



In accordance with City Council Resolution 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 following information comprises the minutes for the regular meeting of the City Council, a joint meeting of the Banning City Council and Banning Utility Authority and a joint meeting of the Banning City Council and the Banning City Council sitting in its capacity as the Successor Agency Board.

MINUTES
CITY COUNCIL

05/12/2020
REGULAR MEETING

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT Douglas Schulze, City Manager
Kevin G. Ennis, City Attorney
Sonja De La Fuente, Deputy City Clerk
Jennifer Christensen, Administrative Services Director
Matthew Hamner, Police Chief
Tom Miller, Electric Utility Director
Adam Rush, Community Development Director
Art Vela, Public Works Director/City Engineer
Ralph Wright, Parks & Recreation Director
Laurie Sampson, Executive Assistant
Carla Young, Business Support Manager
Amber Rockwell, Public Benefits Coordinator

I. CALL TO ORDER

A regular meeting of the Banning City Council was called to order by Mayor Andrade on May 12, 2020, at 5:02 p.m.

Councilmember Welch offered the invocation.

Councilmember Welch led the audience in the Pledge of Allegiance.

II. **AGENDA APPROVAL**

A motion was made by Mayor Pro Tem Wallace, seconded by Councilmember Pingree, to approve the agenda. Rollcall vote was taken as follows:

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

III. **PRESENTATION(S)**

None

IV. **REPORT ON CLOSED SESSION**

City Attorney Ennis reported that City Council met today in closed session at 4:45 p.m. The item discussed was as follows:

1. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Pursuant to Government Code Section 54956.8

Properties: Southeast Corner (APN 532-140-005) of Ramsey Street and Hathaway Street

City Negotiators: Douglas Schulze, City Manager and Art Vela, Public Works Director

Negotiating Parties: Property Owner, Frank Burgess

Under Negotiation: Price and terms for potential acquisition of property

Direction was given to the City's negotiator. No final or reportable action.

V. **PUBLIC COMMENTS, CORRESPONDENCE, AND APPOINTMENTS**

PUBLIC COMMENT(S)

Mayor Andrade opened public comment for items not on the Agenda.

Inge Schuler spoke regarding her dissatisfaction with the video/teleconference system the City is currently using. She requested the reading of correspondence submitted. She also indicated she only noticed the May 5, 2020, Special City Council meeting agenda on the City's website.

Val Westholder indicated that she appreciated the Council meeting being open to the public. She spoke against the homeless shelter/encampment.

Jerry Westholder indicated he had an issue with Councilmember Happe and spoke against the homeless shelter/encampment. He advised that he is not heartless.

John Hagen advised that he has experienced issues with the video/teleconference system the City is currently using. He read a letter regarding the suggested removal of Inge Schuler from the Planning Commission (Attachment 1). He also requested items 6, 9 and 10 be pulled from the Consent items for discussion.

Karen Amirson asked where on the Agenda it indicated that citizens could attend the Council meeting in person. She also spoke against revising Landscape Maintenance District No. 1.

Gabriel Westholder spoke against the homeless shelter/encampment.

Ellen Carr spoke regarding attending the Council meetings in person and requested sanitization of the microphone and lectern.

Diego Rose spoke against the COVID-19 measures taken by the government and advised that 28,000 deaths were taken off the charts by the CDC.

Seeing no further comments, the Mayor closed public comment.

CORRESPONDENCE

Email from Frank Burgess (Attachment 5).

APPOINTMENT(S)

None

VI. CONSENT ITEMS

Items 6, 9 & 10 were pulled for separate consideration.

1. Minutes – April 28, 2020, Regular Meeting
2. Minutes – May 5, 2020, Special Meeting (Closed Session)
3. Proclamation – Kids to Parks Day
4. Approval and Ratification of Accounts Payable and Payroll Warrants Issued in the Month of March 2020
5. Receive and File Cash, Investments and Reserve Report for the Month of March 2020
7. Resolution 2020-60, Authorizing the City of Banning's Participation in the County of Riverside's Urban County Program for Fiscal Years 2021-22, 2022-23, and 2023-24

8. Purchase the Swiftly Platform for the City's Transit Operations for a Period of Five Years in the Amount of \$79,830

Public Comments

None

A motion was made by Councilmember Welch, seconded by Mayor Pro Tem Wallace to approve Consent Items 1-5 & 7-8. Electronic vote was taken as follows:

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

Action: Approved Consent Items 1-5 & 78.

6. Purchase & Sale Agreement - 447 E. Ramsey Street

Staff recommended this item be continued to the next regular City Council meeting.

Public Comments

The Mayor opened public comment.

John Hagen asked why the City wanted to purchase the property and what is planned. He expressed concern with utilization of a non-ratepayer utility fund.

Inge Schuler expressed her concern with this item being a consent item and advised that it should be a report.

Jerry Westholder spoke against this item and advised that he did not believe there was such thing as a non-ratepayer utility fund.

Seeing no further comments, the Mayor closed public comment.

A motion was made by Councilmember Pingree, seconded by Councilmember Welch to continue Consent Item 6 to the next regular City Council meeting. Electronic vote was taken as follows:

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

Action: Continued Consent Item 6 to the next regular City Council meeting.

