

**AGENDA  
REGULAR MEETING  
CITY OF BANNING  
BANNING, CALIFORNIA**

October 28, 2008  
6:30 p.m.

Banning Civic Center  
Council Chambers  
99 E. Ramsey St.

*Per City Council Resolution No. 1997-33 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.*

**I. CALL TO ORDER**

- Pledge of Allegiance
- Invocation
- Roll Call – Council Members Botts, Franklin, Hanna, Machisic, Mayor Salas

**II. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS  
ANNOUNCEMENTS/APPOINTMENTS**

Report by City Attorney

Report by City Manager

PUBLIC COMMENTS – *On Items Not on the Agenda*

*A three-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. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to "share" his/her three minutes with any other member of the public. (Usually, any items received under this heading are referred to staff or future study, research, completion and/or future Council Action.) (See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.*

**PRESENTATIONS**

1. Bill Dickson – Presentations and Request for Assistance (ORAL)

*Our Mission as a City is to provide a safe, pleasant and prosperous  
community in which to live, work and play. We will achieve  
this in a cost effective, citizen friendly and open manner.*

## APPOINTEMENTS

1. Appointment of an Ad Hoc Committee to Review and Recommend  
FY 2009/10 Community Development Block Grant Applications . . . . . 1

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

## ANNOUNCEMENTS/COUNCIL REPORTS:

*(Upcoming Events/Other Items and Report if any) (ORAL)*

### **III. A. CONSENT ITEMS**

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

**Motion: That the City Council approve Consent Items 1 through 5  
Items to be pulled \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ for discussion.**

*(Resolutions require a recorded majority vote of the total membership of the City Council)*

1. Approval of Minutes – Regular Meeting – 10-14-08 . . . . . 2
2. Ordinance No. 1399 – 2<sup>nd</sup> Reading: An Ordinance of the City Council  
of the City of Banning, California, Adopting the “Fire Hazard Severity  
Zone Map” for the City of Banning as Prepared by the Fire Department. . . 20
3. Resolution No. 2008-113, Approving a Parking Easement Agreement  
Between Super Subs Owners, Mr. and Mrs. Benhar, and the City of  
Banning for Public Parking Use . . . . . 23
4. Resolution No. 2008-117, Accepting and Authorizing an Amendment  
to the Riverside County Transportation Commission Transportation  
Expenditure Plan and Retail Transaction and Use Tax Ordinance  
(Ordinance No. 88-1 – Measure “A”). . . . . 38
5. Notice of Completion for Project No. 2008-02, A. C. Overlay, Pavement  
Rehabilitation and Sidewalk Improvements on Various Streets . . . . . 45

- **Open for Public Comments**
- **Make Motion**

### **IV. ORDINANCES - INTRODUCTION**

1. Ordinance No. 1400 - Regulations for Smoking in Public Parks  
Staff Report . . . . . 51  
Recommendation: That the City Council adopt Ordinance No. 1400.

***Mayor asks the City Clerk to read the title of Ordinance No. 1400***

*“An Ordinance of the City Council of the City of Banning, California,  
Amending Section 8.56.030 of the Banning Municipal Code to Regulate  
Smoking in Public Parks in the City of Banning.”*

**Motion: I move to waive further reading of Ordinance No. 1400.**

(Requires a majority vote of Council)

**Motion: I move that Ordinance No. 1400 pass its first reading.**

(A minimum of three votes required)

**V. REPORTS OF OFFICERS**

1. George Hansen, Community Development Director
  - A. Status Report on the One Stop Shop (*ORAL REPORT*)

**VI. ITEMS FOR FUTURE AGENDAS**

New Items –

Pending Items –

1. Schedule Meeting with the Beaumont City Council (*Salas – 11/27/07*) (*City Mgr.*)
2. Schedule Special Jt. Meetings with the City’s Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation)  
(*Franklin – 11/27/07*)
3. Review of Development Fees (*Hanna – 12/11/07*) (*Johnson*) (*ETA 12/10/08*)
4. Review of Ordinance regarding the selling of cars in shopping center parking lots (*Salas – 9/9/08*) (*Hansen*) (*ETA 11/14/08*)
5. Ordinance regarding smoke free parks (*Hanna – 8/12/08*) (*Nakamura*) (*ETA 10/28/08*)
6. Report on “One Stop Shop” (*Franklin – 8/12/08*) (*Hansen/Nakamura*) (*ETA 10/28/08*)
7. Bring back Riverside County Policy regarding animal rescue groups (*Salas*)  
(*Nakamura*) (*ETA 1/09*)
8. Report on “Request Partner” (*Hanna – 8/12/08*) (*Johnson/Nakamura*) (*ETA 11/14/08*)
9. Development of Bridge & Thoroughfare District to fund grade separation at Hargrave (*Hanna – 8/12/08*) (*Burk/Nakamura*) (*ETA 1/09*)
10. Consideration of City Town Hall Meeting to hear what departments the City has and what kind of services the City offers. (*Franklin – 9/9/08*) (*Nakamura*) (*ETA 1/09*)
11. Update on Naming of Streets for Community Members (*Franklin – 9/23/08*)  
(*Hansen/Nakamura*) (*ETA 1/09*)
12. Discussion regarding contingency fee percentages (*Franklin – 9/23/08*) (*Johnson/Burk*)  
(*ETA 11/14/08*)
13. Policy on Summer/Winter Breaks for Council Meetings (*Franklin – 9/23/08*) (*Nakamura*)  
(*ETA 11/14/08*)

## FUTURE MEETINGS

1. November 14<sup>th</sup> (Fri.) – Special Council Meeting at 1:00 p.m.  
*(this is to replace the Nov. 11<sup>th</sup> and Nov. 25<sup>th</sup> Council Meetings)*
2. December 4<sup>th</sup> (Thurs.) – State of the City at Casino Morongo Spa & Resort at Noon (Conference Center)
3. December 5<sup>th</sup> (Fri.) – 6:00 p.m. Special Jt. Council/CRA Meeting  
*(Swearing In of Council Members and Reorganization of Council and CRA)*
4. December 10<sup>th</sup> (Wed.) – 6:30 p.m. – Special Council Meeting) (Special CRA Meeting at 5:30 (if needed) *(this would take the place of the meeting to be held on Tuesday, Dec. 9<sup>th</sup>)*

## **VII. CLOSED SESSION**

1. The City Council will meet in Closed Session pursuant to the provisions of Government Code Section 54956.9 to confer with legal counsel with regard to one matter of pending litigation – Schoen v. City of Banning.
  - A. Opportunity for Public to address closed session items.
  - B. Convene to Closed Session

## **VIII. ADJOURNMENT**

*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.*

**NOTICE:** 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 and Council. 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 three-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to “share” his/her three 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.

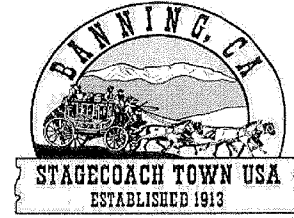
**In compliance with the Americans with Disabilities Act**, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (909) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II].


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# CITY OF BANNING

## M E M O R A N D U M

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**DATE:** October 21, 2008  
**TO:** Honorable Mayor and City Council  
**CC:** Marie Calderon, City Clerk  
**FROM:** Kahono Oei, City Engineer   
**RE:** **AD-HOC Committee Request to Review and Recommend 2009/10 Community Development Block (CDBG) Applications**

The Engineering Division requests the City Council to appoint a committee at the October 28, 2008 meeting, consisting of a least two members from the City Council, to review and recommend FY 2009/10 Community Development Block Grant (CDBG) Applications. Below is a schedule of important dates that are necessary in order to ensure that the City meets Riverside County Economic Development Agency's application deadline.

**October 28, 2008** – Council to appoint a committee.

**November 7, 2008** – Community Development Block Applications due to the City.

**November 14, 2008 – November 26, 2008** – Committee to meet within the provided dates.

**December 10, 2008** – Resolution to be taken to Council requesting approval of applications and authorizing staff to submit said applications.

**December 12, 2008** – City approved applications, minutes and resolution due to the EDA.

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

10/14/08  
REGULAR MEETING

A regular meeting of the Banning City Council and a Joint Meeting of the Banning City Council and Banning Utility Authority was called to order by Mayor Salas on October 14, 2008 at 6:45 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Franklin  
Councilmember Hanna  
Councilmember Machisic  
Mayor Salas

COUNCIL MEMBERS ABSENT: Councilmember Botts (*excused*)

OTHERS PRESENT: Brian Nakamura, City Manager  
David Aleshire, City Attorney  
Bonnie Johnson, Finance Director  
Duane Burk, Public Works Director  
Jim Earhart, Public Utility Director  
Hoyl Belt, Human Resources Director  
Leonard Purvis, Police Chief  
George Hansen, Community Development Dir.  
Jeff Stowells, Battalion Chief  
Ted Yarbrough, Fire Marshal/Emergency Services Coordinator  
Heidi Meraz, Recreation Director  
George Thacker, Asst. Public Works Dir., Water/Wastewater  
Marie A. Calderon, City Clerk

Mayor Salas invited the audience to join her in the Pledge of Allegiance to the Flag. The invocation was given by Pastor Preston Norman, Praise Tabernacle Church.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS  
ANNOUNCEMENTS/APPOINTMENTS

Report by City Attorney

City Attorney Aleshire said the closed session item involved the Community Redevelopment Agency.

Report by City Manager

City Manager introduced the new Human Resources Director Hoyl Belt who joined the team this past Monday. He came through a long arduous process from Yuma, Arizona and previously with

Imperial County. He has many years of experience and will bring a tremendous amount of experience to the City of Banning and will be a tremendous asset to our team.

Mr. Belt said he is very glad to be here and work with and for you and he is looking forward to his time here and it is a beautiful community and very, very happy to be here for this opportunity.

1. Awarding a Contract to Aleshire & Wynder, LLP to Provide City Attorney Services to the City of Banning.

City Manager gave the staff report as contained in the agenda packet.

