endanger the lucrative positions of the other city council members.

7-25-19

Character Letter -
Don Peterson

I first met Don & Vicki Peterson when he stepped into my office in 2012 to take out papers to run for the City Council election.

The City Clerk serves as secretary to the City Council and has many interactions with them. Council Members like to ask the City Clerk various questions and may also express their concerns. Councilman Peterson has always treated me with respect and acknowledged my professionalism in my duties as the City Clerk even though we may not always agree with each other on issues.

He has never harassed me when there were questions I couldn't answer or in having to delay responses to his public records request of which there were many. Public records request have a time period to be answered or time can be extended if more time is needed to gather information - Many time deadlines were not met therefore prompting a lawsuit against the City. But he never harassed me about the delays.

Some community members ask Council Members to bring up certain questions or subjects about the City and their procedures and when Council Member Peterson asks these questions of staff he expresses them very strongly and he gets blamed for being too aggressive. Council Members do their best to get answers because they all want what is best for the community and the City.

Council Member Peterson and his wife are wonderful people and I am happy to be their friend. I have had many friendships with various Council Members throughout my career and with my duty as City Clerk, at all times, working relationships are kept at a professional level.

Marie Caldwell
City Clerk

July 23, 2019

To Whom It May Concern:

I first met Don Peterson in August, 2016 at the Playhouse Bowl Association's Evenings in the Park Summer Concert Series. I found him to be very sincere in his praise of the quality of the concerts and of everyone involved in their production. Don became one of our most enthusiastic supporters and "cheerleaders" for the concerts explaining that community events such as the Evenings in the Park were very important to him and he believed to his constituents as well. Every year since, Don has worked to bring in new supporters to help us continue the production of the concerts. As a 501(c)3 all-volunteer non-profit this has been extremely helpful to the organization.

In addition to Don's interest in and support of the Playhouse Bowl Association, my fiancé and I became acquainted with Don and his wife. I found Don to be extremely up front, genuine, exhibiting good humor, kindness and a dedication to his community. I have seen him reach out to people in need and go above and beyond to assist them in any way he can.

I am not a resident of the City of Banning, but have worked and volunteered there for many years. For all the harsh criticism that has been leveled at Don, I see him in a different light. I have witnessed his concern and care for those less fortunate, for those suffering from severe illness and for those he feels have been treated unfairly.

From his service in the military to his service as a state trooper and officer of the law and his time as a councilmember in Banning Don has served his country and community. While there are those who disagree with him there are those who understand that he strives to do what he believes is right for those he represents.

I am very happy to have had the opportunity to both meet Don and to know him and his lovely wife on a personal level as well as a champion and supporter of Banning's Community and its events.

Respectfully,

Lynette Espinoza

August 27, 2019

Good evening Mayor and Council Members,



A travesty took place on Wed., at the special council meeting regarding the Grand Jury Report titled "City of Banning Council and City Manager Relationship." Sounds quite harmless to me. The Grand Jury interviewed people from the city and former city council members, obviously people who had a negative take on Councilman Peterson. Set up? You bet.

If 20 people got up to speak about the report, 98% of the comments were pro-Peterson, stating that he never acted inappropriately by people who were long standing in the city. That meant nothing to the council. A gentleman commented that four council members will not listen to the community; they will do whatever they want. That is exactly what they did. The four members' responses were scripted and it was obvious they knew their decisions before the meeting. Did you council members forget that you were supposed to represent the people? Shame on you!

So why did they have this meeting anyway? To showcase Peterson in a negative light? There were other Grand Jury reports, and no special meetings were held for them.

Often Councilman Peterson does not go along with the council because he has found out information that tells him otherwise. He does not report what he finds to make other council members look "stupid" as one council member said. That is not his intent. He just does his homework.

He does not ask his supporters to go before the council and lie as someone stated at that meeting. A council member said, "Why do you let your friends come to the podium and say what they do?" He does not have control of what they say; they speak for themselves.

Councilman Happe, you must be desperate to get Peterson off the council. Even if he was guilty of what the report said, and he is not, that would be no reason to resign from office, as you demanded. You were quite nervous in your delivery of

your statement. Who was advising you? Diversified Pacific so they could get their projects approved any way they want since they contributed big bucks to your campaign?

One person said, "I need him censured, removed from all boards and committees because he is an embarrassment to all." He is certainly not an embarrassment because of what he does. Maybe he is an embarrassment to others because of what other should have done and did not do. Peterson, in his research, has brought things to the council that they and even members of the city did not know. The other council members would be wise to at least listen to and digest what he finds. They will see that it has value. He has Banning's best interest in mind.

The Grand Jury recommended collaboration and professionalism in order to govern affectively. The four members do not collaborate or take into consideration what Peterson has found.

The four council members gave the city manager carte blanche authority regarding matters in the city. If that is the case, do we really need a city council? You four will vote for whatever the city manager recommends. Not a smart way to do business, but you four voted for it.

If employees resigned from city in response to improper, unprofessional and inappropriate contact and actions by a council member, why did they not go to their union to address this, or to Human Resources? It doesn't make sense that they would resign. That was a bit extreme.

The report states that no council member has the authority to act alone without concurrence of a council quorum and an actionable vote. Didn't Councilmember Franklin approve the gym at the maintenance facility without members' knowledge? Nothing happened to her.

The interim Police Chief stated that he acted on his own when making decisions. Why would the Grand Jury believe others rather than the acting chief?

I find it difficult to believe that one council member's actions contributed to low employee retention. Did Peterson interact with all employees? An acting city manager left because he had to, due to his previous improper actions. Over a million dollars to clean up an oil spill? That was way out of range and a ripoff, and someone got a kickback for that. Other heads left because they acted unethically in city matters. When people get caught doing something they shouldn't, they usually leave their positions, because then the matter is dropped.

It is obvious that this Grand Jury filing was trumped up. Being censured means to express formal disapproval. That is certainly not something that would require resignation.

Since Peterson did not agree with the city manager taking control of the council, that may have been the beginning impetus for this Grand Jury filing. Councilman Peterson has taken thousands of hours researching things relating to Banning in hopes of assisting the council in making wise decisions. They always seem to look the other way. If they were smarter, they would be pleased that Peterson had enlightened them. Remember that, whenever a council vote comes up. Act in haste; repent in leisure. We are going to pay down the road for the 4-1 decisions of this council.

Thank you.

I wonder if any of you have the
courage to change your vote.
Do the right thing.

Dorothy Famileth-McLean

***THIS PAGE
INTENTIONALLY LEFT
BLANK***



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Laurie Sampson, Executive Assistant

MEETING DATE: September 10, 2019

SUBJECT: Receive and File Contracts Approved Under the City Manager's Signature Authority for the Month of August 2019.

RECOMMENDATION:

Receive and file contracts approved under the City Manager's signature authority for the Month of August 2019.

BACKGROUND:

City Council requested regular reports of contracts signed under the City Manager's signature authority of \$25,000 or less.

ATTACHMENT:

- 1) List of Contracts approved by City Manager
<https://banningca.gov/DocumentCenter/View/6402/August-Contracts>

Approved by:

Douglas Schulze
City Manager

***THIS PAGE
INTENTIONALLY LEFT
BLANK***



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Ted Shove, Economic Development Manager

MEETING DATE: September 10, 2019

SUBJECT: Findings of General Plan Conformity for Real Property Acquisition of Approximately 1.21 Acres of Land

RECOMMENDATION:

Receive and File: finding of General Plan conformity for real property acquisition of approximately 1.21 acres of land, as approved by the Planning Commission on August 14th, 2019.

BACKGROUND:

California Government Code Section 65402 requires that a city's planning agency (i.e. Planning Commission) review and report upon whether the location, purpose, and extent of a proposed real property acquisition by the city for public purposes, conforms with the adopted General Plan or parts thereof.

The Planning Commission Banning City Council considered the acquisition of 1.21 acres of vacant real property pursuant to an Agreement for Purchase and Sale and Escrow Instructions (approved by the City Council on July 9, 2019), to determine if the acquisition would be in conformance with the City's General Plan. The property is located between E. Indian School Lane (north) and E. Theodore Street (south) and adjacent and west of Hargrave Street. The acquisition would allow for the future construction of a public electric utility substation facility. At the August 14, 2019 Planning Commission meeting, the Commission approved the project by a 3 to 0 vote, approving Planning Commission Resolution 2019-17.

JUSTIFICATION:

Per California Government Code Section 65402, the Planning Commission is required to report on the conformity of the proposed real property acquisition with the Banning

General Plan to the City Council within 40 days after the matter has been submitted to the Planning Commission.

FISCAL IMPACT:

None

OPTIONS:

1. Received and File

ATTACHMENTS:

1. Planning Commission Resolution 2019-07
https://banningca.gov/DocumentCenter/View/6394/ATTACHMENT-1-Resolution-2019-07_adopted-20190814
2. Site Map
<https://banningca.gov/DocumentCenter/View/6395/ATTACHMENT-2-Site-Plan>

Approved by:

A handwritten signature in blue ink, appearing to read "DS".

Douglas Schulze
City Manager



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Art Vela, Director of Public Works
Holly Stuart, Management Analyst

MEETING DATE: September 10, 2019

SUBJECT: Adopt Resolution 2019-116, Establishing a Pre-Approved Professional Engineering Vendor List for the Remainder of Fiscal Year 2020 through Fiscal Year 2022

RECOMMENDED ACTION:

The City Council adopt Resolution 2019-116 establishing a pre-approved professional engineering vendor list for various engineering services for the remainder of Fiscal Year (FY) 2020 through FY 2022.