9. Resolution 2020-58, Approving Amendment No. 2 to the Professional Services Agreement with Engineering Resources of Southern California to Increase the Total Compensation by \$750,000 and Extend the Term of Agreement through June 30, 2021 for Plan Check, Inspections, and Related Administrative Services

Public Comments

The Mayor opened public comment.

John Hagen expressed concern with the amount of this item.

Inge Schuler expressed concern with the amount of this item and that it is a Consent item. She asked for an explanation.

Diego Rose expressed concern with the lack of an explanation on this item and recommended clarifying language for everyone.

Jerry Westholder echoed the concerns of those that spoke before him.

Seeing no further comments, the Mayor closed public comment.

Public Works Director Art Vela provided a report on this item, explaining that the services are covered by the developer.

A motion was made by Councilmember Happe, seconded by Councilmember Welch to approve Consent Item 9. Electronic vote was taken as follows:

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

Action: Approved Consent Item 9.

10. Resolution 2020-59, Authorizing CARES Act Emergency Solutions Grant Application

Public Comments

The Mayor opened public comment.

John Hagen asked if the City was applying for the homeless or COVID-19 and where in the queue the City was to get money.

Inge Schuler referenced page 53 of the agenda packet showing the breakdown of operational costs and advised she did not see an estimate.

Jerry Westholder echoed the concerns of those that spoke before him.

Diego Rose expressed concern with the CARES Act and spoke against taking money, as he believes everything comes with strings attached.

Karen Amirson expressed concerns with the pallet shelters. She asked if they were temporary, if the City is providing sewer and laundry room. She indicated the property is commercial, not residential. Finally, she advised that small businesses need help.

Cynthia Barrington expressed concern about a grant for a homeless village being related to COVID-19. She spoke against taxpayer money going toward air conditioning for homeless.

Seeing no further comments, the Mayor closed public comment.

City Manager Doug Schulze advised that the City is obligated to the State of California as a General Law City. He indicated that water and electricity already exist at the site of the homeless shelter. He reminded all that the temporary site was located near the Courthouse. The current site is a pilot project and if it is successful it will continue, if it is not successful it won't.

There was discussion held among the Council and staff regarding the matter.

A motion was made by Councilmember Happe, seconded by Councilmember Welch to approve Consent Item 10. Electronic vote was taken as follows:

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

Action: Approved Consent Item 10.

VII. PUBLIC HEARING(S)

1. Ordinance 1562, Amended and Restated Development Agreement No. 11 Between the City of Banning and AMG Sign Company, Inc. for the Operation of an Electronic Message Center; and Ordinance No. 1562, An Ordinance of the City of Banning, California, approving an Amended and Restated Development Agreement No. 11 Between the City of Banning and AMG Sign Company, Inc. for the Construction and Operation of an Electronic Message Center in the Downtown Commercial General Plan Designation and Zoning District on Real Property Located at 583 West Livingston Street (APN: 540-192-005)

Community Development Director Adam Rush provided a staff report and presentation (Attachment 2) on this item.

Public Comments

The Mayor opened public comment.

John Hagen asked if cannabis would be allowed to advertise.

Diego Rose advised that when he was a business owner in Banning, he wasn't allowed to place a billboard on his property and recommended business owners should be allowed to have large signs. He also expressed concern with the cost of \$36,000 per month to advertise.

Cynthia Barrington asked about a discount to local businesses and if they would be able to afford to advertise.

Robert Ybarra spoke in support of the item.

Seeing no further comments, the Mayor closed public comment.

The applicant, Paul Fisher with AMG explained that traffic safety is not an issue and that he has seen 30% increase to sales tax revenue.

There was discussion held among City Council, staff, and the applicant. The City will work with the applicant to revise the agreement to include language regarding five year renewals after 10 years and allowing all members of the Chamber and address the \$50,000 per year that the developer will pay the City.

A motion was made by Councilmember Happe seconded by Councilmember Wallace to re-open the Public Hearing and continue it to the May 26, 2020 City Council Meeting. Electronic vote was taken as follows:

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

Action: Re-Opened Public Hearing and continue to May 26, 2020 City Council Meeting.

The Mayor recessed the meeting at 7:58 P.M. and reconvened at 8:13 P.M.

VIII. ANNOUNCEMENTS AND REPORTS

CITY COUNCIL COMMITTEE REPORTS

Councilmember Pingree reported that he has participated in the food drive and that it is nice to meet in person and see everyone.

Mayor Pro Tem Wallace advised she has been helping with the homeless and on Mother's Day she and others served 40 plates and gave gifts to all the female residents. She also informed the public that one person that was living there was able to gain employment, the County came out and had each resident sign paperwork, they are not allowed to do drugs or consume alcohol on the premises, this is a transitional program, and she checks on them every other day. Finally, on May 29th at 5:00 p.m. citizens will meet at Nicolet Middle School to drive around and recognize local graduates.

Councilmember Welch advised the committees he participates in have been dormant or conducting their meetings online. On Friday he attended the Riverside County Board of Supervisors meeting with Mayor Andrade. It was determined that masks and socially distancing would be strongly recommended, but not required. He suggested the County create a simple one—page sheet with instructions for the residents.