**Motion Machisic/Franklin that the City Council award a contract to Aleshire & Wynder, LLP to provide City Attorney Services to the City of Banning. Motion carried with Councilmember Botts absent.**

### PRESENTATIONS

1. Update on State Legislation – Assemblyman Paul Cook

Assemblyman Paul Cook addressed the Council stating that he wanted to share what has happened in the last few months and what happened with the budget because obviously it is going to have an impact on you. It was a process that was long and arduous and it is not over yet. The Governor was fighting with them in the Assembly and the Senate and now he is fighting with the Treasurer and the Controller. Their challenges were great this year and they finally got a budget passed and he was one of the ones that was extremely vocal about the amount of time they wasted. Just the dysfunctional nature of the process in Sacramento and they have so many people who are dependent on you that it takes forever to get this process done or accomplished. If they did not pass it that week he thinks that there was bipartisan support to have what actually Congress calls a “continuing resolution” for an “emergency resolution” where you pass the budget based on last year’s spending, a percentage, where you pay the bills and all those people that are dependent upon those checks from California get it and to leave people hanging like that there were a number that thought it was unconscious able that we went that way in the process. Many of them held their noses that voted for it and they didn’t like it. There were a couple of aspects of the budget which he quite frankly voted against and one was the cuts. Those were the cuts that affected public safety particularly law enforcement; a methamphetamine program was cut not all the way but in our area of Riverside County and here and the 65<sup>th</sup> District it’s a big time problem and he doesn’t think Sacramento understands some of the issues and battles that we deal with. The other one he voted against was in law enforcement that was the criminally mentally ill people that commit crimes and have an underlying psychosis or neurosis which contributes to their criminal behavior and we don’t address the symptoms. He also voted against the redevelopment cuts. The Governor and many others said we are not going to take your money; but protect you. He said you have to remember that he is from local government and he remembers hearing those words before. Don’t trust Sacramento. Any money that is available that they can get their hands on, they will get it. Next year they will go through the same battle again and you got hit with your redevelopment. But because we cannot figure out our budget and our structure in Sacramento we are going to punish you. They are looking at legislation and maybe it can be put back because he

thinks it was unfair on how they did that. He complimented the Council on the redevelopment that is going on and he thinks it is great.

Mayor Salas asked what the cities can do to be proactive in preventing the monies being taken continually.

Assemblyman Cook said you know the old saying about the cards and letters and being vocal and with the League of California Cities you need to be an active participant in that. People that have been around for awhile know what happens and if you understand the history of Sacramento's behavior towards local government right off the bat you need to have an agenda. He said if he is successful he will be looking for bipartisan support to run legislation where we might get that back in the budget. He said he is a Political Science major and he used to study this and he actually thought he understood being from local government what went on in Sacramento and he did not realize that the process is broken and until we fix that process and have reform and at least agree to disagree we are going to continue to do this drill over and over again. After the budget wars he is one of the ones that thinks you should be starting on next year's budget because the political decisions should be made now at least with the general concepts or policies so that we don't wait until the last minute. He said he will be asking for support if he goes back there on how we can perhaps run legislation to go around the process because contrary to what they say out there, there is money. But the Governor and many of us had disagreements in terms of the original budget that came out and he wanted a 10% cut across the board and he said this to other cities and he will say you have to make priorities because you only have so much money. You always wish you had more and pray for more but you have got to prioritize what is important for the City of Banning just as the Governor and the legislature has to prioritize what is important for the people of the State of California and we did not do that last year and it was 10% cut across the board and if we do that same thing again he is going to be hopefully, not cynical. We get far too politicized and we have to always bring it back to local government he thinks and it is all about the people and not about you.

2. Presentation from Inland Empire Resource Conservation District –Jennifer Ares, District Manager

She said that she agrees this is a beautiful city and she grew up in Yucaipa and lived in Calimesa and often we drive by Banning on our way to the outlets or Palm Springs but she had quite a rushed day today and she pulled off 8<sup>th</sup> Street and it was a nice feeling and even relaxing. She said that she is the District Manager for the Inland Empire Resource Conservation District (RCD) and they have been in existence since 1941 and they are a special district like a water district and the first RCD was the San Geronio RCD and since then they have grown and merged. She gave a power-point presentation going over the district boundaries and a majority of their District is San Bernardino County and they have a small portion of Riverside County. They have 850,000 acres in their District and what they try and do is to conserve the natural resources. Basically the RCD's were formed to act as independent local liaisons between the federal government and private land owners. They are non-regulatory and work with land owners and cities to act as a middleman to carry out those different projects. She continued with the power-point going over their different programs and what they do and their education outreach to the schools. She said they have a Speak-Off and Envirothon that is geared towards the high school students and she is proud to say



that Banning High School has participated in the Envirothon for 15 years now. She gives credit to Larry Ellis, teacher at Banning High School and they do sponsor the two teams and pay for the students to go to the event. She said basically she is here to offer their services and they have a diversified staff and they have biologist that can assist and can offer technical assistance in regards to open space issues and can do city staff awareness session if there is a topic staff would like to learn more about.

### 3. Presentation of Certificates by Ted Yarbrough – Fire Marshal/City Council

Fire Marshal said that he wanted to take this opportunity to introduce these people who have been dedicated auxiliary members of Fire Station 89's Volunteer Program and they are actually dedicated to fire safety and fire prevention. They have been a big help to him and he wanted to take a special opportunity to say thank you. At this time he passed out the certificates to Jenny Vasquez, Diana Vasquez, Dennis Sargent, Doug Hammer (absent), and Monty Hammer.

At this time Mayor Salas and the City Council presented a Proclamation to Ted Yarbrough on his pending retirement. He has been a long standing employee with the City of Banning and has done a fabulous job. She read for the benefit of the audience the proclamation.

Ted Yarbrough said he has thoroughly enjoyed the time he has been here in Banning either as a City employee or as an employee of CDF doing business as Cal Fire. He has appreciated his time here in Banning and the community support and really does like this community and he has tried to dedicate as much of himself to the community as he possible could. He thanked the Council for the proclamation.

### PUBLIC COMMENTS – *On Items Not on the Agenda*

Mayor Salas said that there is a three-minute time limitation and she understand that you may need a little extra time but in the manner of trying not to be here until midnight we will try to stick to the three minutes as much as possible.

Edward Miller, 5088 Breckenridge Avenue addressed the Council said that every single person he has spoken to is against this project and as far as he knows every single person that everyone else in their group has spoken to is against this project. We all know that the Liberty Energy has merely been placed on hold and that it will appear at the appropriate opportune moment. Mr. Bracken did not spend two years courting the City Council, the Chamber of Commerce, the Master Board of Sun Lakes and every other influential group to simply disappear. Most members of the City Council have claimed an air of impartiality on this project claiming it is their need to do so as members of the Council. However, your actions have clearly indicated a strong commitment to this project despite your words. For two years you have spoken with Mr. Bracken, you have received correspondence from Liberty Energy, had Council meetings where Mr. Bracken has spoke at will as to the benefits of this project. Their small groups of concerned citizens who have read the environmental impact report and raised concerns about the possible disastrous effects of this project in Banning have been limited to three minutes at the City Council meetings. We have held two public meetings in which we have analyzed the environmental impact report. Only one Councilmember bothered to attend those meetings. The other members apparently not

interested in hearing the discussion on the data on the environmental impact report that controvert the statements of Liberty Energy. A Councilmember recently attended a meeting of an industrial representative concerning a plan for horse manure burning power plant. Again, there was interest in hearing the industrial viewpoint but there is no interest apparently in hearing the opposition's viewpoints. The attitude of the City Council has not passed unnoticed. He has heard comments repeatedly from various people he has spoken to is that the City Council has already decided to approve this plant. He hopes not but he is puzzled why the Council is so committed by their actions to the Liberty Energy project and so averse to hearing the objections to this project. He has concluded then the result of this psychological fact that first impressions are very difficult, if not impossible, to reverse. The Council has listened to Liberty Energy for two years and we have not had the opportunity to have the same amount of time to present what is horribly wrong with this project. Again, the fact that he is limited to three minutes proves his point.

Sherman Gallas, 1302 Riviera Avenue addressed the Council stating that Mayor Salas recently coordinated a prayer vigil event in an effort to heal the division within our city resulting from the Liberty Energy proposal. He believes this to be a commendable effort however; he believes this healing must start with renewed respect and civility between City Councilmembers. He is very concerned about the last City Council meeting discussion of whether City Councilmembers may publicly state their position on Liberty Energy project prior to the final vote. Previously the City Attorney recommended that City Council members should not state their position because of possible implications that were not defined. At the last Council meeting another City Attorney repeated that Councilmembers should not voice their position however, stated that they had their Constitutional Right of free speech to state their position. The later is the correct one. It is the norm rather than the exception that legislators at all levels of government including the City state their positions on issues long before the final vote whether they are running for re-election or not. The citizens of this democratic country want to know where their legislators stand on important issues. One Councilmember had the courage to state her position against the Liberty Energy project based on her review of the facts at that time. Members of the audience were appalled in the manner of another Councilmember rudely and abusively accosted the member because of her public stand on the issue. He would like to refer the City Council to City Resolution No. 2004-43 dealing with civility and code of conduct by the City Council. He read from a section of this resolution and said it was definitely violated. Further the City Attorney was asked if a City Councilmember needed to recluse herself in the final vote because she stated an earlier position. The City Attorney gave the correct answer in that she did not need to recluse herself. If our legislators have to recluse themselves from stating their position on an issue prior to the final vote, there would not be anyone present to vote on the issue. In conclusion, he would urge the City Council to be respectful and civil when a Councilmember states an opinion or position on an issue. He urged the Council to be truly objective on issues. Do not be swayed by vendor sales promises. Carefully listen to the facts presented by unbiased experts. Do not be afraid to speak out and take a position on the issue. That is a true democratic process.

Pastor Preston Norman Jr., pastor of Praise Tabernacle Community Church, 1525 W. Nicolet Street and stated that we will soon have a new City Mayor and he would like to recommend Mayor Pro Tem Franklin for the position. She has served and continues to serve our community well in many organizations such as the Pass Area Supporting Our Soldiers, the Banning Ministerial Alliance, San Gorgonio Child Care Center and a volunteer for the Senior Center just to

name a few. She represents the City well in County organizations such as RTA and the Community Action Partnership of Riverside County. In her role as a City Council Member she often is seen in community meetings giving updates to residents and business owners about the status of our City, as well as, listening and answering resident's concerns. Mayor Pro Tem Franklin has shown a constant concern about our City budget, always asking questions about how our dollars are spent. She represents us well as the Chairperson of the Planning Commission and she will do as well if not better job as our next City Mayor. I hope you as City Councilmembers will support our community and make her our next Mayor.

