



The following information comprises the minutes for a 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**

8/18/2022

SPECIAL MEETING

COUNCIL MEMBERS PRESENT:

Council Member Mary Hamlin
Council Member David Happe
Mayor Kyle Pingree
Council Member Alberto Sanchez
Mayor Pro Tem Colleen Wallace

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT:

Doug Schulze, City Manager
Kevin Ennis, City Attorney
Marie Calderon, City Clerk
Caroline Patton, Deputy City Clerk
Lincoln Bogard, Finance Director
Laurie Sampson, Assistant City Manager
John Garside, Multimedia Specialist

*Participated via Zoom.

1. CALL TO ORDER

Roll Call

COUNCIL MEMBER	PRESENT	ABSENT
Hamlin, Mary	X	
Happe, David	X	
Pingree, Kyle	X	
Sanchez, Alberto	X	
Wallace, Colleen	X	

2. PUBLIC COMMENT – Agenda Items Only

Frank Burgess commented that the City Attorney should stop the meeting from going forward under the Brown Act, stating he represented the citizens of Banning. He said the City Manager told him he only represented the City Council and not the citizens. Mr. Burgess commented that only draft letters were included in the agenda packet and contended the District 2 vacancy could not be filled by appointment because Mayor Pingree was subject to a recall. He threatened litigation against the City and suggested the City Attorney had a conflict of interest.

Kathleen Dale said that the Council's Procedures Manual states, "next meeting," which she took to mean next regular meeting, claiming the meeting was therefore

invalid. She commented that she disagreed with restricting public comments during Special Meetings to agenda items only. She asked further procedural questions about the course of the meeting.

City Attorney Ennis clarified that he recommended the public be allowed to also make comments for each subsequent agenda item after the staff report concludes.

Randy Robbins said that the Brown Act letters should speak for themselves, saying the Council should not rely on staff for information but should do their own research. He added that he tried to file a complaint against Council Member Mary Hamlin with the Banning Police and he felt she should recuse herself.

Jon Hagen said he supported holding a special election to fill the impending vacancy on the City Council representing District 2 because of the time remaining in the term.

Inge Schuler commented that there were five applicants for the District 2 vacancy, which she felt indicated people were unhappy with what was going on. She said the vacancy should be filled with a special election and disagreed that City Council members from other districts could pick who represented them. She suggested it was undemocratic and claimed she was discouraged from filing a recall petition.

Ron Duncan said he had never seen a seat filled before a vacancy took effect and he felt the position should remain vacant past Council Member Pingree's resignation date. He told City Council starting a new in-depth search for a "good Council person" would be in their best interest. He stated he hoped they chose a representative who would not be swayed by public opinion and suggested reaching out to residents in new housing developments within District 2.

Stuart Mackenzie drew connections between the current situation and the American revolution. He said that appointment "is the method of royalty and autocrats," which they were not. He said the people of District 2 deserved an election, despite the cost, since "freedom is not free."

Virginia Cervantes said she was disappointed in what she had seen from this City Council. She encouraged the Council Members to be individuals, think for themselves and do their own research. She stated her opposition to "taking the people's vote away" by choosing appointment over holding an election.

Bill Hobbs spoke in opposition to filling the vacancy by appointment, saying the City Council needed to start making the right decisions. He said Council Members should have education or job experience that makes them qualified for the position of Council Member.

Chris McCallum commented there was finally some diversity in the community and he felt there had been progress made in recent years. He spoke to the history of

vacancies on the City Council and the short tenure of all members currently on the City Council, saying everyone needs to come together and unite behind a common goal. He encouraged them to remember the positive achievements of the City and noted progress he had seen.

Charles Zylman cited the California Government Code Section 36512, saying the statutory language prevents the citizens from having their voices heard. He said that City Council had an option to do the right thing and hold an election because the public's trust has been broken. He suggested the statutory language was intentional and should be changed to require an election so they were not at the mercy of the City Council.

City Attorney Ennis responded:

- He disagreed the Brown Act did not allow for the response to a Cease and Desist and/or Cure and Correct Demand at a special meeting as distinguished from a regular meeting.
 - The Cure and Correct provisions of the Brown Act are provided in GC 54960.1(c)(2), which does not specify the type of meeting (special or regular) where an action must occur.
 - The Cease and Desist provisions 54960.2©(2) states the action, "shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda." This expressly allows the action to occur at a special meeting of the City Council.
- He noted that the City Council was able to take action fill an impending vacancy and did not have to wait until after the vacancy occurred. Government Code Section 36512(e) states, "the resigning city council member may cast a vote on the appointment if the resignation will go into effect upon the appointment of a successor." Since the effective date of the resignation is upon appointment of the successor, it permits the Council Member to stay in their position and participate in the process of filling the vacancy. He added this only applies if the Council chooses to fill the position by appointment.
- He clarified that Government Code Section 34902 relates to implementing direct election of a mayor as opposed to the rotating mayor system currently practiced by the City. It does not apply to City Council vacancies and is not a subject on the agenda.