Councilmember Happe had nothing to report regarding committees; however, he responded to some comments made during the public comment period on items not on the agenda. He advised that any suggestion that his request to discuss Commissioner Schuler's service on the Planning Commission was related to Diversified Pacific is false. He informed the public that he served as a firefighter for 25 years and understands the plights of the homeless. In regard to landscape maintenance district fees, he suggested people who are opposed to it rally their

neighbors to vote against it. Finally, he explained why people should wear masks during the pandemic.

Mayor Andrade reported that she has witnessed the homeless population morale lifted. She advised they don't like to be portrayed as less than human and that there are different levels of homelessness. She has attended meetings online and most recently attended the League of California City's Mayor's Meeting where the reopening process was discussed. She attended the County Board of Supervisors Meeting and is in favor of reopening due to the small businesses that are suffering. She also attended the Governor's Task Force where she received updates and was able to ask questions about moving forward. More testing sites will be opening, including one in Beaumont. The Little League Executive Board organized a safe pick-up of the uniforms and have organized fundraisers. She also participated in the food distribution program. There is a site to Adopt-A-Senior for the graduates and encouraged people to look for the site on Facebook.

REPORT BY CITY ATTORNEY

City Attorney Kevin Ennis had nothing to report.

REPORT BY CITY MANAGER

City Manager Doug Schulze reported on the following:

- The State of California issued guidance for Phase II of the gradual reopening process on May 7th with six indicators.
- The impact of the pandemic on the City's budget will be approximately \$5 million.
- Pardee and Diversified Pacific residential developments are moving forward slowly, but moving forward. Pardee pre-sold 15 units prior to the pandemic. Eight of those 15 were ultimately sold.
- Various developments ranging from small retail to one-million square foot distribution/fulfillment centers and commercial projects are in progress.
- Attended a Skype meeting with Senator Mike Morrell and a Skype meeting with Assemblyman Chad Mayes with other City Managers to discuss the impacts the pandemic has had on municipalities.
- A team of City employees has been created to plan and implement procedures to reopen City Hall.
- For the record, the City Manager and Chief of Police for Banning have communicated to both County and State officials that the City does not have the resources to enforce County and State orders. As a result, the City will not be engaging in those efforts.

- Update on the Ramsey Street Village:
 - 40 residents (now full) with three on a wait list
 - Privacy fence installed
 - Sunday church services provided by local groups
 - Lunch provided seven days per week by local groups
 - Mobile showers are brought in one day per week
 - AA and NA meetings are being held on site
 - County services are being provided. Including a representative from the Housing Authority who did an intake interview with each resident.
 - Crime statistics within a one-mile radius (not necessarily related to the Village):
 - 3 vandalism/malicious mischief
 - 1 Residential burglary
 - 2 Commercial burglary
 - 1 vehicle theft
 - 1 trespassing
 - Taxpayer money/public funds are used to provide social services to the public/citizen
 - 90% of the residents are longtime Banning residents
 - Three people have moved to more permanent housing
- The new Economic Development Manager, James Wurtz, started with the City on Monday. Before coming to the City of Banning, he served as Economic Development Manager for the City of Murrieta.

REPORTS OF OFFICERS

1. Resolution 2020-57, Multilateral Clean Fuel Reward Program

Business Support Manager Carla Young and Public Benefits Coordinator Amber Rockwell provided the staff report and PowerPoint presentation for this item.

Public Comment

None.

A motion was made by Councilmember Welch, seconded by Councilmember Happe, to adopt Resolution 2020-57. Electronic vote was taken as follows:

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

Action: Adopted Resolution 2020-57

2. Resolution 2020-56, Establishing Fiscal Year 2020/2021 Service Charges for the Collection, Transportation and Disposal of Solid Waste

Public Works Director Art Vela provided the staff report for this item.

Public Comment

Cynthia Barrington expressed concern with the smaller bins replacing the large bins at the same cost to the resident.

Waste Management advised that they can exchange the smaller bins for the large bins.

A motion was made by Mayor Pro Tem Wallace, seconded by Councilmember Happe, to adopt Resolution 2020-56. Electronic vote was taken as follows:

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

Action: Adopted Resolution 2020-56

IX. DISCUSSION ITEM

1. Reduction of Public Comment Time to Three (3) Minutes

City Manager Doug Schulze provided the staff report for this item.

Public Comment

John Hagen spoke against reducing public comment to three minutes.

Jerry Westholder expressed his understanding, however indicated he is against reducing public comment time.

Cynthia Barrington advised she is against reducing the public comment time and that she feels it sends the wrong message.

Councilmember Happe advised he supports reducing the public comment time to three minutes only for items not on the agenda and leaving the five-minute limit for items that are on the agenda.

There was some discussion held among the Council.

A motion was made by Mayor Andrade, seconded by Councilmember Happe, to direct staff to bring back a Resolution for consideration reducing the public comment time limit on items not on the agenda to three minutes. Electronic vote was taken as follows:

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

Action: Directed staff to bring back a resolution for consideration reducing public comment to three minutes for items not on the agenda.