Bernard Hallot, 843 Wesley Street addressed the Council stating he wanted to voice his opinion against this Liberty plant coming into town. He sees no benefits for the city. He sees nothing but negative aspects of it both from the aerial pollution, ground pollution and traffic pollution. Our intersection at Lincoln and Hargrave is bad enough with the train traffic there and then to put in all these trucks that they want to bring in is totally ridiculous.

Krista Baird, 1036 Charles Street addressed the Council and said that she heard from three different people that Debbie Franklin was down in Norco saying what a wonderful project the Liberty Energy Project was and wanted to ask if that was true or not.

Mayor Pro Tem Franklin said she went to Norco to find out about their project and she was trying to find out more information because as a responsible citizen she felt it was her duty to find out as much information as possible. She gave no comment about the project and gave no comment to anyone other than she was asked about it and she said that she needed to learn a lot more about it. She did not go and make any comment about Liberty Energy whatsoever.

Fred Sakurai, 4300 Dillon Road addressed the Council stating that he does not wear a red patch. He said that this weekend he and his wife took a trip on their own time and own expense and went to see a new facility. They were installing and finishing up the chain link fencing and doing the landscaping and they are going to have a ground breaking on November 1st and they are inviting all people in the area to come and see the new facility. It is called the "Canine Country Club" and it is a pet park. All animals and their handlers and pets are invited to attend.

Deborah Williams, 1492 Paradise Island Lane addressed the Council and said she is trying to represent a lot of the citizens in Sun Lakes. She said she has some preexisting health conditions such as bad lungs and a bad heart. She moved to Sun Lakes or to Banning because of the nice area and because she wanted to somewhat retire. She is kind of very leery of this Liberty sludge plant that is coming in. There are too many negative aspects that she really feels will not be good for the people that live here. There is going to be a loss of revenue to the City. She is afraid that even though they say they are gone right now because they don't have enough money to do their project right now that they will be back and there is too many other areas not only in California but over toward Nevada where there is not that many people around. We have too many things here and the possibility of earthquakes, trains going through, people going back and forth on the freeways and there could be an accident and the ammonia could kill someone. There are too many things that could go wrong with this. Please do not bring the sludge plant into this area.

Juanita Diaz, 1310 S. Hargrave addressed the Council stating that was a mile and a half from this plant that wants to be built. She does feel that Liberty Energy will be back and the Hispanic community, a majority of them, no nothing about this nor do the Laos or Hmong. The reason she knows this is that she has lived here for 30 years and she knows enough people in this city to know what goes on in my community. Maybe she doesn't know what all goes on here in the Council but in the years past there has been a lot of controversy with other things like stores that we wanted to be built here and things that we haven't gotten and a lot of us haven't spoken up but this time we are speaking up. She has children that go to school here and daughters that have graduated here and she will be a big part of this with her Hispanic community to make sure that this doesn't happen. She bought a home here ten years ago and she thinks that she is the first person in her family that has purchased a home and she is raising her children here because she loves Banning even with all the negativity that has gone on and she knows enough of it because she lives here on the south east side that she knows that our city doesn't need this. She has attended enough meetings to know what has been said by Liberty and by Mr. Bracken. When he was asked how many people were notified she knows about the newspaper and things like that but a lot of people were not notified and it is not right and that is racism to her. When he says that Sun Lakers were notified but she knows and she walked in her community and knocked on doors. The last two homes where this place wants to be built she went there herself and knocked on these doors and these gentlemen knew nothing about what was going on and that is sad. That is very sad and we live here and we want to know what goes on in our community. There is a park where her children play at and for this to happen it is not going to happen.

Galina Dwyer, 864 Wesley addressed the Council stating that she would be talking on division and unity. First she would like to clarify misleading information; Liberty is not gone. According to Mr. Bracken himself he hopes to be back next year and if you can imagine it is only two months away. Second, the residents of Banning are not divided by the Liberty Energy Project; they are united against it. Actually the only division noticed is from within the City Council itself and it is only the City Council that has caused community so much distress. Going from door to door and talking to many residents of the Liberty Energy Project she has not met one person who supports it. Everyone was angry with the City Council only and everyone asks the same question, "How could they even consider this dirty industry for Banning." They received many thanks from the residents for their efforts to oppose the toxic sludge plant and they are asked how they can help. She told them of the division. At this point she sees two simple solutions to solve the problem and that is for the City Council to reject the Liberty Energy proposal of the passing of an ordinance that will forbid burning of toxic sludge in our city. The Council created this mess and it needs to clean it now. The details of this disastrous project are available and negative consequences of building such a plant are clearly the very reason we are united. She addressed the Mayor and City Council stating that you are our public servants and you have a last chance to act on the community message which states very clearly "no toxic sludge plant in Banning." Third, she makes a direct public request to those who remove "no toxic sludge signs" from the streets of Banning as far as she knows it is still illegal to remove political signs during election campaign and whoever is doing it is breaking the law. Please put them back and if anyone knows these people, please let them know otherwise they will be filing formal complaint with Banning Police Department and informing the residents. If this practice continues, just be aware that you are breaking the law and people are watching you and you are under surveillance. Fourth, our local resident Chuck Katz drew a great cartoon on the subject "no toxic sludge plant in Banning" and it



is going to be published in the Record Gazette and be less in size but not less powerful. Chuck Katz is going to present this cartoon to all City Council members with autograph and personal no thank you note.

Erin Worth, 243 W. Wilson Street, addressed the Council stating that she just found out about this and she is alarmed. She is a mother, a citizen and she can't image how five people can pass something that should go on a ballot. We should be able to vote about this. It should not be just your decision. You should let the community vote. She feels that with all her heart and her children are scared. We don't want this. Let the people have a voice.

June Brannon, resident of Sun Lakes addressed the Council stating that she has been very upset since she has heard this and she just heard about it in the last few months and she has heard that it has been going on since 2006. You must have had a small little article in the paper because nobody saw it. She is very concerned about it and this stack that they are going to have where all the smoke is going to go and the particles are going to fall down all over and when it rains what is going to happen to the ground. They are going to wash these trucks in an indoor place and the water has got to go somewhere and we are going to have problems with it running down into our water supply or into our homes. She thought we were concerned about our water amount also. And the stink that we are going to have from this is going to smell. She doesn't understand these members even considering it at all. These are your people here and we don't need this kind of thing. We came here because we wanted a pleasant home and live in a nice place. Our property values will be ruined because of it because we will have to tell people what it is. She was in La Quinta last week and this man came up to her and asked if she was from Banning and he said that he heard they are trying to put a plant there and he said you don't want it; don't allow it. As far as the electricity is concerned, there are other ways to get the electricity; we don't need this. She feels this is greed and money offered and is that more important than our lives. She thinks it is pretty bad and if Banning puts this through she will never do another thing for Banning nor have anything to do with them and she will say plenty. She is hoping that the Council has sense enough to not let this happen.

Lyndon Taylor, 1702 Fairway Oaks addressed the Council stating that he would like to briefly summarize some of the problems that this plant will bring us. We've talked about the health hazards everything from cancer to birth defects. We've talked about water consumption and this is no small matter. Liberty themselves say that they are going to consume our potable water at a rate of forty gallons a minutes. If you do the math on that, that is 21 million gallons a year and that is more water than 3,000 homes use. There is a significant earthquake threat in the Banning area due to the immediate proximity of the San Andreas Fault. What if we have a major earthquake and it is not a matter of if; it is a matter of when. If this plant goes down, you can bet that the air and ground will be polluted. The plant will consume 3.4 millions pounds of anhydrous ammonia and hydrous ammonia is a very toxic substance. It will cause death instantly. It will cause severe permanent lung damage to those that are lucky enough to live. Hazmat in this area does not have the local resources to deal with this kind of problem. Liberty's own consultant has said that a 6% to 10% drop in home values the first year continuing for 5 years. Think of what this means in Banning; \$300 million dollars lost to this city in home values. Think what it does to taxes and think what it does to the County of Riverside. Traffic congestion with 132 trucks. The presence of these heavy trucks in Banning will cost money for reconstruction of roadways to carry

vehicles bearing that kind of weight. Odors are going to be produced and there is no way to stop them. Flies will be here and all over our city. Finally, the damage that you will do to the reputation of this city will never be capable of being repaired. If you decide to do this, you have spelled the end to the city of Banning because businesses will move out and our city will not be what it is today.

Dorothy Mc Lean, 916 Linda Vista addressed the Council stating that she does have faith in the City Council. She does not believe that you would vote for a plant that would be harmful to the city in any way, hurt any person, hurt the air and make our town not what it should be. She cannot image that. She also can't believe that because a City Councilmember has not taken a stand on this that he or she is voting for it. She does believe that you will weigh the decisions and weigh what you have heard and weigh what you have learned. She can't image that when you have to take a vote and you have this place filled with people that are so against it that you are going to vote for it. Again, she has faith in the City Council. Someone said that if she or he had to vote for this project right now, that they would vote no. I truly believe that you have not heard everything. She still doesn't think that it is going to pass but does believe that you have not heard everything and you have the right to not make a statement in relation to Liberty Energy. She is coming before the Council and she knows that you have a deadline for an energy alternative and she hopes that in the wake of everything that is going on that you have been looking into other energy alternatives because we are running out of time. She thinks that the Council will listen to the community and will vote in the best interest of the community and she is here to let the Council know that she has faith in all of them.

