



## AGENDA

### SPECIAL CITY COUNCIL MEETING CITY OF BANNING, CALIFORNIA

August 5, 2020  
5:00 P.M.

Council Chamber  
99 E. Ramsey Street  
and via Video/Teleconference

*The following information comprises the agenda for the regular meeting of the Banning City Council, a joint meeting of the City Council and the Banning Utility Authority, and the Banning City Council sitting in its capacity of the Successor Agency Board.*

***Due to the COVID-19 pandemic emergency, and to protect the health and safety of all participants, this meeting is being held in person and via video/teleconference. Pursuant to Governor Newsom's Executive Orders, members of the Banning City Council, staff and public may observe and participate in this meeting electronically or telephonically as outlined below:***

To observe and participate in the on-line video portion of the meeting through your personal computer or device enter the following or click on the link:

<https://us02web.zoom.us/j/81102311855?pwd=Qkh6WHY0eTVuMEVHTkE1MURTVkFnQT09>

Meeting ID: 811 0231 1855  
Password: 876495

One tap mobile: +16699009128,,81102311855#

Dial in: +1 669 900 9128 US  
Meeting ID: 811 0231 1855

Find your local number: <https://us02web.zoom.us/u/kdrYMkxbbB>

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To observe the live meeting through your personal computer, but not participate with video or oral comments, you may use your computer or smart phone to enter the following or click on the link: <https://banninglive.viebit.com> or on the Banning Government Channel on Cable Television

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You may also Email comments to: [sdelafuente@banningca.gov](mailto:sdelafuente@banningca.gov)

#### I. CALL TO ORDER

1. Roll Call: *Councilmembers Happe, Pingree, Wallace, Welch, and Mayor Andrade*

**II. AGENDA APPROVAL**

**III. PRESENTATION**

1. Special Recognitions  
(*Mayor Daniela Andrade*)

**IV. REPORTS OF OFFICERS**

1. Resolution 2020-100, New Energy North America Agreement ..... 1  
(*Staff Report: Doug Schulze, City Manager*)

**Recommendation:** Adopt Resolution 2020-100 approving: 1) the Battery Storage Project at Banning Electric Utility Sunset Substation in concept as described in the Term Sheet for Energy Storage Development and Lease Agreement between the City of Banning and New Energy North America, LLC; and 2) directing the City Manager to prepare a Lease Agreement consistent with the terms established in the Term Sheet for Energy Storage Development and Lease Agreement between the City of Banning and New Energy North America, LLC.

2. Council's Review, Discussion and Approval of Argument in favor of Banning Ballot Measure L - Cannabis Distribution Tax ..... 3  
(*Staff Report: Doug Schulze, City Manager*)

**Recommendation:** Review and discuss the draft ballot argument in favor of Banning Ballot Measure L for approval of a proposed tax on Cannabis Distribution Facilities, and if acceptable to the members of the Council, approve the ballot argument.

3. Resolution 2020-101, Ratifying an Emergency Proclamation ..... 5  
(*Staff Report: Doug Schulze, City Manager*)

**Recommendation:** Adopt Resolution 2020-101, ratifying the Proclamation of Local Emergency in the City of Banning issued by the City's Director of Emergency Services on August 3, 2020 as a result of the Apple Fire.

4. 33 S. San Gorgonio Avenue Lease Agreement ..... 7  
(*Staff Report: Doug Schulze, City Manager*)

**Recommendation:** Authorize the City Manager to execute a lease agreement with D & M Job, Incorporated for 33 S. San Gorgonio Avenue.

**NOTICE:** Pursuant to Government Code § 54954.3(a), the only public comment that will be permitted during this Special Meeting is that pertaining to items appearing on this special meeting agenda. Any member of the public may address this meeting of the Mayor and 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.

**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]

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





## CITY OF BANNING CITY COUNCIL REPORT

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**MEETING DATE:** August 5, 2020

**SUBJECT:** Resolution No. 2020-100, New Energy North America Agreement

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### **RECOMMENDED ACTION:**

City Council adopt Resolution 2020-100 approving the following:

1. The Battery Storage Project at Banning Electric Utility Sunset Substation in concept as described in the Term Sheet for Energy Storage Development and Lease Agreement Between the City of Banning and New Energy North America, LLC; and
2. directing the City Manager to prepare a Lease Agreement consistent with the terms established in the Term Sheet for Energy Storage Development and Lease Agreement Between the City of Banning and New Energy North America, LLC.

### **BACKGROUND:**

The City of Banning was approached by representatives of New Energy North America, LLC approximately one year ago with a proposal for a Public Private Partnership (P3) to develop a utility-scale energy storage and solar installation project(s). During the past year, the City Council was provided with a project briefing and authorized the City Manager to pursue development of appropriate agreements. Several meetings between City staff and New Energy North America representatives have been conducted during the past year to share information and work toward a mutually beneficial agreement.