2. Cannabis Retailers, Distributors and Cultivators

Community Development Director Adam Rush provided the staff report and PowerPoint presentation for this item.

Public Comment

John Hagen read a letter (Attachment 3) regarding the item.

Val Westholder spoke against amending the City's ordinance related to cannabis.

Jerry Westholder spoke against amending the City's ordinance related to cannabis.

Matt Herald spoke in favor of amending the City's ordinance related to cannabis.

Christopher Henry spoke against amending the City's ordinance related to cannabis.

Rimon Law submitted a letter (Attachment 4) on behalf of their client, Macy Newell in opposition to changing the cannabis ordinance.

Cierra Rounds asked if the ordinance was changed, would it be open to all who initially applied and if the Council had considered adopting an approved business model.

City Attorney Ennis advised that not adopting an approved business model protects the City from litigation.

Police Chief Matt Hamner advised that NCIC background cannot be obtained, as cannabis is illegal at the federal level.

There was an extensive discussion among the Council regarding the item.

There was a consensus (5-0) of the Council to add a Distribution tax to the ballot.

There was a consensus (5-0) of the Council to adjust the canopy tax to \$5 per square foot of canopy space the first year, \$10 per square foot of canopy space the second year, then \$15 per square foot of canopy space each additional year.

Councilmember Happe requested a future discussion item related to microbusinesses.

The Mayor recessed the meeting at 10:51 P.M. and reconvened at 10:56 P.M.

There was additional discussion held among the City Council.

A motion was made by Councilmember Pingree, seconded by Mayor Pro Tem Wallace, to keep the limit at three dispensaries and/or bring back a measure for consideration to ask the voters if the number of cannabis retailers should remain at three. Electronic vote was taken as follows:

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

Action: Keep the limit at three dispensaries and/or bring back a measure for consideration to ask the voters if the number of cannabis retailers should remain at three.

CITY COUNCIL – Next Meeting, May 26, 2020, 5:00 p.m.

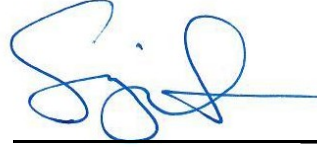
X. ITEMS FOR FUTURE AGENDAS

None

XI. ADJOURNMENT

By consensus, the meeting was adjourned at 11:23 P.M.

Minutes Prepared by:



Sonja De La Fuente, Deputy City Clerk

The entire discussion of this meeting may be viewed here:

<https://banninglive.viebit.com/player.php?hash=L8U1mgt1hrRb>,

<https://banninglive.viebit.com/player.php?hash=yRxPatZ2AWZB> and

<https://banninglive.viebit.com/player.php?hash=DP6iXTPuMQKn> Any related documents maybe viewed here:

<https://banningca.gov/ArchiveCenter/ViewFile/Item/2292> or by purchasing a CD or DVD in the amount of \$7.00 at Banning City Hall located at 99 E. Ramsey Street.

ATTACHMENT 1

RECEIVED

By Sonja De La Fuente at 2:07 pm, May 11, 2020

Public comment not on agenda,

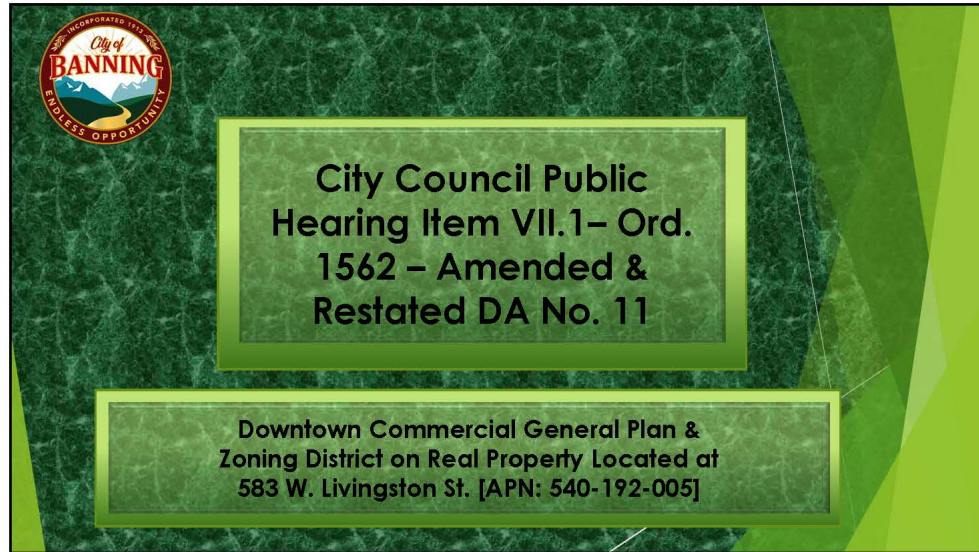
May 10, 2020

I would like to address the issue of replacing Inge Schuler on the planning commission that Councilman Happe is suggesting. Inge is in her 4th year of a 4 year term. She has done an outstanding job since her appointment. Why all of the sudden does Happe want her removed? She has been there longer than Happe has been in office and there was no problem in the past. Happe does not state a reason for her removal. Although she is the most vocal member, she is usually spot on when it comes to speaking out about things that are not up to standard.