Jerry Bailey, 1424 Wyte Way addressed the Council stating that he has talked to the Council about his before and he is coming back to speak about it again. This is the issue of the children who have to use the Ramsey and San Gorgonio intersection before and after school. He went down this afternoon after school and the problem still remains. There are no crossing guards and the signs are unbelievably confusing and the students hearing north are confronted with a detour sign that was upside down and referred them to the left side of the street going north. As soon as they are on the left sign of the street halfway passed Lithopass they are confronted with a no pedestrians beyond this point. Now they have to go all the way back and cross over and go down to the intersection on the right hand side. When they cross Ramsey they are now on the right hand side headed north and there is no sidewalk whatsoever. Mr. Bailey said as it spells out in terms of numbers it goes like this: northbound cars 196, southbound cars 118, northbound children 135 and that is northbound heading north on the left hand side. In regards to the significance of this is that there is a big green shroud around a building that seems to have stalled and may never be finished. He looked behind the big green shroud and there is nothing behind there; just street and curb and the shroud is serving no purpose. He went over the rest of the traffic in that area and that comes to quite an interesting number. We have been going to school for about 35 days and northbound cars comes to 6,860 events, southbound cars comes to 4,130, students moving on that street comes to 3,500 and the dice is rolled against the students. He witnessed students walking three abreast and it was very confusing all around and made no sense whatsoever. It is a significant concern and so how come so many parents, city officials, police, schools, transit authorities; how did we all miss this? The bottom line is very simple. He went on line and there is a worldwide walk to school safety and he found numerous websites which accommodate pedestrians during construction. There are pictures of the wrong way to do it which resembles

what we are doing at that intersection and there are also pictures of the right way to do it. He gave all this information to the City Attorney because he wants him to touch it and knows he has it and he can help the Council understand it and pass it on to the inspectors and the City people. If there is a paralyzed student or a death, you get to have a laminated picture for our refrigerator, for your bathroom mirror and for the dashboard of your car and he is real serious. He has been teaching 27 years and he has seen death in his students and every one of them was preventable. This is preventable. You need to stop it and go down there and clean up this intersection tomorrow morning. Let's get this fixed.

Councilmember Machisic said that his gentleman has been here twice and asked if we could certainly do something in that construction area because as he mentioned students are not prone to cross the street to get to the sidewalk and if they walk up San Gorgonio they come to a construction area and he is sure that some of them will walk in the construction area that has no curbing, etc. Also this gentleman spoke to him Sunday and he appreciates his interest in this particular matter. If we could do something to add to the safety of these students, he thinks it would be appropriate.

Meeting recessed at 7:50 p.m. and reconvened at 8:00 p.m.

#### ANNOUNCEMENTS/COUNCIL REPORTS:

Mayor Pro Tem Franklin –

- She attended the Passcom meeting this morning and the speaker was from the Riverside County of Aging and it was very interesting especially for our senior citizens. They gave a nice presentation about all the benefits that are available to the community for anybody that is concerned a senior especially in regards to transportation, assistance with health insurance, etc. and you can call 1-800-510-2020 or go to [www.rcaaging.org](http://www.rcaaging.org). This is not only for people who may be income limited but also services for those that are seniors. Beaumont will be having CERT (Community Emergency Response Training) a week from Thursday for anyone that is interested and you can contact the City of Beaumont.

Councilmember Machisic –

- Attended an RCA meeting that they have now accumulated 43,000 acres towards the goal of 150,000 in just four years. It is certainly farsighted to have all that open area at some point in time combined with the government land that is open now and that is so vital in an area that grows quickly because one of the things that they overlook is open space and Western Riverside County will have the advantage of this open space.
- WRCOG – Menifee is the 19<sup>th</sup> member of this organization. This is a new city. Also the Registrar of Voters gave a report to the Executive Committee and there were some interesting things mentioned and there are 782,000 registered voters in Riverside County and they are doing some interesting things on early voting. They have Vote by Mail (absentee ballots) which came out last week; early voting sites at three regional malls (The Galleria at Tyler, the Promenade in Temecula and Westfield Shopping Center in Palm Desert); also R.O.V.E.R (vote mobile) will travel to different location every day between Oct. 7<sup>th</sup> and Nov. 1<sup>st</sup> registering voters and offering early voting. Also the polls close at 8 p.m. on Nov. 4<sup>th</sup> and he said he was interested in how fast they count the ballots and it was clearly stated that by 8 p.m.

the only ballots they have counted are the ones that do the early balloting and the absentee ballots and starting at 8 p.m. as soon as the votes come into the central location they count 2500 votes an hour and they indicated that it is going to take 36 hours to complete the vote for all the ballots.

- He attended the League of California Cities Conference in Long Beach and it is always interesting in that you go to these meetings and you think that you can't learn anything here until you get to the first session and you find out that we are not the only ones that have certain problems and the problems that other communities have. There are hundreds of them and you learn by visiting with people and asking them how they solved their problems. We think we are the only ones that have money problems and that is not true because almost every city in California has money problems. He also went to several sessions where they talked about successful campaigns and he also heard one that was a failure as a campaign for a tax election. You can learn a lot of things by just listening and talking with people from all over the State. It was a great experience.

Councilmember Hanna –

- Said in regards to the Registrar of Voters the biggest change is that we have gone from electronic back to paper and that is why it is taking so much longer but people can still register to vote until October 20<sup>th</sup>.
- There will be a Habitat for Humanity Groundbreaking this Thursday at Noon at their site located 1563 E. Nicolet for two homes.
- She attended the meeting of the South Coast Air Quality Management Advisory Board for Government and Small Businesses and one of the new rules that they are considering is a rule that would prohibit the transportation of green waste from one site to another. They are concerned about thistle and other kinds of things being spread and the burning of these in different sites so they are starting to control that and it might have an impact on our community at some point in the future.

Mayor Pro Tem Franklin said that she believes that people who are doing absentee balloting can turn in their absentee ballots here at City Hall now. City Clerk said that was correct. She also wanted to echo what Councilmember Machisic said about the League of California Cities. It was very interesting and they did hear the Governor speak but just going to the sessions teaches you a lot about what is going on in other areas.

Mayor Salas said she had a few comments in regards to Liberty Energy and for the viewers at home she would like to them to know that in the last eight years on the City Council she has not seen this Council ever take any action to move and approve an item that the community didn't want. If the community does not want any matter, this Council has always listened and she has a firm belief that they will continue to do that. At the same time it is important that we as a community, as a city, as a government and as a governing board any business that comes into our city that we give it due process whether or not we agree with it and that we allow that positive flow of information to come in. That doesn't mean that we can all agree that we don't want something whether it be the community along with the City Council but at the same time for many years this community has had that image that certain builders or restaurants or others didn't want to do business here and sometimes they go to other neighboring cities. We are finally getting over that image; we are finally getting over the stigma. We have worked really hard and we have a



great staff and have a good City Council that listens but sometimes we are criticized for that and she would just like to say just know that we are working together to do what is best for Banning and will continue to do that and it is key that we give our businesses due process whether or not we want them here. We have to listen and read objectively what is coming forward. But she had no doubt that we agree on one issue and what we want and don't want in the community and we have read plenty of information. A few of us on the dais have taken stances but she can respect her colleagues who may or may not want to take a stance and that is fine because she knows in her heart and her gut and she knows that there are residents out there that know that this Council at the end of the day will make the best decision for the community. This is your neighborhood and if you don't want that, we don't want that because we represent you ultimately. Continue to come to the City Council meetings and be involved. It is nice that we have a large audience here and that they continue to be involved and would like to see it after the election also. It is good that this issue was brought forward to the community but lets not let it anger or tear us apart but bring us together. When she says us she means both the City Council and the residents. She doesn't support anything that would divide our community. She supports everything that says we are working together.

### CONSENT ITEMS

City Manager asked the Council to pull Consent Item No. 2 from the agenda and it will be brought back to the next Council Meeting. Mayor Pro Tem Franklin pulled Consent Item No. 11 for discussion.

1. Approval of Minutes – Regular Meeting – 09-23-08

Recommendation: That the minutes of the regular meeting of September 23, 2008 be approved.

2. Resolution No. 2008-110, Adopting a Disaster and Emergency Mutual Aid Agreement Between the City of Banning and the Morongo Band of Mission Indians.

**This item was pulled from the agenda.**

3. Resolution No. 2008-112, Accepting and Authorizing the Expenditure of SB-821 Bicycle and Pedestrian Facilities Grant Program Funds for Fiscal Year 2008/09.

Recommendation: That the City Council adopt Resolution No. 2008-112, Accepting and Authorizing the expenditure of SB-821 Bicycle and Pedestrian Facilities Grant Program Funds for Fiscal Year 2008/09, to be utilized to pay for sidewalk improvements on Sims Street that will be constructed as part of the City's Annual Street Rehabilitation Project.

4. Resolution No. 2008-115, Authorizing the Police Department to Enter Into an Agreement with the California Office of Traffic Safety to Receive \$19,773 in Overtime funds to be Used for Officers Participating In the California "Next Generation" Click It or Ticket Campaign.

Recommendation: That the City Council adopt Resolution No. 2008-115, appropriating \$19,773 into police department account 002-2200-421-1030 to fund the Banning Police Department's grant

agreement with the California Office of Traffic Safety (OTS) for the California “Next Generation” Click It or Ticket Campaign in the City of Banning.

5. Notice of Completion – City Council Chambers Upgrade Project

Recommendation: Accept the Council Chamber Upgrade Project as complete and direct the City Clerk to record the Notice of Completion.

6. Notice of Completion for Project No. 2008-05, Removal of an Underground Storage Tank and Appurtenances at 311 E. Ramsey St.

Recommendation: That the City Council accept Project No. 2008-05, Removal of an Underground Storage Tank and Appurtenances at 311 E. Ramsey Street, as complete and direct the City Clerk to record the Notice of Completion.

7. Accept the Right-of-Way Dedication from HDA Mortgage Fund, LLC for Street Improvements at Assessor’s Parcel Number 541-054-007 (1333 E. George Street).

Recommendation: Accept the Right-of Way Dedication from HDA Mortgage Fund, LLC for Street Improvements at Assessor’s Parcel Map Number 541-054-007, as described in Exhibit “A” and Exhibit “B”, and direct the City Clerk to accept and record said dedication.

8. Accept the Right-of-Way Dedication from the Community Redevelopment Agency of the City of Banning for Street Improvements at Assessor’s Parcel Number 541-146-003, 154-150-023 and 541-15-024 (Ramsey Street, Martin Street and Williams Street).

Recommendation: Accept the Right-of-Way Dedication from the Community Redevelopment Agency of the City of Banning for Street Improvements at Assessor’s Parcel Number 541-146-003, 154-150-023 and 541-15-024 as described in Exhibit “A” and Exhibit “B” and direct the City Clerk to accept and record said dedication.

9 Amending the Existing Agreement for Consultant Services with Metcalf & Eddy, Inc. to Provide Additional Work for the Design and Construction of the Brinton Reservoir

Recommendation: that the City Council approves amending the existing Agreement for Consultant Services with Metcalf & Eddy, Inc. to provide additional work for the Design and Construction Management of the Brinton Reservoir in the amount of “not to exceed” \$298,635.55.