The proposal from New Energy North America (NENA) from our first communication has included construction and financing provided by NENA. As such, the capital improvements (assets) must be owned by NENA until all debt is retired. A Public Private Partnership requires the public entity to own the assets. As such, the Public Private Partnership is not an option for the collaboration between the City of Banning and New Energy North America. However, special legal counsel for the City of Banning has identified an approach that will provide a path forward, which includes a Term Sheet that will be used as a framework for a Development Agreement and Lease Agreement. Timing is extremely important to ensure the proposed projects are completed in time to take advantage of tax benefits that will expire in August 2021.

The City of Banning role in the collaborative is to provide land and process the required permits for the renewable energy projects. NENA is responsible for project design, financing, construction, and operation of the facilities. The risk to the City of Banning is minimal yet, the revenue generated from lease of City-owned property and revenue-sharing from the

sale of energy to off-takers is substantial. Estimated annual revenue is expected to exceed \$1,000,000 in year one and potentially up to \$8,000,000 annually after all proposed projects have been completed.

Phase 1 project is a 50MW/200 MWh battery storage facility to be located at the Sunset Substation. The project cost is estimated to be approximately \$80,000,000, which will be financed by NENA. The City Council is asked to approve the Phase 1 Project via Resolution No. 2020-100. In addition, the City Council is asked to direct the City Manager to prepare a lease agreement for the Phase 1 Project. The lease agreement will be prepared and brought to the City Council for consideration at a September 2020 meeting.

**JUSTIFICATION:**

The City of Banning does not have sufficient revenue to provide basic local government services. The collaboration with NENA is low risk with considerable revenue potential. Goals for the collaboration with NENA include, revenue generation and system resiliency without harm to ratepayers.

**FISCAL IMPACT:**

The City of Banning will be responsible for delivering to New Energy North America a construction-ready site, which includes all permitting and environmental processes. There will be in-kind costs as well as consultant costs associated with this deliverable. The revenue generation potential far exceeds costs of delivering the construction-ready site.

**OPTIONS:**

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

**ATTACHMENTS:**

1. Resolution 2020-100  
<https://banningca.gov/DocumentCenter/View/7689/Resolution-2020-100-New-Energy-Agreement>
2. Proposal Letter <https://banningca.gov/DocumentCenter/View/7690/Banning---New-Energy-Proposal-Letter>
3. Term Sheet <https://banningca.gov/DocumentCenter/View/7688/Banning---New-Energy-Term-Sheet>

Approved by:



Douglas Schulze  
City Manager



## CITY OF BANNING CITY COUNCIL REPORT

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**MEETING DATE:** August 5, 2020

**SUBJECT:** Council's Review, Discussion and Approval of Argument in favor of Banning Ballot Measure L - Cannabis Distribution Tax

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### **RECOMMENDED ACTION:**

Staff recommends the City Council review and discuss the draft ballot argument in favor of Banning Ballot Measure L for approval of a proposed tax on Cannabis Distribution Facilities, and if acceptable to the members of the Council, approve the ballot argument.

### **BACKGROUND:**

At its June 9, 2020 City Council meeting, the City Council voted unanimously to place a measure on November 2020 ballot to impose a tax on cannabis distribution facilities. That measure has been assigned the letter "L" by the Riverside County Registrar of Voters. If approved by the voters, Measure L would adopt Banning Ordinance No. 1567 and impose an annual tax on cannabis distribution facilities in an amount equal to ten percent (10%) of the facility's gross receipts. Once adopted, the Council would be authorized to reduce the tax to a level commensurate with other communities but 10% would always be the ultimate cap for that tax unless subsequently altered by the voters. A copy of Resolution No. 2020-89 which placed Measure L on the ballot and Ordinance No. 1567 is attached hereto as **Attachment No. 1**.

At its June 23, 2020 meeting, the City Council held a public hearing and conducted a first reading of Ordinance No. 1565 regulating cannabis uses that would allow cannabis distribution facilities to operate in the Industrial Zone in the City. The provisions of the cannabis ordinance pertaining to cannabis distribution facilities will only go into effect if the voters approve Ordinance No. 1567 and impose a tax on cannabis distribution facilities. At the July 14, 2020 meeting, the City Council adopted that Ordinance.

Because Measure L was placed on the ballot by the City Council, Elections Code Section 9282 gives the City Council priority in preparing and signing the ballot argument in favor of Measure L. On July 14, 2020, the City Council decided to designate Mayor Andrade and Councilmember Happe to draft the ballot argument in favor of Measure L

Staff Report: Measure L Ballot Argument

August 5, 2020

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and to bring that draft argument back to the City Council for review and approval by all five members. The City Council indicated its intent that all five members sign the ballot argument in favor of Measure L.