This move by Happe to remove her smells fishy to me. Inge's property adjoins the 880 acre parcel to be developed by the very company (Diversified Pacific) that paid for Happe's election. Happe has already given them one extension on building in this city and something tells me that another extension is in the works, or a plan change, so they want Inge out of the way. I would like to hear Happe's reasoning for her removal. It seems that if someone on the commission speaks up and they are not in line with the way the council wants to go, they simply have them removed. This is a trend that needs to be stopped. The same thing happened to David Ellis when he was on the commission. The Planning Commission should serve as a filter, or checks and balance to help guide the City Council in their decisions. It doesn't work well if they are removed if they do not agree with council. I recommend that she be allowed to serve out her term.

John Hagen
Banning resident

ATTACHMENT 2



1

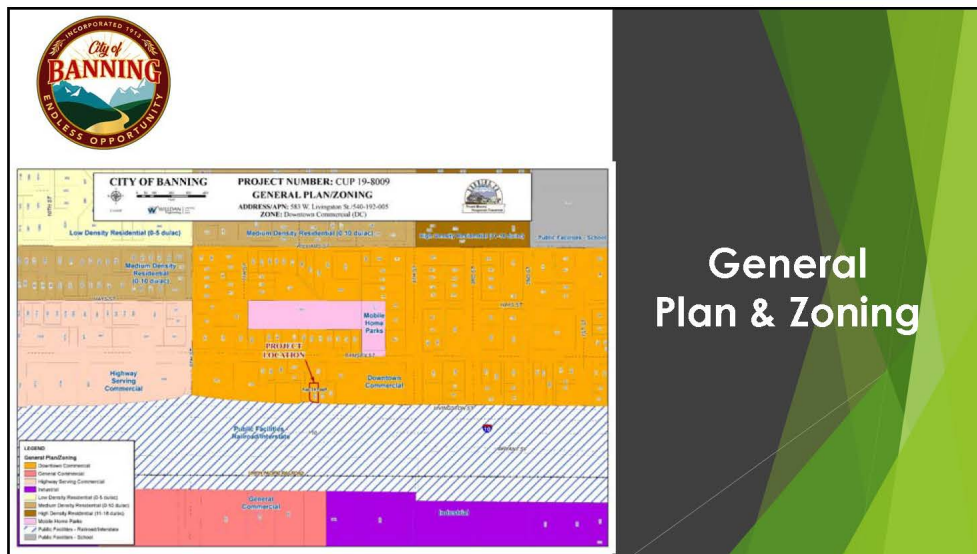


2

1



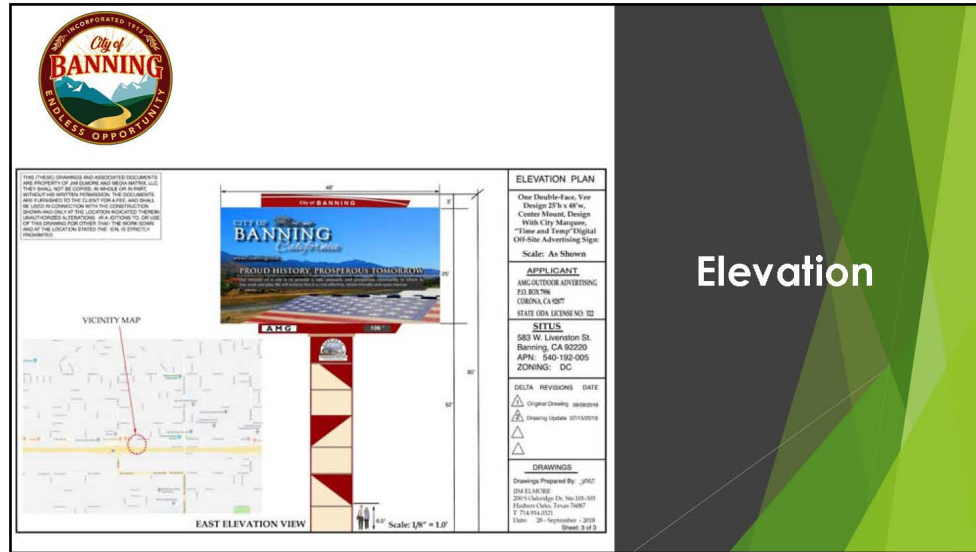
3



4

[illegible]


3



7




8



- ▶ AMG requested a Development Agreement for the construction and operation of an electronic message center at 583 W. Livingston St., near the Interstate 10 freeway.
- ▶ An electronic message center (“digital billboard”). 80-feet in height and 1,200 s.f. of display (25’ x 48’).
- ▶ Original Development Agreement (DA) would provide a \$50,000 per annum payment to City.

Background


9



- ▶ AMG now seeks to amend the Agreement:
- ▶ Eliminate the requirement that AMG pay the City a \$50,000 annual fee, in lieu of incorporating the following public benefits, which are modifications of existing public benefits under the Agreement:
 - ▶ Allowing for a discount available to one local business, in good standing with the Chamber of Commerce, per month on advertising rates; and
 - ▶ Allowing the City an additional public service message.
- ▶ Revise the advertising content control provisions so that certain advertising that was restricted under the original agreement would be allowed.
- ▶ Remove the provision allowing the City to require the sign to be removed at the expiration of the Agreement if an extension to the Agreement is not made.