3. REPORTS OF OFFICERS

3.1. Receipt of Amended Resignation Letter from Kyle Pingree, Council Member for District 2

City Attorney Ennis presented the staff report.

Public Comments

Kathleen Dale reviewed what she saw at the July 12, 2022 City Council meeting and how the process appeared to the public. She said that it looked like Mayor Pingree was “cleaning up the mess” created at the last meeting. Ms. Dale emphasized that the City Council had lost the public’s trust and needed to earn it back.

Virginia Cervantes said she felt the City Attorney was looking for loopholes to allow the City Council to do what they wanted. She suggested each Council Member extend an olive branch to their voters to address the division in the community. She asked that they let the people vote for the new Council Member and make the candidates do what every other City Council candidate must do.

Bill Hobbs emphasized the importance of elections. He said there were a lot of new residents that should have the opportunity to apply to serve.

Tisa Zupan (Weisz) said she was a longtime resident concerned about the politics of the City. She said the statutes were “changed to not benefit the citizens” but contended that the City Council could still choose the right way—to fill the seat through an election. She commented on national politics and starting change at the local level.

Jon Hagen commented that appointment was a cost-savings effort but stated the City “throws so much money away” hiring consultants. He said the election was money well spent to let the people’s voices be heard.

Charles Zylman continued citing Government Code 34902 regarding the direct election of mayors. He said ballot language can be intentionally deceptive. Mr. Zylman read more of Government Code 34902 aloud and asked the City Attorney how many Council Members had been appointed.

City Attorney Ennis answered that none of the sitting City Council Members had been appointed to their current positions. He clarified that Council Member Pingree was initially appointed to an incomplete term but was subsequently elected.

Mr. Zylman continued, stating that was his point.

City Attorney Ennis clarified that currently the City’s mayor is not chosen by direct election, but the positions of Mayor and Mayor Pro Tem are selected annually by a vote of the City Council Members themselves. The Government Code Section Mr. Zylman cites—GC Section 34902—only applies to jurisdictions where voters directly elect their Mayor and does not apply to the City of Banning.

Ellen Carr said she was not a resident of City Council District 2 but that she would want to vote if this was happening in her District. She implored the City Council to allow the residents to vote.

Motion to receive and file the amended resignation letter submitted by Mayor Pingree.

Motion by Council Member Happe
Seconded by Council Member Sanchez

COUNCIL MEMBER	YES	NO	ABSTAIN	RECUSE	ABSENT
Hamlin, Mary	X				
Happe, David	X				
Pingree, Kyle	X				
Sanchez, Alberto	X				
Wallace, Colleen	X				

Motion approved by a vote of 5-0.

3.2. Responses to Three Letters (The “Letters”) Dated August 10, 2022 and August 11, 2022 from Ms. Sheri Flynn, Mr. Kevin Bundy, and Ms. Shaila Nathu Asking that the City Council Cure and Correct an Alleged Violation of the Ralph M. Brown Act that Occurred at the City Council Meeting Held on July 12, 2022 and to Cease and Desist from the Same Violation in the Future

City Attorney Ennis presented the staff report.

Public Comments

Sheri Flynn disagreed with the staff report, stating the issue was that the item was not agendaized, citing the City’s Manual of Procedural Guidelines. She said it was well known the Mayor had posted his house for sale and claimed staff had discouraged her from filing recall documents. She suggested the series of events was intended to halt the recall. She read from the staff report, saying staff used inflammatory language that she sought to adjust.

Gary Sherman congratulated the City Council for what they had been able to accomplish on the homeless issues facing the City.

Frank Burgess commented that people were not allowed to speak on matters not on the agenda but that the last speaker had been allowed to address an item not on the agenda. He addressed the City Attorney, saying the Brown Act was violated by stating the resignation matter was an emergency.

Council Member Sanchez reminded Mr. Burgess the City Attorney had reviewed the emergency declaration. City Attorney Ennis clarified again that

there were two elements of the Brown Act's emergency regulations: (1) whether the issue arose after the agenda was posted and (2) whether there was an immediate need to take action. He specified that the language of the statute does not use the term "emergency."

Mr. Burgess continued, asking what ordinance allowed the City Council to remove citizens for clapping.