10. Interagency Service Agreement between the City of Banning and the Riverside Transit Agency.

Recommendation: That the City Council adopt the Interagency Service Agreement between the City of Banning and the Riverside Transit Agency.

12. Approval of Accounts Payable and Payroll Warrant for the Month of August 2008

Recommendation: That the City Council review and ratify the following reports per the California Government Code.

13. Approval of Accounts Payable and Payroll Warrant for the Month of September 2008.

Recommendation: That the City Council review and ratify the following reports per the California Government Code.

**Motion Machisic/Franklin to approve Consent Items 1, 3 through 10 and 12 and 13.** Mayor Salas opened the item for public comments. There were none. **Motion carried with Councilmember Botts absent.**

11. Awarding a Contract to Burke, Williams and Sorensen for Special Counsel Services to the City of Banning.

Mayor Pro Tem Franklin said she has concerns about this contract and would like to see staff try to negotiate that contact to a more reasonable amount if possible.

City Manager said when they had established the transition time period for our new legal counsel it was the amount that was directed to the City with respect to our previous city attorney. What staff will do to the best of their ability is transition to our new city attorney the legal matters that are pertinent to the City as best we can. There are some other outstanding areas that need a little bit more transition time than anticipated. Mr. Alehsire to his credit and his firm's credit has taken on a significant amount of information in the last week and will continue to do so. He said that we intend to have a staff meeting, meaning department directors, with the firm and the individuals that the Council met during the interview process to insure that the transition will occur smoothly but also most effectively and efficiently over time. Staff doesn't anticipate having to utility much of the supplemental agreement in any shape or form and as soon as they get Mr. Alehsire's firm at full speed.

Mr. Alehsire said that he was able to meet with Julie Biggs last week and said years ago they were a part of that firm and had good relations with the attorneys in that firm and he thinks that her attitude was cooperative in terms of assigning cases. They had a list of matters but they had not done memos on the status of the various matters so he did ask that they prepare a memorandum concerning the status of each case and it was his intent to them talk with the appropriate staff members concerning each of those matters and find out whether the staff had any issues in terms of the status of those matters to make the assignments. He understood that there were certain things that staff was concerned that they would need to continue even though the rate would be considerable higher than in the past and that was one of the reasons staff was hoping to transition as many things as possible and he is certainly on board with that. It is just if there are certain things that staff feels are just so down the road that it is best to leave them with the existing attorney, that is appropriate. He said what we really need to do over the next two week is to explore that some more and come up with a definite plan. Until we do a substitution of attorney on some of these matters they remain in that firm and he did not want to act precipitously if staff felt some of the matters should remain with that firm. He said the rate structure of the new

contract with his firm is less expensive so there is probably an economic incentive to make that transition but need a little bit of time to sort it out.

There was some Council discussion regarding the rate.

Mayor Salas opened the item for public comments. There were none.

**Motion Machisic/Hanna that the City Council award a contract to Burke, Williams & Sorensen to provide Special Counsel services to the City of Banning. Motion carried with Councilmember Botts absent.**

#### ORDINANCES - INTRODUCTION

1. Ordinance No. 1399, An Ordinance of the City Council of the City of Banning Accepting the "Fire Hazard Severity Zone" for the City of Banning as prepared by the Fire Department.  
(Staff Report – Ted Yarbrough, Fire Marshal/Emergency Services Coordinator)

Fire Marshall gave the staff report as contained in the agenda packet. He said the map is nothing more than a map that designates where the different severity zones are in the city. The one thing of concern to the City is the very high fire hazard severity zone. Those areas that are designed as very high are subject to a new section in the Building Code that deals with very high fire hazard severity zones and what construction requirements will be in those zones and they deal with fortifying a home against wildfire basically. This will be a living map and subject to review at least once every 5 years and if there are any changes, it would have to be re-adopted by the City Council.

Councilmember Machisic asked if this would affect a person's home insurance. Fire Marshal said that it is not supposed to. They were assured that when the State came out with these that the insurance these would not be used to determine insurance rates.

Mayor Salas opened the item for public comments. There were none.

Mayor Salas asked the City Clerk to read the title of Ordinance No. 1399. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Adopting the "Fire Hazard Severity Zone Map" for the City of Banning as Prepared by the Fire Department.

**Motion Machisic/Franklin to waive further reading of Ordinance No. 1399. Motion carried with Councilmember Botts absent.**

**Motion Hanna/Machisic that Ordinance No. 1399 pass its first reading. Motion carried with Councilmember Botts absent.**

#### REPORTS OF OFFICERS

1. Conflict of Interest Code Update  
(Staff Report – Marie Calderon, City Clerk)

City Clerk gave the staff report as contained in the agenda packet. Councilmember Machisic asked that when it comes back if it could be highlighted to show the changes.

**Motion Hanna/Machisic that the City Council adopt Resolution No. 2008-116, proposing an amended Conflict of Interest Code for the City. Motion carried with Councilmember Botts absent.**

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

Mayor Salas called the joint meeting to order.

A. CONSENT ITEMS

- A-1. Resolutions Authorizing the Amendment of the Fiscal Year 2007-08 Budget to Include Certain Necessary Adjustments and the Fiscal Year 2008-09 Budget to Include Encumbrance Carryovers and Continuing Appropriations of Certain Unexpended Fiscal Year 2007-08 Appropriations and Associated Revenues.
- 1) City Council adopt Resolution No. 2008-114, Authorizing the Amendment of the Fiscal Year 2007-08 Budget to Include Certain Necessary Adjustments and the Fiscal Year 2008-09 Budget to Include Encumbrance Carryovers and Continuing Appropriations of Certain Unexpended Fiscal Year 2007-08 Appropriations and Associated Revenues.
  - 2) The Banning Utility Authority of the City of Banning adopt Resolution No. 2008-05UA, Authorizing the Amendments of the Fiscal Year 2008-09 Water and Wastewater Budgets to Include Encumbrance Carryovers and Continuing Appropriations of Certain Unexpended Fiscal Year 2007-08 Appropriations.
- B-1. Adopting of City Council Resolution No. 2008-118 and Utility Authority Resolution No. 2008-06UA, Approving the Release of a Partial Payment to the Beaumont Cherry Valley Water District for Wells No. 25 and 26.
- 1) City Council adopt Resolution No. 2008-118, Approving the Release of a Partial Payment to the Beaumont Cherry Valley Water District for Wells No. 25 and 26.
  - 2) The Banning Utility Authority adopt Resolution No. 2008-06UA, Approving the Release of a Partial Payment to the Beaumont Cherry Valley Water District for Wells No. 25 and 26.
  - 3) Appropriate \$379,834.00 from the Water Division Operations reserves and authorize the Finance Director to make the necessary Budget adjustments.

Mayor Salas opened the item for public comments. There were none.

**Motion Machisic/Franklin to approve Consent Items A-1 and B-1.**

Mayor Salas reopened the public comments.



A lady in the audience said that she have been very concerned about the utilities. She and her husband have resided in Banning going on 26 years and their electric bill was never higher than \$348 during the summer and all of sudden it is hitting \$600 and \$700. She asked some of the employees when she came in to pay her bill and they blamed it on her freezer that her aunt gave her. She disconnected it and it made a \$50 difference. She would like to know what is going on.

Councilmember Machisic suggested that she contact someone in the Electric Department and not in the billing department and have them take a look at the bill and they could probably give her a better analysis of the bill. Mayor Salas directed Jim Earhart, Public Utility Director, to speak with her and get her information so that he can meet with her regarding her bill.

**Motion carried with Councilmember Botts absent.**

Mayor Salas adjourned the joint meeting and reconvened the regular City Council meeting.

ITEMS FOR FUTURE AGENDAS

New Items –

Councilmember Hanna said she would like a report from staff, if the Council is agreeable, regarding a plan to prevent flooding this winter. We received a letter from the Norquist's regarding drainage on and around Mountain Avenue. Last year there were a couple of intense rain storms and rather dramatic flooding in that whole area but we have other areas also such as on Wilson Street between Sunset and Sunrise. She is concerned as to how we are going to approach it and she certainly believes in prevention if possible.

Pending Items –

Mayor Pro Tem Franklin would like ETA's on Pending Items 10-14. She also thanked staff and all of the volunteers who worked on Stagecoach Days for a job well done. Mayor Salas said if there is a list of the volunteers, maybe we could recognize them at a future Council meeting.

1. Schedule Meeting with the Beaumont City Council (*Salas – 11/27/07*) (*City Mgr.*)
2. Schedule Special Jt. Meetings with the City's Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation)  
(*Franklin – 11/27/07*)
4. Review of Development Fees (*Hanna – 12/11/07*) (*Johnson*) (*ETA 10/28/08*)
5. Review of Ordinance regarding the selling of cars in shopping center parking lots (*Salas – 9/9/08*) (*Hansen*) (*ETA 10/28/08*)
6. Ordinance regarding smoke free parks (*Hanna – 8/12/08*) (*Nakamura*) (*ETA 10/28/08*)
7. Report on "One Stop Shop" (*Franklin – 8/12/08*) (*Hansen/Nakamura*) (*ETA 10/28/08*)
8. Bring back Riverside County Policy regarding animal rescue groups (*Salas*) (*Nakamura*) (*ETA 10/28/08*)
9. Report on "Request Partner" (*Hanna – 8/12/08*) (*Nakamura*) (*ETA 10/28/08*)
10. Development of Bridge & Thoroughfare District to fund grade separation at Hargrave (*Hanna – 8/12/08*)
11. Consideration of City Town Hall Meeting to hear what departments the City has

- and what kind of services the City offers. *(Franklin – 9/9/08)*
12. Update on Naming of Streets for Community Members *(Franklin – 9/23/08)*
  13. Discussion regarding contingency fee percentages *(Franklin – 9/23/08)*
  14. Need for Executive Session regarding potential litigation in regards to comments made by Councilmembers. *(Franklin – 9/23/08)*

#### FUTURE MEETINGS

1. Special Jt. City Council/Banning School Board Meeting – October 16, 2008  
at 5:30 p.m. – Banning School Board Chambers – Williams Street

City Manager said that this meeting would need to be rescheduled due to some miscommunication and he would know more after the 2x2 meeting on Friday.