BACKGROUND:

In April of 2017, the City Council approved an engineering vendor list that was utilized several times by the Public Works Department. The vendor list allowed staff to acquire various engineering services in a manner that required less time from staff in the preparation and evaluation of Request for Proposals. The pre-approved vendor list established in 2017 expired on July 1, 2019.

A Request for Proposals was released through PlanetBids on April 24, 2019. Through this release, sixty-seven (67) firms were directly notified. The request for proposals closed on June 11, 2019 with the thirteen (13) consultants listed below responding and submitting proposals by the deadline.

| | CONSULTANTS | AVERAGE SCORE |
|----|--|---------------|
| 1. | Transtech Engineers, Inc. | 92.58 |
| 2. | Engineering Resources of Southern California | 89.33 |
| 3. | STC Traffic, Inc. | 85.83 |
| 4. | Albert A. Webb Associates | 85.33 |
| 5. | Michael Baker International | 82.83 |

| | | |
|-----|--|--------------|
| 6. | Converse Consultants | 82.67 |
| 7. | IMEG Corporation | 82.08 |
| 8. | CASC Engineering and Consulting, Inc. | 81.75 |
| 9. | Twining, Inc. | 81.25 |
| 10. | Inland Foundation Engineering, Inc. | 78.00 |
| 11. | Montrose Environmental Group | 73.58 |
| 12. | G & A Consulting | 72.83 |
| 13. | Electric Power Systems Intl. Inc. | 71.92 |

An evaluation committee consisting of three (3) engineers was assembled to evaluate the proposals based on qualifications and experience of the proposed team; ability to provide the requested engineering services and rates.

The services that were requested in the RFP include:

1. Preparation of engineering quantity estimates and costs.
2. Engineering project management.
3. Structural design.
4. Survey services.
5. Land surveying and map/easement or legal description preparation.
6. Federally and State-mandated reports required for NPDES, general construction permit.
7. Preparation of grading improvement plans (mass, rough and precise).
8. Preparation of traffic plans (signing and striping plans, traffic detour and traffic staging plans, and signals).
9. Preparation of street improvement plans.
10. Preparation of traffic studies/reports.
11. Preparation of storm drain improvement plans.
12. Preparation of hydrology and hydraulic reports.
13. Water well/booster pump stations; water main distribution or transmission improvements/replacement of pipelines (potable and recycled).
14. Sewer lift stations.
15. Preparation of sewer improvement plans.
16. Preparation of water and sewer pressure and capacity calculations and reports.
17. Airport Improvements (runway rehabilitation, signing/striping, REILs, etc.)
18. Perform geotechnical design services as necessary on City Capital Improvement Projects
19. Perform construction material testing services as necessary on City Capital Improvement Projects.

Based on the review of the evaluation committee members and the overall ranking of each firm (see table above) based on specific services, the following table represents the evaluation committee's recommendations for each category.

| | Consultants | Plan Check | CMS Inspection | Applying/Administering Federal Grant Projects | NPDES with WQMP Review | Street Improvements | Water Improvements | Sewer Improvements | Strom Drain Improvements | Traffic Eng. | Surveying (R/W, Maps) | Hydrology/ Hydraulics | Geotechnical Engineering & Material Testing | Environmental, CEQA | Structural Design |
|-----|---|-------------------|-----------------------|--|-------------------------------|----------------------------|---------------------------|---------------------------|---------------------------------|---------------------|------------------------------|------------------------------|--|----------------------------|--------------------------|
| 1. | TransTech | X | X | X | X | X | X | X | X | X | X | X | | | X |
| 2. | Engineering Resources of Southern California | X | X | X | X | X | X | X | X | X | X | X | | X | X |
| 3 | STC Traffic, Inc. | X | X | X | | X | | | | X | | | | | |
| 4. | Albert A. Webb Associates | X | | X | X | X | X | X | X | X | X | X | | X | |
| 5. | Michael Baker International | X | X | X | X | X | X | X | X | X | X | X | | X | X |
| 6. | Converse Consultants | | | | | | | | | | | | X | | |
| 7. | IMEG Consultants | X | | | X | X | X | X | X | X | X | X | | X | |
| 8. | CASC Engineering and Consulting, Inc. | X | | X | X | X | X | X | X | | X | X | | X | |
| 9. | Twining, Inc. | | | X | | X | | | | | | | X | | |
| 10. | Inland Foundation Engineering, Inc. | | | | | | | | | | | | X | | |

JUSTIFICATION:

The Public Works Department procures several professional engineering services contracts throughout the year for the development of capital improvement projects. Establishing a pre-approved vendor list would expedite the process in obtaining these services, as well as, reduce the time spent by City staff preparing and evaluating formal RFPs and proposals.

FISCAL IMPACT:

There is no fiscal impact related to this resolution. The funding of on-call engineering services contracts will be determined at the time of contract award for each specific project and shall be awarded per the City's purchasing policies.

ALTERNATIVES:

Do not approve as presented and staff would proceed with a Request for Proposals for individual projects in order to obtain the required services.

ATTACHMENTS:

1. Resolution 2019-116
<https://banningca.gov/DocumentCenter/View/6417/Attachment-1-Resolution-On-Call-Engineering>
2. Request for Proposals (RFP) dated April 24, 2019
<https://banningca.gov/DocumentCenter/View/6416/Attachment-2--RFP-19-041-Specifications>

Approved by:



Douglas Schulze
City Manager



**CITY OF BANNING
CITY COUNCIL REPORT**

TO: **CITY COUNCIL**
FROM: **Douglas Schulze, City Manager**
PREPARED BY: **Adam B. Rush, Community Development Director**
MEETING DATE: **September 10, 2019**

SUBJECT: Approving Resolution 2019-113, Approving the Comprehensive User Fee Study Report, dated January 2, 2019 and Adopting an updated Master User Fee Schedule for the following City departments and fee groups: Finance and Administration; Animal Control; Community Services; Airport; Building; Planning; Utility Billing; Electric Utility; Police; Fire; and Engineering, Making a Finding for Exemption under CEQA, and; and Introducing Ordinance 1553, proposing amendments to Chapter 3.36 "Fee and Service Charge Revenue/Cost Comparison" of the Banning Municipal Code (BMC) ("Code Amendment"), and Making Findings Pursuant to CEQA.

RECOMMENDED ACTION:

That the City Council:

1. Adopt Resolution 2019-113, A Resolution of the City Council of the City of Banning, California, Approving the Comprehensive User Fee Study Report, dated January 2, 2019 and adopting an updated Master User Fee Schedule for the following City departments and fee groups: Finance and Administration; Animal Control; Community Services; Airport; Building; Planning; Utility Billing; Electric Utility; Police; Fire; and Engineering.; and
2. Waive further reading, and introduce as read by title only, Ordinance 1553, An Ordinance of the City of Banning California, amendments to Chapter 3.36 "Fee and Service Charge Revenue/Cost Comparison" of the Banning Municipal Code (BMC) ("Code Amendment"), and Making Findings Pursuant to CEQA.

BACKGROUND:

The City of Banning engaged Wildan Financial Services (“Wildan”) to determine the full costs incurred by the City to support the various activities for which the City charges user fees to its customers and constituents. The intention of establishing a Comprehensive User Fee Study Report and an updated Master User Fee Schedule is to recover the costs for the use of city facilities and the provision of support services; which are provided to the City’s customers, residents, and businesses. The Comprehensive User Fee Study Report (“Report”) has initiated a variety of fee methodologies to identify the full cost of individual fees and program activities; wherein, the majority of user fees and programs are recovered at 100% of the cost borne by the City.

The Master User Fee Schedule has not been updated since 2007. In some cases, significant increases were necessary to achieve full costs recovery. The City has reviewed the Report and potentially large fee increased. Resulting from Council policy, staff has reduced some of the Report recommendations as the increases are not feasible over a short timeframe. In other situations, the City is implementing a full cost recovery where required by City Council policy and state law. These fees are specifically related to the Community Development related fees for both Planning and Building Permits, plan reviews, and associated costs.

The City has conducted several meetings with the Building Industry Association (BIA); specifically, in regards to the residential plan check and permit fees. The BIA has cited several concerns; which staff analyzed and implemented corrections into the final Master User Fee Schedule. These updates were primarily concerning the labor rates of certain community development staff members which have been reconciled with our current contract rates and the City’s Classification and Compensation schedule.

In addition, the City has transmitted notification of the Master User Fee Schedule and Report to the BIA at least 14-days prior to the September 10, 2019 City Council Public Hearing. In addition, the City provided a copy of the Report to the BIA and published before the community within 10-days of the public hearing before Council. As of this writing, no communication has been received on this item.

DISCUSSION

The Master User Fee Schedule focused on the cost of City services, as City staff currently provides them at the existing, known, or reasonably anticipated service and staff levels. This report provides a summary of the study results, and a general description of the approach and methods Willdan and City staff used to determine the recommended fee schedule. The report is not intended to document all of the numerous

discussions throughout the process, nor is it intended to provide influential dissertation on the qualities of the utilized tools, techniques, or other approaches.