Mayor Pingree said he would provide it to Mr. Burgess, despite his protests to the contrary.

Kathleen Dale said the staff report put together a story, but that it was known Mayor Pingree was planning to leave and what he did was not right. She said she was upset because the letters they were approving would not admit fault on behalf of the City, saying again the City Council had lost her trust. Ms. Dale stated she felt the process was not transparent and should have been noticed in the Record Gazette.

City Attorney Ennis responded that the special meeting agenda had been posted 72 hours in advance, exceeding the 24-hour notice requirement in the Brown Act for special meeting agendas. He reported that upon of a yesterday, August 17, 2022, the materials were updated 24 hours in advance of the meeting. Further, staff deleted the "inflammatory" comments cited by Ms. Flynn in her comments.

Mr. Ennis also noted that the despite the knowledge of Mayor Pingree's impending move, the resignation later was the legally permitted and required way to announce a resignation. Although there may have been an indication he would resign before receipt of a resignation letter, the date of the resignation letter is the date the City was made aware of his intended action.

Finally, the draft language of the City's letters directly follow the correct and cure provisions of the Brown Act.

Motion to approve and send all three response letters.

Motion by Mayor Pingree
Seconded by Mayor Pro Tem Wallace

COUNCIL MEMBER	YES	NO	ABSTAIN	RECUSE	ABSENT
Hamlin, Mary	✗				
Happe, David	✗				
Pingree, Kyle	✗				
Sanchez, Alberto	✗				
Wallace, Colleen	✗				

Motion approved by a vote of 5-0.

Mayor Pingree announced a recess at 7:18 p.m. The meeting was reconvened at 7:28 p.m.

- 3.3. Rescission of July 12, 2022 Decision to Fill Impending City Council District 2 Vacancy by Appointment or Special Election; New Decision to Fill Impending City Council District 2 Vacancy by Appointment or Special Election; and Discussion of and Decision on the Next Steps and Timetable to Fill the Vacancy

City Attorney Ennis presented the staff report.

Public Comments

Charles Zylman said that the City Council could have called the special election at their July 12, 2022 meeting and asked why they did not. He said he assumed "we knew" the laws on July 11 and should have called the election then. He stated he supported holding a special election.

Virginia Cervantes said she felt they were just listening to the public talk, but she hoped that they took the comments personally. She said she had heard City Council had already chosen who would represent District 2, and so she encouraged the citizens write into City officials and staff to ask for an election.

Donald Day said the relationship between the City Council and its residents' relationship had turned ugly and it felt like the City was just trying to check the boxes. He suggested they hold a special election and make the right decision.

Randy Robbins said he agreed with Mr. Day that the perception in the community is problematic. He cited dates being manipulated and said for perception the City needed to take the issue to a special election to fix the derision.

Sheri Flynn spoke regarding the recall effort against Council Member Hamlin of District 3. She said she hoped the people of District 2 would have the chance to elect their next representative, saying it was wrong for the City Council to appoint. She accused City Manager Schulze of not providing the City Council with the correct information at the July 12, 2022 meeting to subvert the recall against Mr. Pingree. She said Mr. Chavez was appointed before Pingree's resignation and should be ashamed of himself for going along with the appointment hoax. She called on City Council to table the discussion, saying they were opening themselves up to a lawsuit, and directed them to reconsider the issue at their September 13 meeting.

City Attorney Ennis said her letter would be part of the record and her comments would therefore be part of the meeting record.

Alberto Chavez asked if he could respond to the comments made about him by the previous commenter or if he had to remain on topic.

Mayor Pingree confirmed he needed to stay on topic.

Bill Hobbs said he was looking for leaders on the City Council. He said it was important to have the election because, if he were a resident of District 2, he would want to know their experience and qualifications for the position of Council Member. He said it was embarrassing for him to listen to the City Council over the past few years and said he hoped things would change. He said having an appointed member on the Council for two years was not right.

Virginia Cervantes said she felt she needed to say something because she found Mr. Chavez to be very threatening when the previous commenter was speaking. She said no woman should have to be angered by someone they don't know and asked why that was what the City Council wanted.

Kathleen Dale said she supported having an election for the position since none of them had her trust. She said they needed to be chosen by the people because the current Council had cut her out of a election cycle through redistricting and approved a warehouse in a residential area. She said the people had made it clear they wanted an election through the recall petitions. Ms. Dale posed several questions:

- Could the special election could be combined with the recall election?
- Could Council appoint someone to fill the seat until a special election?
- Is Mr. Pingree prepared to stay through a special election?
- Would the applicants for the position support an election?