The argument is limited to 300 words. The deadline for filing an argument with the Registrar of Voters is August 17, 2020. Not more than five signatures may appear on the argument according to Elections Code Section 9283.

For background information, the City Attorney has prepared an Impartial Analysis of Measure L. A copy of that Impartial Analysis is attached as **Attachment No. 2**.

A copy of Mayor Andrade's and Councilmember Happe's draft ballot argument in favor of Measure L was not available at the time this report was prepared but will be distributed to the Council either before or at the meeting.

This item is prepared and presented to the City Council at this meeting so as to ensure that discussion of this subject matter is handled in compliance with the Brown Act. No public resources have been incurred in preparing the ballot argument.

**FISCAL IMPACT:**

None.

**OPTIONS:**

the City Council can provide alternative direction to Mayor Andrade and Councilmember Happe regarding the contents of ballot argument.

**ATTACHMENTS:**

1. Resolution No. 2020-89 placing Measure L on the ballot (including Ord. 1567)  
<https://banningca.gov/DocumentCenter/View/7681/Reso-2020-89>
2. City Attorney's Impartial Analysis of Measure L  
<https://banningca.gov/DocumentCenter/View/7682/Impartial-Analysis-of-Measure-L>
3. Mayor Andrade's and Councilmember Happe's Draft of Ballot Argument (to be distributed separately)

Approved by:



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Douglas Schulze  
City Manager



**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Laurie Sampson, Executive Assistant

**MEETING DATE:** August 5, 2020

**SUBJECT:** Resolution 2020-101, Ratifying a Proclamation Declaring a Local Emergency Due to the Apple Fire, Dated August 3, 2020

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**RECOMMENDED ACTION:**

Adopt a Resolution of the Council of the City of Banning Ratifying a Proclamation Declaring a Local Emergency Caused by the Apple Fire.

**DISCUSSION:**

On Friday, July 31, 2020, at approximately 4:45 pm., a wildfire (named the Apple Fire) broke out near the intersection of Oak Glen Road and Apple Tree Lane in the area of Cherry Valley. The fire quickly spread through the neighboring City of Beaumont and into the foothills of the City of Banning. The Director of Emergency Services, Douglas Schulze, proclaimed the existence of a local emergency on Monday, August 3, 2020 (see attachment 1). It is recommended that the City Council adopt a Resolution Ratifying a Proclamation Declaring the Existence of a Local Emergency (Attachment 2) caused by the Apple Fire.

**OPTIONS:**

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

**ATTACHMENTS:**

1. Proclamation of the Existence of a Local Emergency  
<https://banningca.gov/DocumentCenter/View/7686/Apple-Fire-Emergency-Proclamation>
2. Resolution 2020-101, Declaring the Existence of a Local Emergency  
<https://banningca.gov/DocumentCenter/View/7685/Resolution-2020-101-Local-Emergency>

Approved by:



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Douglas Schulze  
City Manager



## CITY OF BANNING CITY COUNCIL REPORT

**TO:** CITY COUNCIL  
**FROM:** Douglas Schulze, City Manager  
**MEETING DATE:** August 5, 2020  
**SUBJECT:** 33 S. San Gorgonio Avenue Lease Agreement

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### **RECOMMENDED ACTION:**

City Council authorize City Manager to execute a lease agreement with D & M Job, Incorporated for 33 S. San Gorgonio Avenue.

### **BACKGROUND:**

D & M Job, Incorporated operates Lithopass in Banning and previously occupied 99 S. San Gorgonio Avenue. The property at 99 S. San Gorgonio Avenue was recently substantially damaged by a structure fire and is no longer habitable. The owner of 99 S. San Gorgonio Avenue contacted City officials on behalf of his tenant to determine if a short-term lease would be an option to keep his tenant in business until a new structure at 99 S. San Gorgonio could be built.

The City-owned property at 33 S. San Gorgonio Avenue has been vacant since March when Brew Rebellion closed. A short-term lease agreement has been prepared based on the previous lease agreement between the City and owners of Brew Rebellion.

### **JUSTIFICATION:**

Lithopass provides services to the Banning community and surrounding communities. City-owned property at 33 S. San Gorgonio is vacant and is not generating any revenue for the City. A lease agreement will allow a local business to continue operating in the city and provide revenue for the City.

### **FISCAL IMPACT:**

An electric service upgrade at 33 S. San Gorgonio Avenue may be required to meet the needs of Lithopass. The lease agreement requires Lithopass to pay for the cost of the electric service upgrade. The lease agreement will generate \$1,000 per month revenue for

the City of Banning. Tenant is responsible for utilities during the term of the lease as well as any improvements.

**OPTIONS:**

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

**ATTACHMENTS:**

1. 33 S. San Gorgonio Avenue Lease Agreement

<https://banningca.gov/DocumentCenter/View/7687/Lithopass-Lease-Agreement>

Approved by:



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Douglas Schulze  
City Manager