2. Special City Council Meeting Budget Workshop – October 20, 2008 at 6:00 p.m.  
- Council Chambers

Mayor Salas said that there will be a signing ceremony on October 30<sup>th</sup> at 6:00 p.m. with the Morongo Band of Mission Indians and Supervisor Ashley. This is regarding the development of a road on the south side of the freeway.

**There was staff and Council discussion of future meetings and the Council set the following:**

- **October 28<sup>th</sup> – Regular Council Meeting**
- **November 14<sup>th</sup> (Fri.) – Special Council Meeting at 1:00 p.m.**  
**(this is to replace the Nov. 11<sup>th</sup> and Nov. 25<sup>th</sup> Council Meetings)**
- **December 4<sup>th</sup> (Thurs.) – State of the City at Casino Morongo Spa & Resort at Noon**  
**(Conference Center)**
- **December 5<sup>th</sup> (Fri.) – 6:00 p.m. Special Council Meeting (Swearing In of Council Members)**
- **December 10<sup>th</sup> (Wed.) – 6:30 p.m. – Special Council Meeting)**  
**(instead of meeting on Tuesday, December 9<sup>th</sup>)**

#### ADJOURNMENT

By common consent the meeting adjourned at 8:48 p.m.

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Marie A. Calderon, City Clerk

**THE ACTION MINUTES ARE A SUMMARY OF ACTIONS TAKEN BY THE CITY COUNCIL. A COPY OF THE MEETING IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK'S OFFICE.**

*2nd Read.*

**ORDINANCE NO. 1399**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA ADOPTING THE "FIRE HAZARD SEVERITY ZONE MAP" FOR THE CITY OF BANNING AS PREPARED BY THE FIRE DEPARTMENT**

THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 1.**

The City Council adopts the Fire Hazard Severity Zone Map attached as Exhibit A.

The Fire hazard Severity Zone map will be used to determine the areas of the City where Chapter 7a of the California Building Code will be applied.

The Fire Hazard Severity Zone map shall be reviewed by the Fire Chief and updated, as required, every 5 years.

**SECTION 2. NON-EXCLUSIVITY**

Nothing in the Ordinance shall limit or preclude the enforcement of other applicable laws.

**SECTION 3. EFFECTIVE**

This ordinance shall take effect 30 days after adoption and be in force and effect according to California law.

**SECTION 4. PUBLICATION**

The Mayor shall sign this ordinance and the City Clerk shall attest thereto and shall within fifteen days of its adoption cause it, or a summary of it, to be published in a newspaper of general circulation within the City of Banning.

**PASSED, APPROVED AND ADOPTED** this 28<sup>th</sup> day of October, 2008.

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Brenda Salas, Mayor



**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

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Burke, Williams & Sorensen, LLP  
City Attorney

**ATTEST:**

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Marie A. Calderon, City Clerk

**CERTIFICATION:**

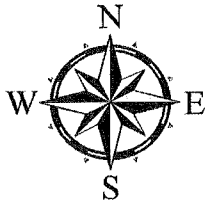
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1399 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 14th day of October, 2008, and was duly adopted at a regular meeting of said City Council on the 28<sup>th</sup> day of October, 2008, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

Marie A. Calderon, City Clerk  
City of Banning, California

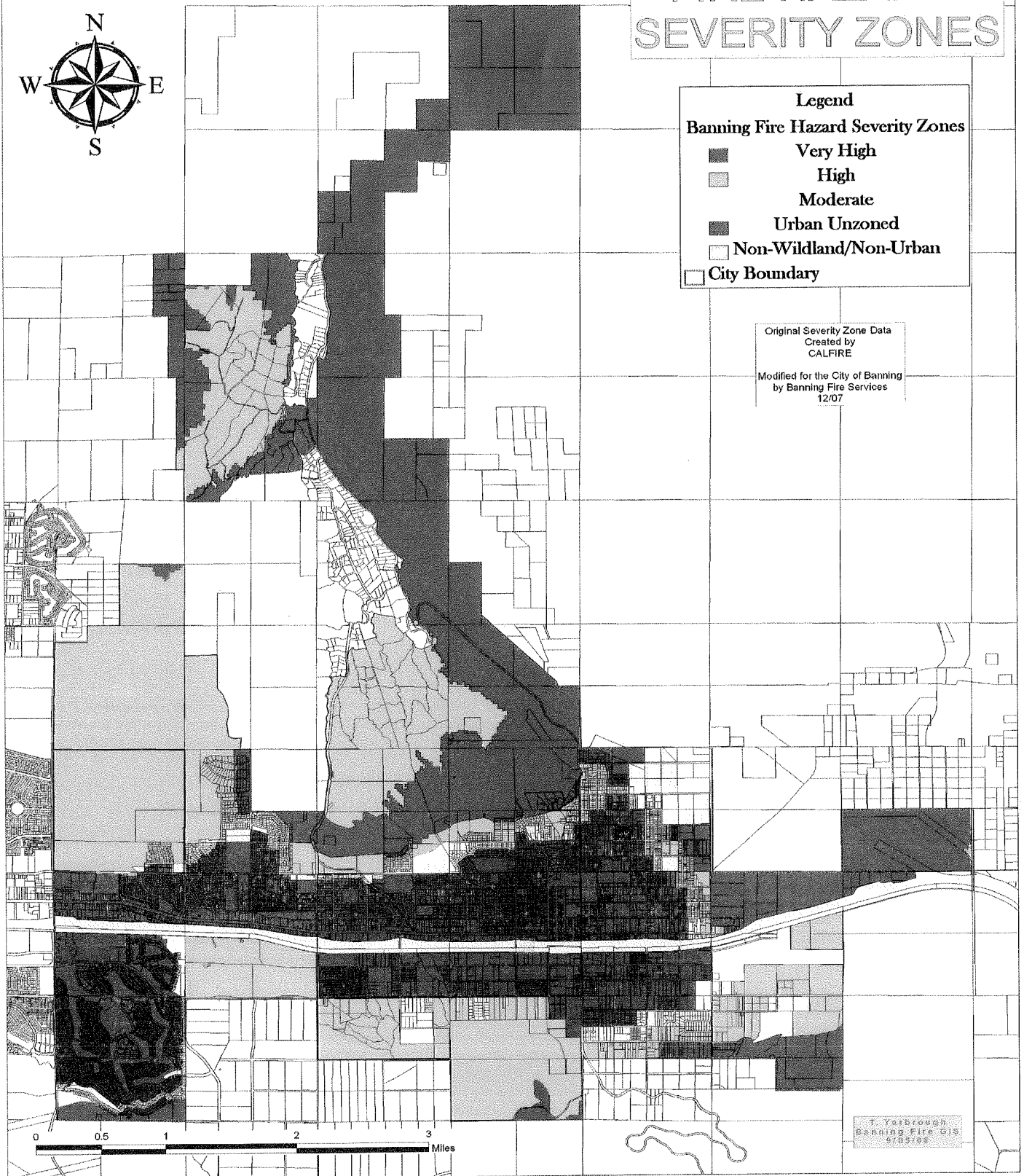
# FIRE HAZARD SEVERITY ZONES



- Legend**
- Banning Fire Hazard Severity Zones**
- Very High
  - High
  - Moderate
  - Urban Unzoned
  - Non-Wildland/Non-Urban
  - City Boundary

Original Severity Zone Data  
Created by  
CALFIRE

Modified for the City of Banning  
by Banning Fire Services  
12/07



T. Yarbrough  
Banning Fire GIS  
9/05/08

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:**       **October 28, 2008**

**TO:**         **Honorable Mayor and City Council**

**FROM:**       **Kahono Oei, City Engineer**



**SUBJECT:**   **Resolution No. 2008-113, "Approving a Parking Easement Agreement between Super Subs Owners, Mr. and Mrs. Benhar, and the City of Banning for Public Parking Use"**

**RECOMMENDATION:**   Adopt Resolution No. 2008-113, "Approving a Parking Easement Agreement between Super Subs Owners, Mr. and Mrs. Benhar, and the City of Banning for Public Parking Use."

**JUSTIFICATION:**   An Easement Agreement with the City is necessary to utilize the parking lot behind Super Subs, located at 112 N. San Gorgonio Avenue, for public parking use.

**BACKGROUND:**   The City Council has previously approved the concept for downtown revitalization, including the downtown business facade improvement program and downtown parking improvements. In an effort to effectively utilize downtown parking, increase parking spaces, and beautify City Hall, plans and specifications were prepared and completed for Project No. 2008-03, "Construction of Parking Lot Improvements and Landscape Improvements at City Hall and Repplier Park", in May of 2008.

The scope of work under this project includes the demolition of existing improvements at City Hall and 112 N. San Gorgonio Avenue (Super Subs), grading, construction of sidewalks, driveways, curb and gutter, handicap ramps, adjusting manholes to match proposed grade, parking lot improvements including PCC paving, installation of lights, underground electrical conduit and pre-cast concrete vaults, landscaping and irrigation and all appurtenances, signing and striping.

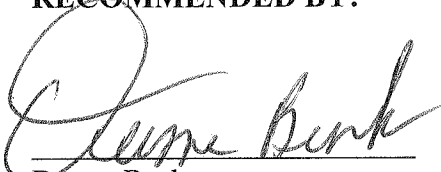
On July 8, 2008, City Council adopted Resolution No. 2008-79, "Awarding the Construction Contract for Project No. 2008-03, 'Construction of Parking Lot Improvements and Landscape Improvements at City Hall and Repplier Park'". The contract includes the construction of a new parking lot for the Super Subs property. In return for these improvements, the owners of Super Subs have agreed to share its parking lot with the City of Banning to provide public parking. In order for the City to ensure that the parking lot at Super Subs can be utilized for public purposes, the City needs to enter into a Parking Easement Agreement, as attached herein as Attachment "A".

The Parking Easement Agreement was discussed with the Super Subs owners, Mr. and Mrs. Benhar, and they have agreed with the terms of the Parking Easement Agreement as shown herein as Attachment "A". A schematic of the easement area is shown attached as Exhibit "B" of Attachment "A".

The project is anticipated to be completed by November, 2008.