JUSTIFICATION:

The basic concept of a Comprehensive User Fee Study Report is to determine the “reasonable cost” of each service provided by the City for which it charges a user fee. The full cost of providing a service may not necessarily become the City’s fee, but it serves as the objective basis as to the maximum amount that may be collected. The standard fee limitation established in California law for property-related (non-discretionary) fees is the “estimated, reasonable cost” principle. In order to maintain compliance with the letter and spirit of this standard, every component of the fee study process included a related review. The use of budget figures, time estimates, and improvement valuation clearly indicates reliance upon estimates for some data.

Ordinance 1553 acknowledges the required public hearing regarding the adoption of the updates to the Master User Fee Schedule, makes a determination of exemption under the California Environmental Quality Act (CEQA), proposing amendments to Chapter 3.36 “Fee and Service Charge Revenue/Cost Comparison” of the Banning Municipal Code (BMC) (“Code Amendment”), the approval of a Comprehensive User Fee Study Report prepared by Willdan Financial Services, and the adoption of an updated Master User Fee Schedule for the following City departments and fee groups: Finance and Administration; Animal Control; Community Services; Airport; Building; Planning; Utility Billing; Electric Utility; Police; Fire; and Engineering.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

City staff has determined that these actions do not constitute a “project” under CEQA pursuant to State CEQA Guidelines Section 15378(b)(4) because these actions involve the creation of a government funding mechanism which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. In addition, City Staff has determined that these actions are statutorily exempt from CEQA under CEQA Guidelines Section 15273(a)(1) and (2) because these actions and documents are establishing fees to recover the costs of the City’s operating expenses; which include employee wage rates, fringe benefits, and the purchasing and/or leasing of necessary supplies, equipment, and materials, the City finds the User Fee Study categorically exempt from CEQA.

FISCAL IMPACT:

The update to the City’s Master User Fee Schedule will provided the cost recovery necessary to ensure the existing level of service, and the reasonably anticipated increases in service remain and that the City does not incur a significant financial cost to provide this service.

OPTIONS:

1. Approve as recommended; or
2. Do not approve and provide alternative direction.

ATTACHMENTS:

1. Resolution 2019-113
[https://banningca.gov/DocumentCenter/View/6406/Attachment-1_ Resolution-No-2019-113-DRAFT_20190910---MASTER-FEE-STUDY](https://banningca.gov/DocumentCenter/View/6406/Attachment-1_Resolution-No-2019-113-DRAFT_20190910---MASTER-FEE-STUDY)
2. Ordinance 1553
https://banningca.gov/DocumentCenter/View/6407/Attachment-2_Ordinance-1553-for-Master-Fee-Study_abr
3. Comprehensive User Fee Study, dated January 2, 2019 (Willdan)
https://banningca.gov/DocumentCenter/View/6403/Attachment-3_Banning-UF-Report_20190826
4. Proof of Publication
https://banningca.gov/DocumentCenter/View/6404/Attachment-4_Banning--Public-Hearing-Notice-Code-Amendment-and-Master-User-Fee-Schedule-Update_20190826
5. Notice of Exemption (NOE)
https://banningca.gov/DocumentCenter/View/6405/Attachment-5_-Notice-of-Exemption-NOE

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Adam B. Rush, Community Development Director

MEETING DATE: September 10, 2019

SUBJECT: ORDINANCE NO. 1552 OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AN ORDINANCE APPROVING ZONING TEXT AMENDMENT 19-97503 AMENDING SECTION 17.108.020 "PERMITTED USES" OF CHAPTER 17.108 "TEMPORARY USE PERMITS," TABLE 17.12.020 OF SECTION 17.12.020 "PERMITTED, CONDITIONAL AND PROHIBITED USES" OF CHAPTER 17.12 "COMMERCIAL AND INDUSTRIAL DISTRICTS" AND ADDING A NEW SECTION, 17.24.180, "COMMERCIAL CARGO/STORAGE CONTAINERS" ESTABLISHING REGULATIONS FOR COMMERCIAL CARGO/STORAGE CONTAINERS, OF TITLE 17 "ZONING" OF THE BANNING MUNICIPAL CODE AND MAKING FINDINGS PURSUANT TO CEQA.

RECOMMENDED ACTION:

The Planning Commission recommends that the City Council adopt Ordinance 1552, taking the following actions:

1. Making a determination under CEQA Guidelines Section 15060(c)(3) that the Zoning Text Amendments are not subject to CEQA because the amendments are not a "project" as defined by the CEQA Guidelines Section 15378.
2. Introduce, as read by title only, Ordinance No. 1552 (Attachment 3), an Ordinance of the City Council of the City of Banning, California, Approving Zoning Text Amendment (ZTA) No. 19-97503 amending Section 17.108.020 "Permitted Uses" of Chapter 17.108 "Temporary Use Permits," Table 17.12.020 of Section 17.12.020 "Permitted, Conditional and Prohibited Uses" of Chapter 17.12 "Commercial and Industrial Districts and adding a new Section 17.24.180, "Commercial cargo/storage containers" establishing regulations for commercial cargo/storage containers, of Title 17 "Zoning" of the Banning Municipal Code.

APPLICANT INFORMATION:

Applicant: City of Banning
99 E. Ramsey Street
Banning, CA 92220

BACKGROUND:

At the meeting of August 14, 2019 the Planning Commission recommended to the City Council approval of Zoning Text Amendment 19-97503, establishing regulations for commercial cargo/storage containers.

Commercial cargo/storage containers are generally used to transfer goods from point A to point B. It is widely used in overseas shipping industry and ground distribution throughout the world. In the City of Banning, commercial cargo/storage containers are being used primarily for temporary storage of building materials and tools, household goods, personal items, seasonal overstock and other materials for use on a limited or temporary basis. The sizes of such commercial cargo/storage containers vary by the nature of their use. Many corporations are now offering temporary storage containers for moving purposes such as "PODs" by PODs, "PackRat" by Lowes, "U-Box" by U-Haul and many others and are sized generally 8X7X8 and 8X8X16 feet. Some retailers offer smaller versions. Traditional commercial cargo/storage container are typically sized at 8X8X20 to 8X8X53 feet.

Currently, the Banning Municipal Code (BMC) authorizes storage containers, for a period not to exceed 60-days, unless the cargo container is used for a construction project with a valid building permit, in which case the temporary use permit may be granted for up to 365-days. There is no zoning district which authorizes commercial cargo/storage containers as either a permanent or semi-permanent ancillary use through any type of permit or authorization.

City staff understands and acknowledges the convenience and low cost of commercial cargo/storage containers and their growing popularity in utilizing them in both residential and commercial construction.

In utilizing commercial cargo/storage containers as permanent, but ancillary uses; the city should develop design guidelines to ensure that commercial cargo/storage containers are screened from public right-of-ways (R/W) and compatible with the surrounding neighborhood. The architectural guidelines and enhancements are developed to promote compatibility within established zoning districts, and that containers are developed in accordance with applicable building codes. The use of commercial cargo/storage containers, as permanent construction elements, does not in any way preclude the application of required building code compliance, including, but not limited to the California Building Code, Green Building Code, and the Mechanical, Electrical, and Plumbing (M.E.P.) codes.

ANALYSIS:

The four major components, necessary for consideration of both the temporary and permanent use of containers are their concealment, their color, the placement, and the size of proposed container usage and storage. These four components are vital considerations across all zoning districts, including residential and commercial/industrial districts.

Land Uses:

For residential application, staff is reviewing the needs during construction and moving. For construction use, a temporary use permit is appropriate to allow an opportunity for residents and/or property owners to meet their temporary storage needs. For moving purposes, no permit is required by the resident or the property owner.

For commercial and industrial applications, staff is reviewing the needs for temporary uses such as seasonal overstock storage, construction storage of materials and tools, and remodel storage of existing furnishings and goods during tenant improvements. This is limited to a short period of time not to exceed 60 days, or a maximum of 365-days but only in conjunction with an active construction project.

The permanent storage use would include the long term storage of maintenance equipment such as garden tools, disposable parts, overstock of goods, files/documents, event furniture and appliances, and miscellaneous items used in daily operation of a business. This is to assist in providing additional storage for those businesses that may not have adequate storage spaces within their current building square footage. This is also a quick and inexpensive method of gaining storage space without the high cost and time of the traditional construction method.

Site Standards:

The site standards for residential, commercial, and industrial will address the placement on site/setbacks, color, conditions of the container, size, and screening. All of the criteria are to minimize the impact commercial cargo/storage containers have on the neighborhoods and commercial/industrial developments in the city and not create hazardous situations or negative visual impacts.

ENVIRONMENTAL DETERMINATION:

A. California Environmental Quality Act (CEQA)

City staff has determined that the proposed Zoning Text Amendment is not subject to the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines Section 15060(c)(3) because it is not a project as defined by the CEQA Guidelines Section 15378. The Zoning Text Amendment will establish zoning and design standards for commercial cargo/storage containers within each zoning districts.

In addition, adoption of the Zoning Text Amendment does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to the proposed Zoning Text Amendment will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA and the City of Banning Municipal Code.

B. Multiple Species Habitat Conservation Plan (MSHCP)

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that may be subject to the proposed Zoning Text Amendment will not require an individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

ADDITIONAL REQUIRED FINDINGS

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that Zoning Text Amendments meet certain findings prior to the approval by the City Council. Findings for Zoning Text Amendment No. 19-97503 are made and can be found in the attached Planning Commission Resolution 19-20 (attachment 1) and Ordinance 1552 (attachment 3).