Background

10




► **These new public benefit provisions are summarized as follows:**

- Any business located in the City, and which is a member in good standing of the Banning Chamber of Commerce will be entitled to post up to one, eight (8) second, advertisement per minute per month at fifty percent (50%) discount off of the normal (full rack) Electronic Message Center display rate(s). AMG shall provide such discount advertising to only one qualifying business each month, as selected by the Chamber of Commerce. AMG estimates the value of such discount to be Eighteen Thousand Dollars (\$18,000) per month.
- In addition to the City's existing right to place one eight (8) second Public Service Message per minute on one face of the Electronic Message Center per paragraph 4.4 of the Agreement, the City will also be entitled to post up to one additional eight (8) second advertisement per minute per month on one side of the Electronic Message Center.
- AMG asserts that the value of this benefit to one City business per month is **equal to approximately \$18,000.00.**

Justification

11




► **Changes to Advertising Content Control:**

- Under the previously approved wording of this Section, AMG would not be able to display "any advertising for adult entertainment, mud wrestling, alcohol (except beer and wine), tobacco products of any type, or other content that could be reasonably considered sexually explicit or pornographic by community standards."
- Under the proposed language, AMG would agree that the advertising would not "display any advertisement that is obscene or depicts or makes reference to any (a) strip club, or gentlemen's club featuring nude or partially-clothed dancers or wait staff, (b) pornographic materials, (c) sexually oriented novelty products, (d) adult books, magazines, website, videos or other similar forms of adult entertainment, and (e) stores, websites or establishments selling or featuring any of the foregoing materials..
- The proposed revisions also **remove the City's ability to object** to advertising the City considers detrimental to the City's image.

Justification

12




Changes to Sign Removal Provisions:

- ▶ In the Amendment, AMG proposes to remove these Sections entirely and replace them with the following:
 - ▶ *Electronic Message Center is being constructed at a site pursuant to a lease between OWNER and the owner of such real property. Upon the expiration of the Agreement, OWNER's obligations as to any removal of the Electronic Message Center and restoration of the real property where it is constructed shall be left to the terms of any lease or other contract between OWNER and the owner of record of the real property.*
- ▶ The result of this change is to remove the authority under the Agreement, that provides the City a right to remove the electronic message center upon termination of the Development Agreement.
- ▶ This will mean that once the ten (10) year term of the Agreement expires, the Owner will get to retain and continue to use the sign, but the public benefits of the sign will no longer be required by the Development Agreement.


Justification

13

RECOMMENDED ACTION:

That the City Council take the following actions:



That the City Council waive full reading of, and introduce Ordinance No. 1562, approving the Amended and Restated Development Agreement No. 11 between the City of Banning and AMG Sign Company, Inc. ("AMG").

City Council Recommended Action

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ATTACHMENT 3

RECEIVED

By Sonja De La Fuente at 2:08 pm, May 11, 2020

John Hagen
Banning Resident

Banning City Council

May 12, 2020

Dear Council Members, and to Whom this may concern ,

Once again your attempt to instill confidence in your decision making skills has failed. Your community trust has been shaken again. Your business practices are highly in question. Why? Because you continually do whatever you want to do, ignoring the will of the public that put you in office. How do you expect your constituents to trust you when you promise one thing and as soon as you get what you want you do the opposite.

When Measure O was placed on the ballot last November the City made certain concessions to the public assuring them that strict guidelines would be followed, even drawing up an ordinance in advance to assure that there would be only 1 store per 10,000 population, there would be a 200 ft setback enforced so they would not in-croach on residential areas, and they would only be allowed in the Highway Commercial Zone. Now that you got the Measure to pass you want to throw out all those guarantees that were promised. I feel this move is highly unethical if not illegal. I can not believe that the 3 lottery winners that were awarded CUPs are not screaming. You are undercutting their business before they have a chance to open. They jump through all your hurdles and then when its over you change the rules. What kind of business practices are those. Who in their right mind would want to conduct business in this setting.

You claim that your not getting the revenue that you expected. Well, you were warned prior to getting involved in the industry that most cities only generate a small portion of what was expected. There is so much under the table stuff occurring with a cash only business it is almost impossible to get an accurate accounting. It will be hard enough to track and police 3 business let alone 24. this will be a disaster with no end. Your tax revenue will be basically the same with 3 store as 24 because customers will go to where it is sold. By adding 24 more locations doesn't mean you sell 24 times more dope, you just spread it out over a larger area causing more problems for policing and auditing. Every location that you allow a store to go in will cause additional vagrants and panhandling, making the general public feel unsafe. Every city that has allowed a shop to open in a general commercial zone the general businesses suffer a loss in sales, eventually drying up that shopping area. If you remove the cap on the number of stores you will be forced to allow them in the general shopping areas. This will force the general public to go to Beaumont to shop.