**FISCAL DATA:** Not Applicable

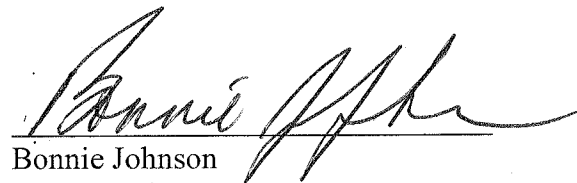
**RECOMMENDED BY:**

  
Duane Burk  
Director of Public Works

**APPROVED BY:**

\_\_\_\_\_  
Brian Nakamura  
City Manager

**REVIEWED BY:**

  
Bonnie Johnson  
Director of Finance

**Attachments:**

**Attachment "A"** - Parking Easement Agreement between the City and Super Subs Owners, Mr. and Mrs. Benhar, for public parking use.

**Exhibit "A"** – Description of Real Property

**Exhibit "B"** - Parking Easement Area Map (8½ X 11), located within Attachment "A"

## RESOLUTION NO. 2008-113

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING A PARKING EASEMENT AGREEMENT BETWEEN SUPER SUBS OWNERS, MR. AND MRS. BENHAR, AND THE CITY OF BANNING FOR PUBLIC PARKING USE

**WHEREAS**, in order to utilize downtown parking, increase parking spaces, and beautify the parking lot of City Hall, plans and specifications were prepared and completed for Project No. 2008-03, "Construction of Parking Lot Improvements and Landscape Improvements at City Hall and Repplier Park", in May of 2008; and

**WHEREAS**, on July 8, 2008, the City Council awarded the above mentioned construction contract to C.S. Legacy Construction, Inc. to perform the improvements, which includes construction of a new parking lot within Super Subs, located at 112 N. San Gorgonio Avenue, and in return Super Subs agrees to share the parking lot with the City of Banning to provide public parking; and

**WHEREAS**, in order for the City to ensure that the parking lot at Super Subs can be utilized for public purposes, the City needs to enter into a Parking Easement Agreement as attached herein as Attachment "A"; and

**WHEREAS**, the Parking Easement Agreement was discussed with the Super Subs Owners, Mr. and Mrs. Benhar, and the Owners have agreed with the terms of the Parking Easement Agreement, due to the fact that the City of Banning is constructing the parking lot improvements.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

**Section I.** Approve the Parking Easement Agreement between Super Subs Owners, Mr. and Mrs. Benhar, for public parking use within the parking lot at 112 N. San Gorgonio Avenue.

**Section II.** The City Manager is authorized to execute the Parking Easement Agreement between Super Subs Owners, Mr. and Mrs. Benhar, and the City of Banning. This authorization will be rescinded if the Agreement is not executed by both parties within thirty (30) days of the date of this resolution.



**PASSED, ADOPTED AND APPROVED** this 28<sup>th</sup> day of October, 2008.

\_\_\_\_\_  
Brenda Salas, Mayor

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon,  
City Clerk of the City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

\_\_\_\_\_  
David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-113, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 28<sup>th</sup> day of October, 2008.

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Marie A. Calderon, City Clerk  
City of Banning  
Banning, California

## **Attachment “A”**

PAKING EASEMENT AGREEMENT BETWEEN SUPER SUBS OWNERS, MR. AND MRS.  
BENHAR, AND THE CITY OF BANNING

RECORDING REQUESTED BY:

WHEN RECORDED, MAIL TO:

City of Banning  
99 East Ramsey  
Banning, California 92220  
Attention: City Clerk

(Space Above For Recorder's Use)

**PARKING EASEMENT AGREEMENT**  
**(To the City of Banning)**

**No Documentary Transfer Tax per Revenue Taxation Code § 11922**

**APN: 541-141-001**

**Site Address: 112 N. San Gorgonio Ave, Banning, CA 92220**

This PARKING EASEMENT AGREEMENT ("Parking Easement Agreement") is made by and between Suttichai and Diana Benhar, ("Grantor") and the **CITY OF BANNING**, a California municipal corporation and general law city ("City"), and will be effective upon recordation in the Office of the Riverside County Recorder, State of California (the "Effective Date").

**RECITALS**

- A. Grantor owns in fee that certain real property located in the City of Banning, Riverside County, California, commonly known as 112 N. San Gorgonio Avenue and further described and depicted on the attached Exhibit A ("Real Property"). Grantor owns and operates a sandwich shop on the Real Property known as Super Subs.
- B. As consideration for the City and the Redevelopment Agency of the City of Banning causing to be constructed certain parking improvements on the Real Property, Grantor agrees to record a parking easement agreement covering a portion of the Real Property adjacent to Hays Street, which is the parking lot area for the Real Property.



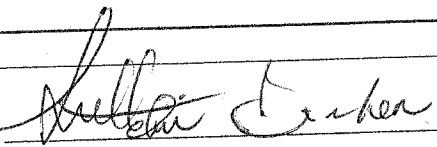
## AGREEMENT

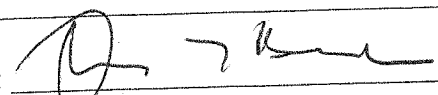
1. Grant of Parking Easement. Grantor hereby grants to the City for the benefit of the general public, a permanent easement for the installation, operation, maintenance and use of public parking facilities, signage, public utilities and all public purposes related thereto in the area of the Real Property described and depicted on Exhibit B of this Easement Agreement ("Parking Easement Area").
2. Limitation on Grantor's Use of Parking Easement Area. Grantor may not take any actions to or otherwise attempt to reserve any of the parking spaces in the Parking Easement Area for employees, customers or invitees of the Real Property without the express written consent of the City, which consent may be withheld by the City in its sole discretion.
3. Parking Spaces to be Attributed to the Real Property. Notwithstanding the provisions of Sections 1 and 2 above, the City agrees that all parking spaces created and available for public use in the Parking Easement Area will be attributed to the Real Property for the purposes of satisfying any parking requirements of the City.
4. Maintenance of Parking Easement Area. Except for routine street sweeping performed by the City, Grantor is responsible for the removal of any debris and reasonable cleaning of the Parking Easement Area and such other work as may be necessary to maintain the reasonable condition and appearance of the Parking Easement Area. The City agrees to perform such extraordinary repairs and maintenance as may be required to maintain the Parking Easement Area in a condition similar to the overall condition of Hays Street and the other public parking located on such street, including but not limited to striping, surfacing, paving, and patching.
5. Indemnification. Grantor agrees to indemnify and hold harmless City to the fullest extent to which it can legally do so, from and against all claims, liens, encumbrances, actions, loss, damage, expense and/or liability arising from or growing out of loss or damage to property, including third parties and Grantor's property, or injury to or death of persons, including employees of Grantor, resulting in any manner whatsoever, directly or indirectly, by reason of the exercise of the rights hereby granted; provided, however, that this covenant shall not apply in those instances where such claims, liens, encumbrances, actions, loss, damage, expense and/or liability are caused by the sole active negligence of City.
6. Insurance. Grantor shall and maintain insurance as set forth in Exhibit C.
7. Enforcement. Any violation or breach of any restrictions contained in this Parking Easement Agreement by Grantor or Grantor's employees, agents, contractors, or lessees will be subject to the City's right to prosecute a proceeding at law or in equity to enjoin or prevent such violations, to cause any such violation or breach to be remedied, or to recover damages for such violation or breach. The violation of any restriction is hereby declared to constitute a nuisance. All remedies provided herein, at law or in equity, will be cumulative and not exclusive.

8. Attorneys' Fees. If any action or proceeding is instituted by Grantor or City to enforce or interpret the provisions of this Parking Easement Agreement or for damages on account of the breach hereof, the prevailing party in such action or proceeding will be entitled to recover from the other party or parties its costs and expenses incurred in connection therewith, including without limitation reasonable attorneys' fees and the costs and expenses of litigation.
9. Modifications and Amendment. This Parking Easement Agreement may be amended only with the written consent of the Grantor and the City.
10. Severability. In the event any term, covenant, condition or provision of this Parking Easement Agreement is held to be invalid or otherwise unenforceable by any court of competent jurisdiction, such holding will in no way affect any of the other provisions, which will remain in full force and effect.
11. Governing Law. This Parking Easement Agreement will be construed in accordance with the laws of the State of California.
12. Effect of Easement Agreement. The Real Property will be held, developed, transferred and conveyed subject to the express covenants, conditions and restrictions set forth in this Parking Easement Agreement. Such covenants, conditions and restrictions attach to and run with the Real Property; are binding upon and inure to the benefit of the Real Property, any portion thereof and interest therein; and are binding upon and inure to the benefit of Grantor and any person or entity having or acquiring an interest in the Real Property and their successive owners and assigns. All the covenants, conditions and restrictions, reservations, rights and easements set forth herein are declared and agreed to be for the purpose of enhancing the value, desirability and attractiveness of the Real Property. All provisions of this Parking Easement Agreement, including without limitation the covenants, conditions and restrictions, reservations, rights and easements set forth herein, are hereby imposed as equitable servitudes upon the Real Property.

THIS PARKING EASEMENT AGREEMENT has been executed by the undersigned authorized representatives of the parties to be effective as of the date of recordation in the Office of the Riverside County Recorder.

**GRANTOR:**

By:   
Name: Suttichai Benhar  
Title: Owner

By:   
Name: Diana Benhar  
Title: Owner

**CITY OF BANNING**

a California municipal corporation and general law city

By: \_\_\_\_\_  
Brian Nakamura, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Marie Calderon, City Clerk

EXHIBIT A

DESCRIPTION OF THE REAL PROPERTY

APN: 541-141-001 also known as 112 N. San Geronio Ave, Banning, California, 92220

EXHIBIT B

PARKING EASEMENT AREA



## EXHIBIT C

### INSURANCE

A. Insurance Requirements. Grantor shall provide and maintain insurance, acceptable to the City Manager or City Council, in full force and effect, against claims for injuries to persons or damages to property which may arise from or in connection with the Parking Easement Agreement. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. Grantor shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

2. Minimum Limits of Insurance. Grantor shall maintain limits of insurance no less than \$1,000,000 general liability aggregate for bodily injury, personal injury and property damage.

B. Other Provisions. Insurance policies shall contain the following provisions:

1. All Policies. Each insurance policy shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either party to this Parking Easement Agreement, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to City.