PUBLIC COMMUNICATION:

This hearing was advertised in the Record Gazette newspaper on August 30, 2019 and notices were posted in two public places in compliance with the City's noticing requirements for public hearings.

No other written communication has been received as of the writing of this staff report.

FISCAL IMPACT:

This Zoning Text Amendment (ZTA) is a City-initiated code amendment and is paid for through the General Fund budget allocations. Approximately 20 total hours have been dedicated to the drafting, review, presentations, and coordination associated with the proposed amendment.

OPTIONS:

1. Concur with the Planning Commission's Recommendation of Approval.
2. Do not approve and provide Staff with direction.

ATTACHMENTS:

1. Planning Commission Staff Report and Resolution 2019-20
https://banningca.gov/DocumentCenter/View/6412/Attachment-1_PC_STAFF-REPORT_ZTA-19-97503---COMMERCIAL-CARGO-AND-STORAGE-CONTAINERS
2. Planning Commission Minutes (August 14, 2019)
https://banningca.gov/DocumentCenter/View/6411/Attachment-2_Planning-Commission-Minutes_July-2019-DRAFT_20190807-FINAL
3. Ordinance No. 1552 for ZTA 19-97503
https://banningca.gov/DocumentCenter/View/6408/Attachment-3a_Ordinance-1552-for-ZTA-19-97502_ABR and
https://banningca.gov/DocumentCenter/View/6409/Attachment-3b_EXHIBIT-A-to-Ordinance-No-1552
4. Public Hearing Notice
https://banningca.gov/DocumentCenter/View/6410/Attachment-4_ZTA-19-97503-20190910

Approved by:



Douglas Schulze
City Manager

***THIS PAGE
INTENTIONALLY LEFT
BLANK***



**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Adam Rush, Community Development Director

MEETING DATE: September 10, 2019

SUBJECT: Ordinance No. 1554 to consider proposed amendments to Chapter 5.24 "Commercial Solicitors" and Chapter 17.108 "Temporary Use Permits", Section 17.108.020 "Permitted uses", and Section 17.108.070 "Requirements and prohibitions for mobile vending" amending the Banning Municipal Code (BMC) ("Code Amendment") to be consistent with SB 946 related to local regulation of street vendors.

RECOMMENDED ACTION:

That the City Council:

Continue the Ordinance off calendar without discussion.

ATTACHMENTS:

Public Hearing Notice

Approved by:

Doug Schulze, City Manager

ATTACHMENT 1

Public Hearing Notice

Record Gazette
218 N. Murray St.
Proof of Publication
(2015.5 C.C.P.)

168325 PHN SB 946

State of California)
County of Riverside) ss.

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer and publisher of Record Gazette, a newspaper published in the English language in the City of Banning, County of Riverside, and adjudicated a newspaper of general circulation as defined by the laws of the state of California by the Superior Court of the County of Riverside, under the date October 14, 1966, Case No. 54737. That the notice, of which the annexed is a copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

August 30, 2019

NOTICE OF PUBLIC HEARING FOR
UPDATING CITY OF BANNING MUNICIPAL CODE
PER SENATE BILL NO. 946 (RELATED TO
LOCAL REGULATION OF STREET VENDORS)

NOTICE IS HEREBY GIVEN of a public hearing before the City of Banning City Council to be held on Tuesday, September 10, 2019, at 5:00 p.m. (or soon thereafter) in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider proposed amendments to Chapter 5.24 Commercial Solicitors and Chapter 17.108 Temporary Use Permits, Section 17.108.020 Permitted uses, and Section 17.108.070 Requirements and prohibitions for mobile vending amending the Banning Municipal Code (BMC) (Code Amendment) to be consistent with SB 946 related to local regulation of street vendors. City staff has evaluated the potential environmental impacts of the adoption of the proposed Code Amendment, the approval of the adoption of the proposed Code Amendment pursuant to the California Environmental Quality Act (CEQA). City staff has determined that these actions do not constitute a project under CEQA pursuant to CEQA Guidelines Section 15378(b)(4) because it is not a project as defined by the CEQA Guidelines Section 15378. Approval of the proposed Code Amendment does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

Information regarding the Notice of Exemption (NOE), the proposed Code Amendment, and all relevant materials can be obtained by contacting the City's Community Development Department at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning during regular business hours. You may also go to the City of Banning website at <http://www.banningca.gov>.

All parties interested in speaking either in support of or in opposition of this item are invited to attend the hearing, or to send their written comments to the Community Development Department, City of Banning at P.O. Box 998, Banning, California, 92220. If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the City Council makes its decision on the proposal; or, that you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code Section 65009).

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA

Adam B. Rush, M.A., AICP Dated: 08/27/2019
Community Development Director Publish: 08/30/2019
Published in
The Record Gazette
No. 168325
08/30/2019

Executed on: 08/30/2019

At Banning , CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.


Signature

***THIS PAGE
INTENTIONALLY LEFT
BLANK***



**CITY OF BANNING
CITY COUNCIL REPORT**

TO: **CITY COUNCIL**

FROM: **Douglas Schulze, City Manager**

PREPARED BY: **Art Vela, Director of Public Works/City Engineer**

MEETING DATE: **September 10, 2019**

SUBJECT: **Approving Resolution 2019-112, Approving the Development Impact Fee Update Study Dated August 7, 2019, Approving the Update of [the] Traffic Fee Component of the Development Impact Fee Program Dated May 2019, Adopting New and Amended Development Impact Fees, Making a Finding of Exemption under CEQA, and Repealing Provisions of Resolution No. 2006-75 and Ordinance Nos. 1320 and 1321 Establishing or Modifying Certain Development Impact Fees; and Introducing Ordinance 1551, Updating the City's Development Impact Fee Program, Amending the City of Banning Municipal Code, and Making Findings Pursuant to CEQA**

RECOMMENDED ACTION:

That the City Council:

1. Adopt Resolution 2019-112, A Resolution of the City Council of the City of Banning, California, Approving the Development Impact Fee Update Study Dated August 7, 2019, Approving the Update of [the] Traffic Fee Component of the Development Impact Fee Program Dated May 2019, Adopting New and Amended Development Impact Fees, Making a Finding of Exemption under CEQA, and Repealing Provisions of Resolution No. 2006-75 and Ordinance Nos. 1320 and 1321 Establishing or Modifying Certain Development Impact Fees; and
2. Waive further reading, and introduce as read by title only, Ordinance 1551, An Ordinance of the City of Banning California, Updating the City's Development Impact Fee Program, Amending the Banning Municipal Code, and Making Findings Pursuant to CEQA.

BACKGROUND:

Development impact fees (DIFs) are commonly imposed by local agencies on new developments as a precondition in the development application process. Revenues realized from DIF programs serve the primary purpose of funding the cost for public facilities necessary for mitigating the impacts of development projects and assure that new developments pay for their share of costs associated with growth.

The legal requirements for enactment of a development impact fee program are set forth in Government Code Sections 66000 through 66025 (also referred to as the “Mitigation Fee Act”).

The City of Banning currently imposes DIFs for the following: General Facilities, Police Facilities, Fire Facilities, Parkland/Park Development, Traffic Control Facilities, Water and Wastewater Facilities (collectively referred to as the “DIF Program”). The City’s DIFs were last updated in 2006, with the exception of Water and Wastewater which were last updated in 2004 and 2005, respectively.

Existing Development Impact Fees

| Land Use | General | Police | Fire | Parks | Traffic | Water | Wastewater |
|------------------------|---------|--------|---------|--------------|---------|------------|------------|
| Residential | | | | | | | |
| Single | \$478 | \$823 | \$1,355 | \$1,955 | \$250 | \$7,232 | \$2,786 |
| Multi-Family | \$530 | \$913 | \$1,355 | \$2,168 | \$172 | \$7,232 | \$2,786 |
| Non-Residential | | | | | | | |
| Commercial | \$208 | \$472 | \$579 | \$1,233/acre | \$1,176 | See Note 3 | See Note 4 |
| Office | \$302 | \$192 | \$841 | \$1,233/acre | \$479 | See Note 3 | See Note 4 |
| Industrial | \$73 | \$73 | \$468 | \$1,233/acre | \$333 | See Note 3 | See Note 4 |

Notes

1. Residential Fees are per dwelling unit.
2. Most non-residential impact fees are based on a tiered fee structure based on square footage. The fees in this table are the highest of each tier.
3. Non-residential water impact fees are based on meter size.
4. Non-residential wastewater impact fees are based on type of use.

In anticipation of future development projects such as Pardee’s Atwell project, and considering the time lapse since the last update it was determined that an update to the City’s DIF Program was appropriate. The City subsequently entered into Professional Services Agreements with Willdan for completion of the *Development Impact Fee Update Study* (“DIF Update Study”) and LSA for the preparation of the *Update of the Traffic Fee Component of the Development Impact Fee Program* (“Traffic Fee Study”) (collectively referred to as “DIF Studies”).

DISCUSSION

Development Impact Fee Update Study

The *DIF Update Study* was prepared by Willdan and contains recommendations for the following impact fees: Police Facilities, Fire Protection Facilities, Park Facilities, General City Facilities, Wastewater Facilities and Water Facilities.