City Attorney Ennis responded:

- Staff did not know—or were not aware—that the City Council could have, within a few days, called a special election in order to have it included on the November 8, 2022 General Election ballot. He explained staff were still figuring out whether the Council could begin consideration of how to fill the vacancy in advance of the vacancy having actually occurred. There was no knowledge that there were 5 days (3 business days) to hold a special meeting and call a special meeting in order to call a special election because staff were still researching whether they could begin the vacancy recruitment before Mr. Pingree's departure.
- He said he did not believe that the two special elections could be consolidated because of the requirement that it be held at a regular date for special elections (per the elections code).
- He did not believe the Council could appoint a replacement until such time that a special election is held because the statute requires the City Council choose either to hold the election or to appoint a successor.

There was City Council discussion.

Motion to rescind City Council's July 12, 2022 decision to fill the impending City Council District 2 Vacancy by appointment.

Motion by Council Member Happe
Seconded by Council Member Sanchez

COUNCIL MEMBER	YES	NO	ABSTAIN	RECUSE	ABSENT
Hamlin, Mary	×				
Happe, David	×				
Pingree, Kyle	×				
Sanchez, Alberto	×				
Wallace, Colleen	×				

Motion approved by a vote of 5-0.

Motion to fill the District 2 impending vacancy by appointment rather than a special election.

Motion by Mayor Pro Tem Wallace
Seconded by Council Member Sanchez

COUNCIL MEMBER	YES	NO	ABSTAIN	RECUSE	ABSENT
Hamlin, Mary	×				
Happe, David		×			
Pingree, Kyle		×			
Sanchez, Alberto	×				
Wallace, Colleen	×				

Motion approved by a vote of 3-2.

Motion to direct staff to reopen the City Council District 2 Vacancy application period though Wednesday, August 31st and schedule a Special Meeting of the City Council on Tuesday, September 6th at 9:00 a.m. to interview all applicants.

Motion by Council Member Sanchez
Seconded by Mayor Pro Tem Wallace

COUNCIL MEMBER	YES	NO	ABSTAIN	RECUSE	ABSENT
Hamlin, Mary	×				
Happe, David	×				
Pingree, Kyle	×				
Sanchez, Alberto	×				
Wallace, Colleen	×				

Motion approved by a vote of 5-0.

3.4. Interviews for Impending Vacancy of City Council District 2 Office

Public Comments

Charles Zylman said if they wanted the trust back they should give the voice back to the people. He said the Council was setting a precedent for other districts.

Motion to direct staff to proceed with previous direction to extend the recruitment period and have the interviews occur at the September 6th meeting at 9:00 a.m.

Motion by Mayor Pingree

Seconded by Council Member Sanchez

COUNCIL MEMBER	YES	NO	ABSTAIN	RECUSE	ABSENT
Hamlin, Mary	✗				
Happe, David	✗				
Pingree, Kyle	✗				
Sanchez, Alberto	✗				
Wallace, Colleen	✗				

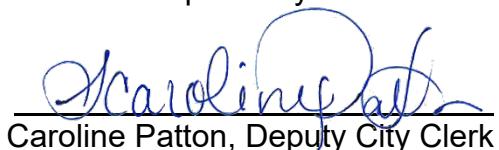
Motion approved by a vote of 5-0.

Council Member Sanchez asked if they could meet with the applicants. City Attorney Ennis said that under the Brown Act, they could meet with them so long as they did not discuss the views of other Council Members. However, he advised the process be conducted in an open and transparent manner and Council Members wait for the open session interviews so the Council Members all get the same information.

4. ADJOURNMENT

Mayor Pingree adjourned the meeting at 7:44 p.m.

Minutes Prepared by:



Caroline Patton, Deputy City Clerk

This entire meeting may be viewed here:

<https://banninglive.viebit.com/index.php?folder=City+Council+Meetings>

All documents related to this meeting are available here:

<http://banning.ca.us/Archive.aspx?ADID=2683>

ATTACHMENTS:

Exhibit A – Public Comment – Sheri Flynn

Exhibit B – Public Comment – Randy Robbins

Exhibit A - Public Comment

August 18, 2022

City Council and
Deputy City Clerk, Caroline Patton
City of Banning
99 E. Ramsey St.
Banning, CA 92220



Dear Council Members and Ms. Patton:

Please include this letter in the record and minutes of the August 18, 2022 City Council meeting and as read into the record:

First I would like to announce that the recall of Mary Hamlin will go forward. Out of 1,686 signatures collected only 82 were found invalid. Only 1,259 were needed so we had a rate of 97% valid signatures and 30% more signed than were needed. Second, I hope you have taken the time to read my Brown Act violation letter.