The reason you put these ordinances and measures on the books was so you did not get pushed into a corner when forced to allow these type of businesses in our community. Now you propose to undo all the safeguards that were put in place. You do not have any shops open yet so what are you basing your lack of generating revenue on. You can't seem to get any shops open when dealing with 3 location how are you going to handle 24. If the cap is removed that list of 24 could grow to 54 how is that going to work? The increase in numbers also increases area impact, calls for service, more auditing personnel, more problems and headaches.

By not approving this change you will uphold your end of the agreement that you made to the public. Honor the commitment to the 3 lottery winners who took the time and effort to jump through all your hoops. Eliminate the monstrous policing headache for the already overworked and understaffed Police Dept. and make it easier to track and monitor only 3 businesses. You could also possibly eliminate a couple of lawsuits by the lottery winners and the public you supposedly represent. It would turn this losing situation into a win-win for you. This is a no brain er, hopefully I'm not talking to the same.

I was impressed by the planning commission's decision to table this vote, but surprised when it was taken up by the council anyway. Someone up there is really pushing this and it makes me wonder why. There is no legitimate reason for this to be heard at this time when a total review of the General City Plan is up for review later this year. We do not have any shops open to judge what effect it is making on our community at this time. There could be a couple of reasons. 1. The City is taking advantage of the lack of accessible public input because of the virus lock down, or 2. Somebody up there is benefiting in some way or another. I guess time will tell.

John Hagen

Banning Resident

ATTACHMENT 4

May 12, 2020

VIA EMAIL

Doug Schulze (dschulze@banningca.gov)

Adam Rush (arush@banningca.gov)

Re: City's Consideration of Increasing the Number of Commercial Cannabis Retailers

Gentlemen:

As you likely recall, our firm represents Macy Newell, the owner of Nourish Earth, winner of the 2019 City lottery for a commercial cannabis retail license. On April 22, 2020, my firm sent you a letter explaining why client feels that commercial cannabis retail expansion is not in the best interest of the City or my client's business. On April 24, 2020, my office received an email response from the City Manager Schulze, explaining the City's rationale on why it desires to move forward with permitting additional cannabis retailers to obtain licenses in the City, in addition to the three lottery winners. My client has requested that we prepare the following responsive letter, responding to the City Manager's email.

1. Timing and Speed of Current Licensees

City Manager Schulze emphasized the lack of urgency on part of the licensees. I cannot speak for the other two licensees, but my client has prioritized and met all City requests, deadlines, and responses presented by City Departments – she is currently obtaining permits for demolition so she can begin her tenant improvements. The City must consider its own role in the timeline of this process. Let me be clear, my client is not pointing fingers at the City or saying the City's response or timeline has been anything but appropriate. But, naturally, on projects like these, it takes time. My client has consistently responded expeditiously on all fronts to complete plan review, while the City's departments have needed appropriate time to review and respond.

Moreover, as a lawyer to the regulated cannabis industry for many years, I feel compelled to add that my client's timeline has not been delayed; instead, compared to most projects that I have been involved with, it has been expedited. For this reason, I disagree that adding additional licenses equates to a speedier, more urgent response, from the subsequent round of licensees or the current licensees. My client asks, in the interest of building successful businesses in which owners can make sound, sustainable decisions that ensure the likelihood of profitability, that the City consider the equation, *more licenses ≠ doors open sooner*.

2. Limited Available Property

In his email, City Manager Schulze noted that "it has been difficult to find facilities to lease or purchase." This point cannot be emphasized enough. Cannabis business owners face enormous challenges in finding viable real estate that is reasonably priced, and strategically advantageous. No other business that I am aware of has to deal with regulatory setbacks and buffers, restricted zoning, landlords unwilling to lease to them because of the business type, little to no banking and financing available, and

community opposition. These issues often leave owners with a Sophie's Choice between: (1) an undesirable building (needing substantial tenant improvements to be remotely viable); (2) a poorly positioned building (with poor public access, lack of parking, undesirable neighborhood); or (3) an overpriced building (with a substantial mark up because of cannabis). Cannabis Business owners would be lucky to find a building that is well positioned for retail, in decent shape, where the owner has not gouged the price by double or more.

These hurdles will continue to exist for the next set of licensees in the City; in fact, the additional licensees will likely have a worse chance in securing a suitable property, since the three existing licensees have secured their respective locations. While there may seem to be several available properties on the market up and down Ramsey Street, my client, a licensed real-estate agent, and my office's cannabis business experience, believe that most of these properties can be eliminated for one or more of the issues listed above. Again, we return to our formula, *more licenses ≠ doors open sooner*.

3. Oversaturation: City of Beaumont

Recapping the points raised in my last letter: Banning's cannabis ordinance provides: "Only one cannabis retailer for every 10,000 residents may lawfully operate in the City . . ." See Ordinance 1531 Section 17.54.80A. This population-to-retailer ratio is on par with other neighboring cities in Riverside County, such as Moreno Valley. Based on the population of residents in Banning (estimated to be between 30,000-32,000 residents), three retail stores will be more than sufficient to supply those residents seeking medical or adult-use cannabis products, as well as tourists, travelers, and visitors from outside of the City. My client fears that allowing additional retail stores will saturate the local market, which already exists within a limited zoning radius. Allowing too many licensed retailers in close proximity to one another will make it harder for each business to guarantee continued profitability, longevity in the community, and ultimately contribute to the City's tax revenue. To prevent such oversaturation, the City should maintain the 10,000:1 ratio set forth in Ordinance 1531 and not permit another retailer until the population reaches at least 40,000 residents.