Willdan calculated impact fees based on one of the two following methodologies:

1. Existing Inventory

The existing inventory approach is based on a facility standard derived from the City's existing level of services (e.g. facilities) and existing demand for services. This approach results in no facility deficiencies attributable to existing development and is often used when a long-range plan for new facilities is not available.

The existing inventory method was used to develop the Police Facilities, Fire Protection Facilities, Parkland and Park Facilities, and the General City Facilities development impact fees.

2. Planned Facilities

The planned facilities approach allocates costs based on the ratio of planned facilities that serve new development to the increase in demand associated with new development. This approach is appropriate when specific planned facilities that only benefit new development can be identified, or when the specific share of facilities benefiting new development can be identified.

This method was used for the Water and Wastewater Facilities development impact fees and relied on information from the City's Integrated Master Plan for water, wastewater and recycled water. It should be noted that the cost for recycled water facilities has been included as part of the Water Facilities development impact fee.

Traffic Fee Component of the Impact Fee Program Study (Traffic Fee Study)

The City's current Traffic Control Facility development impact fee was developed to only fund traffic signals at several locations and does not include costs for items such as right-of-way acquisition, intersection widening, installation of additional lanes and utility relocations, which are often required for intersection capacity improvements.

The Traffic Fee Study recommends an updated impact fee for traffic improvements based on a planned facilities approach, as described above.

The following table summarizes the recommended development impact fees for the DIF Studies:

Proposed Impact Fees

| Land Use | General | Police | Fire | Parks | Traffic | Water | Wastewater |
|------------------------|---------|---------|-------|---------|---------|------------|------------|
| Residential | | | | | | | |
| Single | \$521 | \$1,200 | \$746 | \$3,819 | \$3,409 | \$9,744 | \$5,061 |
| Multi-Family | \$426 | \$982 | \$610 | \$3,125 | \$2,644 | \$9,744 | \$5,061 |
| | | | | | | | |
| Non-Residential | | | | | | | |
| Commercial | \$493 | \$351 | \$486 | - | \$8,319 | See Note 3 | See Note 4 |
| Office | \$643 | \$458 | \$633 | - | \$3,518 | See Note 3 | See Note 4 |
| Industrial | \$239 | \$170 | \$236 | - | \$1,791 | See Note 3 | See Note 4 |

Notes

1. Residential fees are per dwelling unit (DU).
2. Non-residential impact fees are per 1,000 sq. ft.
3. Non-residential water impact fees are based on meter size. See attached DIF Update Study for full list of fees.
4. Non-residential wastewater impact fees are based on use. See attached DIF Update Study for full list of fees.

JUSTIFICATION:

The City's DIFs were last updated in 2006, with the exception of Water and Wastewater which were last updated in 2004 and 2005, respectively. Cost estimates used to develop the current DIFs are outdated and most cases undervalued, which if not updated, the DIF revenues would not be sufficient to build the public facilities needed to mitigate the impacts of development.

Ordinance 1551 acknowledges the required public hearing regarding the adoption of the updates to the City's DIF program, makes a determination of exemption under the California Environmental Quality Act (CEQA), revises certain sections of the Banning Municipal Code related to development impact fees, and references all new and amended development impact fees in an amended Chapter 15.68 (Development Impact Fees) of Title 15 (Building and Construction) of the Banning Municipal Code.

Fee Calculation Methodologies.

The *DIF Update Study* uses the planned facilities methodology (as detailed in Section 1) as the appropriate methodology to calculate the wastewater and water facilities impact fees, and the existing inventory methodology (also as detailed in Section 1) as the appropriate methodology to calculate the fire, police, general city, and park and recreation facilities impact fees.

The existing inventory methodology allocates costs based on the ratio of existing facilities to demand from existing development. By definition the existing inventory methodology results in no facility deficiencies attributable to existing development. This

methodology is often used when a long-range plan for new facilities is not available. Only the initial facilities to be funded with fees are identified in the *DIF Update Study*. Future facilities to serve growth will be identified through an annual capital improvement plan and budget process, possibly after completion of a new facility master plan.

The planned facilities methodology allocates costs based on the ratio of planned facility costs to demand from new development. This methodology is appropriate when planned facilities will entirely serve new development, or when a fair share allocation of planned facilities to new development can be estimated. An example of the former is a wastewater trunk line extension to a previously undeveloped area. An example of the latter is expansion of an existing library building and book collection, which will be needed only if new development occurs, but which, if built, will in part benefit existing development, as well. Under this methodology, new development funds the expansion of facilities at the standards used in the applicable planning documents.

The *Traffic Fee Study* uses the plan-based fee methodology (as detailed in Section 3.1) as the appropriate methodology to calculate the traffic impact fees since the need for transportation-related improvements depends specifically on the projected number of trips that must be accommodated. The plan-based fee methodology is used for facilities that must be designed based on multiple considerations, including, but not limited to, future traffic and infrastructure demand projections, geographic location of anticipated growth, and potential development constraints. For example, the need for transportation-related improvements depends specifically on the projected number of trips that must be accommodated. The City first analyzed existing facilities, geographic constraints, and current and required levels of service in order to identify future facility needs. This information was then analyzed in conjunction with a projection of the amount and location of future development in order to determine the adequacy of existing facilities and the demand for new improvements.

Mitigation Fee Act Findings.

Section 66001 of the Mitigation Fee Act provides that in any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency must:

1. Identify the purpose of the fee;
2. Identify the use to which the fee is to be put and, if financing public facilities, the facilities shall be identified;
3. Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed;
4. Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed; and
5. Determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

The *DIF Update Study* and the *Traffic Fee Study* have provided a clear nexus for the proposed increase in the City's DIFs in compliance with the Mitigation Fee Act. In accordance with Section 66001(a)(1) of the Mitigation Fee Act, the purpose of the proposed increased City DIFs is described in Section 10 of the *DIF Update Study* and Section 2.1.1 of the *Traffic Fee Study*. In accordance with Section 66001(a)(2), the use to which the increased City DIFs will be put is described in Section 10 of the *DIF Update Study* and Section 2.1.2 of the *Traffic Fee Study*.

Lastly, in accordance with Sections 66001(a)(3)-(4) and (b) of the Mitigation Fee Act, Section 10 of the *DIF Update Study* and Sections 2.1.3 and 2.1.4 of the *Traffic Fee Study* describe the reasonable relationship between (1) the use of the increased City DIFs and the development projects that will pay the fees, (2) the need for the public facilities and the development projects that will pay the fees, and (3) the increased City DIF amounts and the cost of the public facilities attributable to the development projects that will pay the fees.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

City staff has determined that these actions do not constitute a "project" under CEQA pursuant to State CEQA Guidelines Section 15378(b)(4) because these actions involve the creation of a government funding mechanism which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. In addition, City Staff has determined that these actions are statutorily exempt from CEQA under CEQA Guidelines Section 15273(a)(4) because these actions and documents are merely establishing a fee to obtain funds for those capital projects necessary to maintain service within existing service areas and these actions do not provide for the creation of new service areas. The capital projects described in the *DIF Update Study* and the *Traffic Fee Study* will maintain the level of service currently provided by the City's existing fire protection, police, general city, traffic control, parkland and park, wastewater, and water facilities systems by ensuring that the impacts of new development will not negatively impact existing service levels.

FISCAL IMPACT:

The update to the City's DIF Program will provide the necessary revenue to fund the capital projects described in the DIF Studies in order to mitigate the impacts of new development and to keep the City's level of service for fire protection, police, general city, traffic control, parkland and parks, wastewater and water facilities systems at a satisfactory level.

OPTIONS:

1. Approve as recommended; or
2. Do not approve and provide alternative direction.

ATTACHMENTS:

1. Resolution 2019-112
<https://banningca.gov/DocumentCenter/View/6389/Attachment-1-Resolution-2019-112>
2. Ordinance 1551
<https://banningca.gov/DocumentCenter/View/6390/Attachment-2-Ordinance-1551>
3. *Development Impact Fee Update Study* dated August 7, 2019 (Willdan)
<https://banningca.gov/DocumentCenter/View/6391/Attach-3-Final-Development-Impact-Fee-Update-Study>
4. *Update of [the] Traffic Fee Component of the Development Fee Program* dated May 2019 (LSA)
<https://banningca.gov/DocumentCenter/View/6392/Attach-4-Final-Traffic-Component-of-DIF>
5. Proof of Publication
<https://banningca.gov/DocumentCenter/View/6393/Attachment-5-Proof-of-Publication>

Approved by:



Douglas Schulze
City Manager

***THIS PAGE
INTENTIONALLY LEFT
BLANK***



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Doug Schulze, City Manager

PREPARED BY: Kevin G. Ennis, City Attorney

MEETING DATE: September 10, 2019

SUBJECT: Hearing on Proposal by Councilmember Wallace to Censure of Councilmember Peterson

RECOMMENDATION:

Staff recommends that the City Council comply with the procedures set forth in Section 2.04.060 of the Banning Municipal Code and Section 10.5 of the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning ("Manual of Procedures") by conducting a hearing on the proposed censure of Councilmember Peterson based on the Statement of Charges presented by Councilmember Wallace. A copy of Banning Municipal Code Section 2.04.060 and of Section 10.5 are attached hereto as **Attachment 1**.