I would like to request that the Council allow the people of District 2 to have an election to choose their representative.

Districts were set up so different areas of the City could choose someone within their neighborhood to represent them. It is wrong for this Council to take it upon themselves to appoint a Council member, WHEN YOU DO NOT REPRESENT DISTRICT 2. Let the people decide.

I would like to point out that City Manager Doug Shultz at the July 12th meeting purposefully did not give the Council the information they needed to make a decision to either appoint or call a special election.

He led the Council to believe that the only choice they had was to appoint. That was incorrect. The Government code states that:

"IF THE COUNCIL CALLS A SPECIAL ELECTION, THE SPECIAL ELECTION SHALL BE HELD ON THE NEXT REGULARLY ESTABLISHED ELECTION DATE NOT LESS THAN 114 DAYS FROM THE CALL OF THE SPECIAL ELECTION".

In fact, July 12th was 120 days out from the November 8th General election. Therefore, the Council HAD UNTIL JULY 18TH to still place Pingree's question of replacement on the November 8th ballot.

You could have just as easily "started the process" for a special election as you did to appoint.

HOWEVER, after the July 12th meeting, staff quickly moved to correct the fatal flaw in their plan to only allow an appointment. They had Pingree submit a second letter of resignation dated July 14th, making his resignation effective immediately upon an appointment instead

Exhibit A - Public Comment

and the District 2 residents had no idea you were not going to allow them to choose their representative- again- in a free and fair election.

You must not hold these interviews as if you were continuing to appoint his replacement. You must start over at the September 13th regular council meeting.

Mayor Pingree has not sold his house and moved yet and it could be months before he needs to actually resign. SO WHY THE RUSH??

I'LL TELL YOU WHY. Because Mr. Pingree needed to stop his recall. It is patently obvious that his resignation was to thwart his recall and allow the City Council and City Manager to pick and choose whom they wanted to replace him.

This City, by their actions taken on July 12th, and tonight, have lost the trust of the people of Banning. The Council needs to move to restore the TRUST AND FAITH of the CITIZENS in their government by being transparent in all your decisions, by putting your constituents first.

I ask that you not rush to make a decision tonight but take the time to review the large amount of information that you have been given in a very short time.

I encourage you to pursue looking into the possibility of combining the special election required for the RECALL of MARY HAMLIN with an election to fill Pingree's seat.

You do not have enough information to make a decision tonight and you owe it to the citizens of Banning to try to find a way to let an election go forward and not an appointment.

Thank You For Your Time,

Sheri Flynn
Citizen of Banning

Exhibit B - Public Comment



August 2, 2022

Complaint against neighbor to the Banning Police Department:

At approximately 2:00 pm on Monday August 1, 2022, I was in front of my house, at 5972 Indian Canyon Dr, Banning, 92220, cleaning out my gutter and taking out trash cans. While standing on the sidewalk next to the trash can, the wheels of the trash can were on the edge of the rounded sidewalk, I heard a vehicle that was about one hundred feet away accelerate up the street towards my house. The vehicle continued accelerating and moved close to my trash can. In my estimation this vehicle was traveling at about twice the posted 20 MPH speed limit. The vehicle passed my trash can with less than one foot of clearance and I was on the other side touching the trash can. The vehicle, a red SUV with handicap plates, continued up the street at a high rate of speed.

When I caught my breath, I realized that this person may have been intentionally trying to intimidate me and I felt threatened and continue to have a concern of the safety of my person, family, and household.

The driver of the vehicle is known to me. The driver was Banning City Council Member Mary Hamlin. I believe Ms. Hamlin acted intentionally in an attempt to intimidate me. I am currently the President of a group of citizens in litigation with the city in which Ms. Hamlin's action have been questioned. Additionally, it is known to her that I also signed an Intent to Recall form for Ms. Hamlin as well as signing the actual Recall Petition.

Approximately two weeks prior, this same vehicle came by my house, and I had my back turned to the street. I heard an engine rev as it drove by, I looked up and saw the same red SUV heading down the street. I was not able to identify the driver at this time but recognized the SUV as the one Ms. Hamlin normally drives. I laughed this behavior off at time as a childish attempt to intimidate me and my family.

With this latest incident I now feel threatened and concerned for my well-being. I will be forwarding this letter and the following police report to our attorneys to be placed in the record.

Mary Hamlin lives at 1794 Masters Dr, Banning, CA 92220

I hereby acknowledge that what I have written in this complaint is true and correct to the best of my knowledge.

Randel L. Robbins
5972 Indian Canyon Dr
Banning, CA 92220
909-499-3570