We note City Manager Schulze's comment: "it is important to note that the 1:10,000 population ratio only works if one does not consider the 50,000 people in Beaumont, where the City has determined they are not going to allow retail cannabis dispensaries." We understand that, at the moment, the City of Beaumont has not permitted licensed cannabis dispensaries, which may likely lead to an overflow of consumers into Banning. However, the City of Banning cannot guarantee what the City of Beaumont may or may not do in the future, and City of Beaumont would be well within its own rights to permit commercial cannabis at a later time. The City of Banning would be doing a great disservice to its own citizens and businesses if it regulated its commercial activity according to that of its neighbors. For arguments sake, what would the City response be to its citizens and business owners if in 6 months the City of Beaumont amended its cannabis ordinance to permit 5 retail dispensaries (1:10,000 population)? Will Banning require the subsequently added retail dispensaries to close? For these reasons we do not believe that adding licenses based on the City's neighbors' inaction is a prudent move and we urge the City to not to follow this course.

4. Conclusion

Our findings and recommendation are the same as in our original letter. During the City's initial licensing process, the three lottery winners of the retail licenses spent significant time, funds, and resources under the belief that they would be well-positioned to compete in an unsaturated market. My client believes that the City should give the lottery winners a buffer, respecting to all legally bound requirements and administrative processes, to allow time for them to become operational, iron out any business obstacles through working with the City, and develop a rapport with the community. After the three lottery winners are operational, the City will be in a better position to gauge the needs of the community and determine if additional retail stores are necessary and desirable to serve the City's needs. These three lottery winners, including my client, hope to be long- standing community pillars, but if Banning is inundated with retailers competing for the same core business, they likely will never have the chance.

In conclusion, my client respectfully requests and recommends that the City continue to follow Ordinance 1531 and maintain the 10,000:1 ratio set forth in the ordinance. If the City believes it is a prudent decision to change the existing ratio, my client hopes that the City will first give the current ratio a chance, and wait a minimum of two years to determine if the existing three retailers are able to effectively serve the community's needs. During this time, the City could properly observe product availability and success of the current three retail operations. Alternatively, if the City feels a change is required, the City could allow this to be a democratic decision and allow the voters to decide if they want or need additional retailers in the City.

Thank you for time and consideration. Should you have any questions or desire additional clarification, please do not hesitate to contact the firm at your convenience.

Very truly yours,



Justin M. Keller, Partner,
RIMÔN LAW

cc: Client

ATTACHMENT 5

From: fburgess@burgessrelocation.com
To: [Daniela Andrade](#); [David Harpe](#); [Art welch](#); [Kyle](#)
Cc: [Doug Schulze](#); [Grand Administrator](#); [Lee Myers](#); [Sonia De La Fuente](#); [Robert Ybarra](#); [ROMAN CANCHOLA](#)
Subject: City Council Meetings.
Date: Friday, May 8, 2020 2:58:26 PM

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City of Banning Information Technology

To the City Council of the City of Banning. I as a Citizen of Banning opposed the way that the city of Banning is conducting it last two council meetings and the one coming up this next week May the 12th, 2020. as well as the Planning Commission this past week. I request that you go Dark until you open up the council meetings.

This is not a fair way to conduct city business in behalf of Citizens of Banning. While you may feel it is legal, I do not. The agenda is not posted at the meeting and no one knows what Item you are at most of the time. You have a poor communication system. You have birds singing and dogs barking and so on and on. People calling in to speak are unable to get in to express there views and the list goes on and on. This is a violating of the Brown Act.

You give the appearance that is the way you want it. I feel very strong that you are occurring a lawsuit to be file if you continue operating city business this way. Please I ask you here and now to stop this anti-government way of conduct City Business.

You are violating the citizen of Banning constitutional right to appear before you and voice there rights by conduct this form of council unethical meetings. This goes also for the planning commission meetings. This must stop. Do the right thing and

postpone all Council and Planning Commission meeting until you open up the meetings to the Citizens of Banning can attend the meetings. You must go dark until you open up the meetings.

The board of Supervisors of Riverside County has open meetings. Why the city of Banning having close meeting? Is the reason truly because you are in violating the Brown Act? What are you hiding?

Do you really want the Citizen of Banning to file a lawsuit? This lawsuit would make all of your action for the last two council meetings null and void and most likely require you each to resign because of this action.

While you are laughing at me, Please believe me if you do not postpone this kind of government for the people of Banning it can happen.

I have the feeling that you as Council and your Management are not listening to your Attorney or you need a new Attorney.

Please forward this to Council Woman Colleen Wallace as I don't seem to have her E-M.

With all of this been said, You may think you are legal but is it ethical? That's the Question.

REQUEST THAT THIS E-M BE READ ALOUD IN TO THE CITY OF BANNING RECORDS AT THE MAY 12,2020 BY THE CITY CLARK OF THE CITY OF BANNING.

Frank J. Burgess
Citizen of Banning 60 years Plus.