BACKGROUND:

At the August 7, 2019 special City Council meeting, the City Council reviewed the June 21, 2019 Riverside County Grand Jury Report entitled "City of Banning Council and City Manager Relationship." A copy of that Report is attached hereto as **Attachment 2**. Following that review, Councilmember Wallace presented a Statement of Charges against Councilmember Peterson dated July 31, 2019, asserting the following violations of City policies and seeking censure:

- Count 1: City Councilmember circumvents City Manager relationship
- Count 2: City Councilmember's independent actions that have created a destructive culture within the City government
- Count 3: City Councilmember's inappropriate actions are unprofessional

The grounds in support of the three charges are provided in the Statement of Charges, attached hereto as **Attachment 3**. As of the date this report was prepared, Councilmember Peterson has not delivered a written response to the Statement of Charges to the members of the City Council but plans to provide his response at the Council Meeting on September 10, 2019.

RULES AND PROCEDURES FOR CENSURE:

A member of the City Council may be punished through the administration of public censure if he or she violates any general law or regulation; any rule, law, ordinance, or resolution of the City of Banning; or any administrative policy which has been adopted by and is expressly applicable to the City Council. To "censure" a Councilmember means to adopt a motion with a statement of disapproval of his or her conduct.

The rules and procedures for the censure of legislative body members are set forth in Section 2.04.060 of the Banning Municipal Code and in Section 10.5 of the Manual of Procedures. Because one set of rules was adopted by an Ordinance (the section of the Municipal Code) and the other by resolution (Section 10.5 of the Manual of Procedures), then in the event of a conflict between the two, the former controls. The rules as applied to this proceeding are summarized below, with the full text of Banning Municipal Code (BMC) Section 2.04.060 and Section 10.5 available in **Attachment 1**:

1. Paragraph (C) of BMC Section 2.04.060 and Paragraph (d) of Section 10.5 provides that a member may not be 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.
2. Censure proceedings are initiated with the presentation of a written statement of charges to the member of the legislative body who is the subject of the proposed censure with a copy delivered to the City Clerk. Councilmember Wallace presented a Statement of Charges to Councilmember Peterson and to the City Clerk at the August 8, 2019 special City Council meeting.
3. The charged member may deliver a written response to other members of the legislative body within 7 days, or may defer his or her response to the hearing. Councilmember Peterson has not delivered a written response to the Council but plans to present his defense at the Council meeting.
4. Pursuant to BMC Section 2.08.060(C)(3), the motion for censure must be agendized and considered at the second regular meeting after the Statement of Charges was presented. The September 10th City Council meeting is the second regular meeting following the delivery of the Statement of Charges on August 8th.
5. A hearing must be conducted in open session, and may not be continued except in the case of an absence of a member who is neither bringing nor the subject of

the charge. The hearing is conducted by the Mayor and is to proceed in the following order:

- a. The Mayor announces the item.
- b. Councilmember Wallace reads the counts against Councilmember Peterson and may present witnesses in support of the allegations in the Statement of Charges.
- c. Councilmember Peterson answers in rebuttal.
- d. Members of the public may speak in favor or against the charges.
- e. The remaining members of the City Council may speak to the charges.

6. Pursuant to BMC Section 2.08.060 (C)(3)(d), a motion should then be made by a member of the Council who is not the charging member and seconded by a member who is not the charging member. The charging member (Councilmember Wallace) and the member charged (Councilmember Peterson) are not permitted to vote. Passage of the motion requires a unanimous vote of the remaining three members of the City Council.

If the motion for censure passes, the motion will become a part of the public record, with a copy being placed in Councilmember Peterson's administrative file and made available upon request by a member of the public. The motion will also be taken into account upon evaluation of a request for defense made by Councilmember Peterson with respect to any litigation arising from the censured conduct.

If the motion does not pass, the censure proceedings shall be at an end, and Ms. Wallace may not commence censure proceedings on the same grounds for a period of 1 year.

JUSTIFICATION:

Holding a hearing in accordance with the City's established procedures would satisfy the Council's responsibilities under Section 2.08-060 of the Banning Municipal Code and Section 10.5 of the Manual of Procedures.

FISCAL IMPACT:

None.

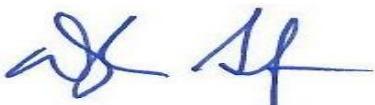
OPTIONS:

1. Conduct hearing in accordance with Section 2.08.060 of the Banning Municipal Code and Section 10.5 of the Manual of Procedural Guidelines
2. Continue the hearing only if a councilmember is absent from the meeting.

ATTACHMENTS:

1. Section 2.08.060 of the Banning Municipal Code and Section 10.5 of the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning
<https://banningca.gov/DocumentCenter/View/6432/Attachment-1-BMC-204060>
2. 2019 Grand Jury Report
<https://banningca.gov/DocumentCenter/View/6433/Attachment-2-2019-Grand-Jury-Report>
3. Statement of Charges by Councilmember Wallace against Councilmember Peterson
<https://banningca.gov/DocumentCenter/View/6434/Attachment-3-Statment-of-Charges-Wallace-v-Peterson>

Approved by:



Doug Schulze
City Manager



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Kevin G. Ennis, City Attorney

MEETING DATE: September 10, 2019

SUBJECT: Hearing on Proposal by Councilmember Peterson to Censure of Mayor Welch

RECOMMENDATION:

Staff recommends that the City Council comply with the procedures set forth in Section 2.04.060 of the Banning Municipal Code and 10.5 of the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning ("Manual of Procedures") by conducting a hearing on the proposed censure of Councilmember Welch based on the Statement of Charges presented by Councilmember Peterson. A copy of Banning Municipal Code Section 2.04.060 and Section 10.5 of the Manual of Procedures are attached hereto as **Attachment 1**.

BACKGROUND:

At the August 7, 2019 special City Council meeting, the City Council reviewed the June, 21, 2019 Riverside County Civil Grand Jury Report entitled "City of Banning Council and City Manager Relationship." In response to that Report, Councilmember Wallace presented a Statement of Charges against Councilmember Peterson and initiated the procedures for the censure of Councilmember Peterson. That separate censure item is presented on this same City Council agenda as a separate agenda item. In response to that discussion, Councilmember Peterson presented a Statement of Charges against Councilmember Welch, based on the 2017-2018 Riverside County Civil Grand Jury Report. That 2017-2018 Civil Grand Jury Report is attached hereto as **Attachment 2**. Councilmember Peterson's Statement of Charges against Mayor Welch, is attached hereto as **Attachment 3** and asserts the following violations of City policies and seeking censure:

- Count 1: "Violation of Ethics -- Deceptive Letter to Grand Jury"
- Count 2: "Violation of Ethics -- Giving Direction to City Manager without Knowledge or Consent of the City Council"

The July 19, 2016 Letter referenced in Attachment 3 is attached as **Attachment 4**.

Councilmember Welch has delivered a written response to the Statement of Charges to the members of the City Council, which response is attached hereto as **Attachment 5**.

RULES AND PROCEDURES FOR CENSURE:

A member of the City Council may be punished through the administration of public censure if he or she violates any general law or regulation; any rule, law, ordinance, or resolution of the City of Banning; or any administrative policy which has been adopted by and is expressly applicable to the City Council. To "censure" a Councilmember means to adopt a motion with a statement of disapproval of his or her conduct.

The rules and procedures for the censure of legislative body members are set forth in Section 2.04.060 of the Banning Municipal Code and in Section 10.5 of the Manual of Procedures. Because one set of rules was adopted by an Ordinance (the section of the Municipal Code) and the other by resolution (Section 10.5 of the Manual of Procedures), then in the event of a conflict between the two, the former controls. The rules as applied to this proceeding are summarized below, with the full text of Banning Municipal Code (BMC) Section 2.04.060 and Section 10.5 available in **Attachment 1**:

1. Paragraph (C) of BMC Section 2.04.060 and Paragraph (d) of Section 10.5 provides that a member may not be 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.
2. Censure proceedings are initiated with the presentation of a written statement of charges to the member of the legislative body who is the subject of the proposed censure with a copy delivered to the City Clerk. Councilmember Peterson presented a Statement of Charges to Councilmember Welch and to the City Clerk at the August 8, 2019 special City Council meeting.
3. The charged member may deliver a written response to other members of the legislative body within 7 days, or may defer his or her response to the hearing. Councilmember Welch has not delivered a written response to the Council but plans to present his defense at the Council meeting.
4. Pursuant to BMC Section 2.08.060(C)(3), the motion for censure must be agendized and considered at the second regular meeting after the Statement of Charges was presented. The September 10th City Council meeting is the second regular meeting following the delivery of the Statement of Charges on August 8th.

5. A hearing must be conducted in open session, and may not be continued except in the case of an absence of a member who is neither bringing nor the subject of the charge. As this item involves Mayor Welch, it would be appropriate for Mayor Pro Tem Andrade to chair the meeting for the consideration of this agenda item. Therefore, the hearing is conducted by the Mayor Pro Tem and is to proceed in the following order:
 - a. The Mayor Pro Tem announces the item.
 - b. Councilmember Peterson reads the counts against Mayor Welch and may present witnesses in support of the allegations in the Statement of Charges.
 - c. Mayor Welch answers in rebuttal.
 - d. Members of the public may speak in favor or against the charges.
 - e. The remaining members of the City Council may speak to the charges.

6. Pursuant to BMC Section 2.08.060 (C)(3)(d), a motion should then be made by a member of the Council who is not the charging member and seconded by a member who is not the charging member. The charging member (Councilmember Peterson) and the member charged (Mayor Welch) are not permitted to vote. Passage of the motion requires a unanimous vote of the remaining three members of the City Council.

If the motion for censure passes, the motion will become a part of the public record, with a copy being placed in Councilmember Welch's administrative file and made available upon request by a member of the public. The motion will also be taken into account upon evaluation of a request for defense made by Councilmember Welch with respect to any litigation arising from the censured conduct.

If the motion does not pass, the censure proceedings shall be at an end, and Mr. Peterson may not commence censure proceedings on the same grounds for a period of 1 year.

JUSTIFICATION:

Holding a hearing in accordance with the City's established procedures would satisfy the Council's responsibilities under Section 2.08.060 of the Banning Municipal Code and Section 10.5 of the Manual of Procedures.

FISCAL IMPACT:

None.

OPTIONS:

1. Conduct hearing in accordance with Section 2.08.060 of the Banning Municipal Code and Section 10.5 of the Manual of Procedural Guidelines
2. Continue the hearing only if a councilmember is absent from the meeting.

ATTACHMENTS:

1. Section 2.04.060 of the Banning Municipal Code and Section 10.5 of the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning
<https://banningca.gov/DocumentCenter/View/6427/Attachment-1-BMC-204-060>
2. 2018 Civil Grand Jury Report
<https://banningca.gov/DocumentCenter/View/6428/Attachment-2-2017-2018-Grand-Jury-Report>
3. Statement of Charges by Councilmember Peterson against Councilmember Welch
<https://banningca.gov/DocumentCenter/View/6429/Attachment-3-Statement-of-Charges-v-Mayor-Welch>
4. July 19, 2016 Letter from City to Civil Grand Jury
<https://banningca.gov/DocumentCenter/View/6430/Attachment-4-July-19-2016-Mayor-Welch-Responce-to-Grand-Jury-Report>
5. Mayor Welch's Written Response to Statement of Charges
<https://banningca.gov/DocumentCenter/View/6431/Attachment-5-Mayor-Welch-Rebuttal-to-Statement-of-Charges>

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

MEETING DATE: September 10, 2019

SUBJECT: Budget Adjustment and Update Job Description for Community Development – Associate Planner

RECOMMENDED ACTION:

Authorize the City Manager to initiate a budget adjustment with the Finance Department, update the Job Description through the Human Resources Division and begin the recruitment process for an Associate Planner as an additional staff member to the Community Development Department.

BACKGROUND:

The City Council was presented with an initial strategy, during the July 9, 2019 meeting, that detailed the transition process from a heavy reliance on contract staff to a hybrid approach of City staff supported by contract staff.

As previously discussed, the City is already incurring the growth and development pressures that has been anticipated with the onset of significant residential development. Along with an influx of additional development projects, the Community Development Department currently lacks an entry-level planner position that typically covers a majority of duties that are covered by senior and executive level staff.

A Community Development Department functions when the workload is spread across a hierarchical structure, beginning with administrative support staff and ending with the Director. However, inquiries, projects, and responsibilities that are adequately suited for an Associate Planner level employee are currently being managed by either a Senior Planner or the Department Head. While staff is always able to cover multiple duties and juggle several priorities, this is not the best use of city resources or the customer's dollars.

| Community Development Organizational Chart | | | |
|--|---|------|-------------------|
| Staff Member | Title | FTE* | Contract (Yes/No) |
| Adam B. Rush | Community Development Director | 1.00 | |
| Sonia Pierce | Senior Planner | 1.00 | |
| Mark DeManicor | Senior Planner | 1.00 | Yes |
| TBD | Fire Safety Specialist | 0.50 | Yes |
| Sandra Calderon | Project Coordinator/Recording Secretary | 1.00 | |
| Sandra Castaneda | Office Specialist | 1.00 | |
| TBD | Permit Technician | 1.00 | Yes |
| TBD | Plans Examiner/ Building Inspector | 1.00 | Yes |
| Andrea Mares** | WRCOG Fellow | 1.00 | N/A |

* Full-time equivalent hours represent the actual staffing levels as of 8-30-19 versus the maximum levels authorized under their existing contracts or agreements.

**A WRCOG Fellow is provided by the Western Riverside Council of Governments (WRCOG). Candidates are paired with Cities determined to be the most compatible with the Fellow's career and/or education goals. Ms. Mares is a full-time employee and works at City Hall; however, the pay and any benefits are borne by WRCOG.

For example, to provide general zoning and property information to customers on a walk in basis is about twice as costly for the Director to provide this information versus entry-level staff. As such, the current caseload and customer inquiries warrant the hiring of an Associate Planner to support the departmental functions and provide a consistent point of contact for the wide spectrum of customers the City services on a daily basis.

The general responsibilities, of an Associate Planner, will be to primarily provide coverage at the front counter for general property and zoning related inquiries. An Associate Planner should have an intimate knowledge of general planning principles, such as the difference between the General Plan and Zoning Ordinance; property development standards, the ability to read maps, plans, and some schematic drawings and above all, a strong sense of customer relations and provide of excellent service.

In addition, the Department is starting a major transition as we prepare for anticipated growth, and subsequent permit activity, resulting from the Pardee "Atwell" and Diversified Pacific "Rancho San Gorgonio" master plan developments. Below is a just a short list of the upcoming internal changes and departmental activity:

- (1) Implementation and Training of a new permit and project management software system (September, 2019 – February, 2020).

- (2) The incoming Commercial and Retail Cannabis related permits
- (3) The anticipated re-entitlement of the *Banning Business Center* (649 W. Lincoln)
- (4) Transition of the City's Building & Safety Contract Staffing personnel (September – November of 2019).
- (5) The recruitment of a City Building Official.
- (6) The upgrading, and integration, and secondary software programs to support the City's new project management system.
- (7) The initiation of a Comprehensive General Plan Update to upgrade the City's 2006-era General Plan
- (8) The initiation of an update to the City's signage regulations; which will require an Ordinance Amendment, and significant public outreach.

These items are not an exhaustive list; nor, do they specifically include the large volume of subdivisions, design reviews, landscape, wall, and fence plans associated with the two large master planned developments already referenced herein.

JUSTIFICATION:

The Community Development Department is budgeted for 1.5 full-time contract planners. City staff solicited an Associate Planner proposal, from our current in-house planning consultant, which exceeded the City's Full-Time Equivalent (FTE) by over \$6,000.00. IN addition, the existing case and workload only justify a part-time Associate Planner to provide coverage of the planning counter and manage the projects currently being managed by either Senior staff or executive management.

FISCAL IMPACT:

Providing an Associate Planner, on a part-time basis initially, will have a financial impact of approximately **\$96,000**. This amount will be offset by reductions in the planning contract, for Romo Planning Group, by the same amount.

OPTIONS:

- 1. Approve as recommended
- 2. Do not approve and provide alternative direction

ATTACHMENTS:

- 1. Associate Planner Job Description
https://banningca.gov/DocumentCenter/View/6435/Associate_Planner-Job-Description

Approved by:



Douglas Schulze
City Manager



**CITY OF BANNING
CITY COUNCIL REPORT**

TO: **CITY COUNCIL**

FROM: **Douglas Schulze, City Manager**

MEETING DATE: **September 10, 2019**

SUBJECT: **Resolution 2019-115, Approving an Employment Agreement with Parks and Recreation Director Ralph Wright**

RECOMMENDED ACTION:

Staff recommends the City Council adopt Resolution 2019-115, authorizing the City Manager to enter into an Employment Agreement with Ralph Wright as Parks and Recreation Director.

BACKGROUND:

A nation-wide recruitment process was completed in late August with over one-hundred candidates submitting applications prior to the deadline. Six candidates were invited to participate in an interview process on Tuesday, August 20, 2019. Two interview panels including members of the City management team, City employees, and two members of the Parks & Recreation Commission served as panelists. A second round of interviews occurred on Friday, August 30, with two candidates.

Ralph Wright was selected as the top choice following the interview process and he has accepted the position contingent upon successful negotiation of an employment agreement. Mr. Wright has over twenty years' experience in Parks and Recreation management. He has a Master of Business Administration degree from California State University, San Bernardino. Mr. Wright served as Recreation Superintendent for the City of Twentynine Palms for 10 years and Parks and Recreation Manager for the Town of Apple Valley for twelve years.

The Draft Employment Agreement was developed using the salary and benefits previously approved for Department Directors by Resolution 2019-41. The only benefits offered that are not established by Resolution 2019-41 is Severance (Section 4.0) and accrual banks of 40 hours sick leave and vacation leave. Severance pay is included in

employment agreements approved for other Department Directors and the City Manager.

Highlights of the employment agreement that may be of interest to the City Council include the following:

- Agreement is for a period of 3 years and may be extended unilaterally by the City;
- Annual salary is \$131,840.69 which is Step 8 of the established range for the position;
- Severance pay equivalent to three months' salary & benefits paid if employee is terminated without cause;
- All other benefits are established by Resolution 2019-41 for Directors.

Prior to Council action, the following statement must be read by the Mayor:

Consistent with Section 54953(c)(3) of the Government Code and Section 2.5 of the City Council Rules of Procedure, the Mayor, Mayor Pro Tempore, or other presiding officer shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in Section 3511.1(d) of the Government Code, during the open regular meeting in which the final action is to be taken and prior to the motion to approve. The Administrative Services Director is a local agency executive as defined in Section 3511.1(d) of the Government Code, and the oral report is required prior to approval of the attached Agreement as addressed in the Staff Recommendation section of this report.

- Employee will receive an annual salary of \$125,364.06 during his term as Parks and Recreation Director.
- If the City terminates the agreement without cause, Mr. Wright is entitled to three months' salary plus insurance coverage for himself and his dependents, subject to limitation by Government Code section 53260.
- Mr. Wright is entitled the standard benefits offered to all Directors, as established by Resolution 2019-41.

JUSTIFICATION:

The Parks and Recreation Director position is a budgeted and vacant position that is responsible for park maintenance, recreation programs, special events, and the senior center. The draft employment agreement is consistent with previously established salary and benefits for the position.

FISCAL IMPACT:

This position has been budgeted and the employment agreement is consistent with established budget expenditures.

OPTIONS:

1. Approve as recommended
2. Do not approve and provide alternative direction

ATTACHMENTS:

1. Resolution 2019-115
<https://banningca.gov/DocumentCenter/View/6418/Attachment-1-Resolution-2019-115-final>
2. Draft Employment Agreement
<https://banningca.gov/DocumentCenter/View/6419/Attachment-2-Parks-and-Recreation-Director-Employment-Agreement-DRAFT>
3. Application and Resume – Ralph Wright
<https://banningca.gov/DocumentCenter/View/6420/Attachment-3-Ralph-Wright-Resume>

Approved by:



Douglas Schulze
City Manager

***THIS PAGE
INTENTIONALLY LEFT
BLANK***



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL
FROM: Douglas Schulze, City Manager
MEETING DATE: September 10, 2019
SUBJECT: Authorize City Manager to submit application for City of Banning Tree City USA designation

RECOMMENDED ACTION:

Authorize the City Manager to submit an application to the Arbor Day Foundation for Tree City USA designation.

BACKGROUND:

The Tree City USA program began as a nationwide movement in 1976 to provide a framework for communities to manage and expand public tree programs. Currently, more than 3,400 communities have made a commitment to becoming a Tree City USA. In California, approximately 150 communities have the Tree City USA designation, including, Riverside, Indio, and Hemet in Riverside County.

To qualify as a Tree City USA community, the City must meet four standards established by the Arbor Day Foundation and the National Association of State Foresters. The standards are intended to ensure that qualifying communities have a viable tree management program, but also that no community would be excluded because of size.

- Standard 1 – an individual, department or board must be legally responsible for the care of all trees on city-owned property. This could be a professional forester, arborist, city department, citizen-led tree board or some combination thereof.
- Standard 2 – a basic public tree care ordinance forms the foundation of a city's tree care program. It provides an opportunity to set good policy and back it with the force of law when necessary.
- Standard 3 – a community forestry program with an annual budget of at least \$2 per capita toward the planting, care and removal of city trees.
- Standard 4 – an Arbor Day Observance and Proclamation.

JUSTIFICATION:

Trees provide many benefits, including clean air, clean water, shade and beauty, but they also require an investment to remain healthy and sustainable. The City of Banning currently meets all four standards required for Tree City USA designation, including an annual budget appropriate of at least \$2 per capita. The tree ordinance is outdated and should be amended to incorporate best practices for planting, maintaining, and removing trees from streets, parks and other public spaces as well as activities that are required or prohibited. Several model ordinances are available from the Arbor Day Foundation.

FISCAL IMPACT:

An ongoing annual budget of \$2 per capita is required to maintain Tree City USA designation. However, the City of Banning annual budget for tree maintenance far exceeds the required minimum. Additional fiscal impacts for time spent preparing a new tree ordinance will be minimal.

OPTIONS:

1. Approve as recommended
2. Do not approve and provide alternative direction

Approved by:

A handwritten signature in blue ink, appearing to read "DS".

Douglas Schulze
City Manager



CITY OF BANNING CITY COUNCIL REPORT

TO: **CITY COUNCIL**

FROM: **Douglas Schulze, City Manager**

PREPARED BY: **Art Vela, Director of Public Works**

MEETING DATE: **September 10, 2019**

SUBJECT: **Adopt Resolution 2019-114, Authorizing the City Manager to Execute a Cooperative Agreement between the City of Banning, City of Beaumont and Riverside County Transportation Commission for the Preparation of the Highland Springs Interchange Project Study Report**

RECOMMENDED ACTION:

The City Council adopt Resolution 2019-114, authorizing the City Manager to execute a Cooperative Agreement between the City of Banning ("Banning"), City of Beaumont ("Beaumont") and Riverside County Transportation Commission (RCTC) for the preparation of the Highland Springs Interchange Project Study Report (PSR).

BACKGROUND:

The Highland Springs Avenue Interchange (the "Interchange"), which is located within the jurisdictional boundaries of the Cities of Banning and Beaumont, has been greatly impacted by the increase in traffic related to development along the Highland Springs Avenue corridor. The Interchange is in need of improvements to mitigate the current congestion as well as to provide additional capacity for future developments such as Pardee's Atwell development and projects within Beaumont's city limits.

Recently Banning, Beaumont and RCTC staff held a meeting to discuss the possibility of RCTC taking the lead on the Interchange project on behalf of Beaumont and Banning. RCTC has extensive experience in the successful delivery of projects similar in scope to the Interchange project and has resources available for complete required technical studies and engineering. Concluding the meeting, RCTC committed to taking the lead on the Interchange project.

One of the initial studies required for interchange projects is a PSR, which is required in order to gain Caltrans approval prior to moving to the Project Approval and Environmental Document (PA&ED) phase. The primary term of the proposed Cooperative Agreement between Banning, Beaumont and RCTC includes the development of the PSR by RCTC.

JUSTIFICATION:

The Highland Springs Interchange is in need of improvements to mitigate existing congestion and traffic related to development projects along the Highland Springs Avenue corridor.

RCTC has extensive experience in the improvement of interchange projects and has the available resources for the preparation of the PSR.

The proposed Cooperative Agreement outlines the specific obligations for each party and commits RCTC to prepare the PSR in order to move to the subsequent phases of the project.

FISCAL IMPACT:

Western Riverside Council of Governments (WRCOG) has allocated \$2,000,000 in Transportation Uniform Mitigation Fee (TUMF) program funds to the Highland Springs Avenue interchange project. The WRCOG allocation is sufficient to cover the full cost, estimated at \$600,000, for the preparation of the PSR.

ALTERNATIVES:

Do not approve and provide staff with direction.

ATTACHMENTS:

1. Resolution 2019-114
<https://banningca.gov/DocumentCenter/View/6396/Attachment-1-Resolution-2019-114>
2. Cooperative Agreement
<https://banningca.gov/DocumentCenter/View/6397/Attachment-2-RCTC-Beaumont-and-Banning-Cooperative-agr-c1-003>

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Ted Shove, Economic Development Manager

MEETING DATE: September 10, 2019

SUBJECT: Discuss and Consider Approving Draft Language and Release of RFP for Commercial Redevelopment for City-Owned Real Property Consisting of +/-5.55 Acres, Downtown Banning

RECOMMENDATION:

The City Council approve draft language and tentative schedule for Request for Proposal ("RFP") - Commercial Redevelopment for City-Owned Real Property Consisting of +/- 5.55 Acres, Downtown Banning.

JUSTIFICATION:

On June 27, 2017, the City entered into a settlement agreement with Banning Office Venture, LLC and Vanir Group of Companies, Inc. ("Developer") on June 27, 2017 to settle a lawsuit filed by the City for breach of contract. The agreement included Assessor Parcel Number's ("APNs"): 541-181-032, -033, -034, and -035. According to the agreement, the Developer would release all interest in the property in favor of the City. In exchange, the City would market for sale/development within a total term of three years. According to the settlement agreement, the City was required to either solicit through an RFP process, a developer or a regional real estate brokerage firm to assist in disposing of the property.

On February 27, 2018, the City and Developer entered into an Amended and Restated Agreement for the Reverter of Real Property Pursuant to Purchase and Sale Agreement. This amended agreement provided for the City to purchase the property with no further conditions required by the City to fulfill, including the requirement to retain a regional real estate brokerage or sell the property through an RFP process.

For the purposes of this RFP, staff is also recommending, in addition to the above APNs, the following: 541-181-002, -005, -021, and -023, to be included as they are underutilized

property adjacent to the Site (“Site”), The Property has since received some interest from various development firms and individuals.

On June 4th and July 4th, 2019, City staff held community engagement sessions to discuss the Site’s development potential. Summaries of both of these sessions are included in the RFP document under “Supplemental Attachments”.

Staff is recommending Council approval of the draft scope of services language (Exhibit B in the RFP) and recommended timeline, under Section 2 (page 4) of the RFP. Based upon quality and content of the proposals, staff would return a recommendation to approve a proposal or reject the bids received for Council consideration, tentatively in November.

FISCAL IMPACT:

None

OPTIONS:

1. Approve as recommended
2. Do not approve and provide alternative direction.

ATTACHMENTS:

1. Draft RFP - Commercial Redevelopment for City-Owned Real Property Consisting of +/-5.55 Acres, Downtown Banning
<https://banningca.gov/DocumentCenter/View/6422/RFP-Specifications83019DRAFTrev1>

Approved by:



Douglas Schulze
City Manager