2. General Liability Coverages.

(1) City, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, or employees.

(2) Grantor's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Grantor's insurance.

(3) Grantor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.

C. Other Requirements. Grantor agrees to deposit with City, at or before the Effective Date of this contract, certificates of insurance necessary to satisfy City that the insurance provisions have been complied with. The City may require that Grantor furnish City with copies of original endorsements effecting coverage. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Grantor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

2. The procuring of such required policy or policies of insurance shall not be construed to limit Grantor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Parking Easement Agreement.



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of RIVERSIDE

On SEPTEMBER 30, 2008 before me, SUSAN E. MORGAN, PUBLIC <sup>NOTARY</sup> personally appeared SUTTICHA BENHAR AND DIANA BENHAR, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Susan E. Morgan (Seal)



## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

### CAPACITY CLAIMED BY SIGNER

- ☒ INDIVIDUAL  
☐ CORPORATE OFFICER  
 TITLE(S) \_\_\_\_\_
- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER \_\_\_\_\_

SIGNER IS REPRESENTING:  
 (NAME OF PERSON(S) OR ENTITY(IES))  
 \_\_\_\_\_  
 \_\_\_\_\_

### DESCRIPTION OF ATTACHED DOCUMENT

PARKING EASEMENT AGREEMENT  
 TITLE OR TYPE OF DOCUMENT

4 + EXHIBITS + ACKS  
 NUMBER OF PAGES


NOT DATED  
 DATE OF DOCUMENT

BRIAN NAKAMURA AND  
 SIGNER(S) OTHER THAN NAMED ABOVE  
MARIE CALDERON -  
NEITHER YET SIGNED

**CITY COUNCIL MEETING  
CONSENT ITEM**

**DATE:** October 28, 2008

**TO:** Honorable Mayor and City Council

**FROM:** Kahono Oei, City Engineer 

**SUBJECT:** Resolution No. 2008-117, "Accepting and Authorizing an Amendment to the Riverside County Transportation Commission Transportation Expenditure Plan and Retail Transaction and Use Tax Ordinance (Ordinance No. 88-1 - Measure "A")"

**RECOMMENDATION:** Adopt Resolution No. 2008-117, "Accepting and Approving an Amendment to the Riverside County Transportation Commission Transportation Expenditure Plan and Retail Transaction and Use Tax Ordinance (Ordinance No. 88-1 - Measure "A").

**JUSTIFICATION:** In order for the amendment to the Transportation Improvement Plan (TIP) to become effective, the Board of Supervisors of Riverside County and a majority of the cities within Riverside County constituting a majority of the incorporated population must approve the proposed amendment. The Amendment pertains to the change in designation of Highway 111 in the Coachella Valley.

**BACKGROUND:** The Riverside County Transportation Commission Transportation Expenditure Plan and Retail Transaction and Use Tax Ordinance, Ordinance No. 88-1 (Measure "A") was approved by 78.9 percent of the voters in Riverside County in November of 1988. The purpose of Measure "A" is to help relieve traffic congestion, increase safety, improve air quality, provide funds to match developers' fees and State and local moneys for transportation, and plan adequately for traffic by providing essential countywide transportation improvements.

The Transportation Expenditure Plan, also referred to as the Transportation Improvement Plan ("TIP"), was attached as Exhibit "B" to Measure "A" and was incorporated therein by reference. The TIP identifies State Highway 111, from Ramon Road to Indio Boulevard, as one of the projects in the Coachella Valley for which Measure "A" State highway and major regional road project funds are to be appropriated and expended. A map depicting the then-current Highway 111 designation between Ramon Road to Indio Boulevard (the "Original Alignment") was part of the TIP, and is attached herewith as Exhibit "A".

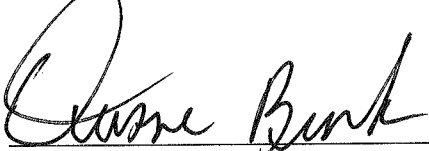
Since the passage of Measure "A" in 1988, the designation of Highway 111, has been changed as portions of the Original Alignment have been relinquished by the State and are now maintained by local jurisdictions. Additionally, Highway 111 was realigned in the City of Palm Springs and now is located on Vista Chino Drive, between Indian Canyon Drive and Gene Autry Trail, as well as the segment of Gene Autry Trail, from Vista Chino Drive to South Palm Canyon Drive. Changes to the alignment of Highway 111 have raised questions regarding the eligibility of segments relinquished by the State to local agencies

for Measure "A" Highway Funds. Furthermore, additional segments of Highway III not included in the Original Alignment have been requested to be eligible for receipt of Measure "A" Highway Funds.


The changes to the designation of Highway III to match current conditions have created the necessity for the adoption of an amendment to the TIP, as the TIP is no longer current as it applies to Highway III. Furthermore, in order for Measure "A" Highway Funds to be effectively expended to carry out the voter intent for highway and roadway improvements, an amendment to the TIP is necessary.

**FISCAL DATA:** Not Applicable. No additional funding or changes to existing funding will be provided to the Coachella Valley due to the passage of this Amendment.

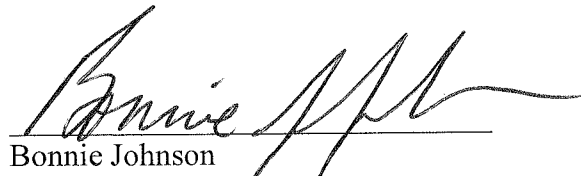
**RECOMMENDED BY:**

  
Duane Burk  
Director of Public Works

**APPROVED BY:**

  
Brian Nakamura  
City Manager

**REVIEWED BY:**

  
Bonnie Johnson  
Director of Finance

## **RESOLUTION NO. 2008-117**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ACCEPTING AND AUTHORIZING AN AMENDMENT TO THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION TRANSPORTATION EXPENDITURE PLAN AND RETAIL TRANSACTION AND USE TAX ORDINANCE (ORDINANCE NO. 88-1 - MEASURE "A")**

**WHEREAS**, the Riverside County Transportation Commission Transportation Expenditure Plan and Retail Transaction and Use Tax Ordinance, Ordinance No. 88-1 (Measure "A") was approved by 78.9 percent of the voters in Riverside County in November of 1988; and

**WHEREAS**, the purpose of Measure "A" is to help relieve traffic congestion, increase safety, improve air quality, provide funds to match developers' fees and State and local moneys for transportation and plan adequately for traffic by providing essential countywide transportation improvements; and

**WHEREAS**, the Transportation Expenditure Plan, also referred to as the Transportation Improvement Plan ("TIP"), was attached as Exhibit "B" to Measure "A" and was incorporated therein by reference; and

**WHEREAS**, the TIP identifies State Highway 111 from Ramon Road to Indio Boulevard as one of the projects in the Coachella Valley for which Measure "A" State highway and major regional road project funds are to be appropriated and expended ("Measure "A" Highway Funds") and a map depicting the then-current Highway 111 designation between Ramon Road to Indio Boulevard (the "Original Alignment") was part of the TIP; and

**WHEREAS**, since the passage of Measure "A", the designation of Highway 111 has been changed as portions of the Original Alignment have been relinquished by the State and are now maintained by local jurisdictions, and additionally, Highway 111 was realigned in the city of Palm Springs and now is located on Vista Chino Drive between Indian Canyon Drive and Gene Autry Trail, as well as the segment of Gene Autry Trail from Vista Chino Drive to East Palm Canyon Drive; and

**WHEREAS**, changes to the alignment of Highway 111 have raised questions regarding the eligibility of segments relinquished by the State to local agencies for Measure "A" Highway Funds, and furthermore, additional segments of Highway 111 not included in the Original Alignment have been requested to be eligible for receipt of Measure "A" Highway Funds; and

**WHEREAS**, pursuant to California Public Utilities Code Section 240302(d), the TIP may only be amended by the following process:

- (1) Initiation of amendment by the commission, reciting findings of necessity for the amendment.
- (2) Approval by the board of supervisors.

- (3) Approval by a majority of the cities constituting a majority of the incorporated population; and

**WHEREAS**, the changes to the designation of Highway 111 have created the necessity for the adoption of an amendment to the TIP, as the TIP is no longer current as applies to Highway 111, and furthermore, in order for Measure "A" Highway Funds to be effectively expended to carry out the voter intent for highway and roadway improvements, an amendment to the TIP is necessary; and

**WHEREAS**, at its meeting on October 8, 2008, the Board of Directors of the Riverside County Transportation Commission ("Commission Board") adopted a resolution initiating an amendment to the TIP, including the required findings of necessity for the amendment; and

**WHEREAS**, the City Council of the City of Banning ("City Council") has considered the proposed amendment, and approves said amendment to the TIP; and

**WHEREAS**, Public Utilities Code Section 240302, under which Measure "A" and the TIP were adopted, states that generated tax revenues may be expended "for the planning, environmental reviews, engineering and design costs, and related right-of-way acquisition"; and

**WHEREAS**, the TIP states that the "scope of highway and commuter rail projects to be implemented is to be determined through required environmental analysis and full consideration of alternatives" including "public participation during the environmental analysis process"; and

**WHEREAS**, the amendment to the TIP does not approve construction of any transportation improvements but amends the TIP to reflect current conditions in the Coachella Valley; and

**WHEREAS**, under California Code of Regulations, Title 14, Section 15378(b)(4), the amendment of the TIP is not a "project" subject to environmental review under the California Environmental Quality Act ("CEQA") because the amendment merely creates a government funding mechanism and is not a commitment to any specific project; and

**WHEREAS**, under California Code of Regulations, Title 14, Section 15004, the amendment of the TIP is not subject to CEQA because there is insufficient information about the transportation improvements to conduct meaningful environmental review at this time; and

**WHEREAS**, pursuant to the TIP, all appropriate environmental review will be completed prior to any future approval of a specific transportation improvement.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

**Section I.** Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by reference as though fully set forth herein.

**Section II.** Approval of Amendment to the TIP. The City Council hereby approves the following amendment to the TIP, as initiated by the Commission Board:

A. Inclusion of Segments to Coachella Valley Portion of TIP. That portion of the TIP entitled "Coachella Valley", Section 1, entitled "State Highways and Major Regional Road Project", of the aforementioned portion of the TIP, located on page 183-07 of Measure "A", shall be amended to include the segments of highway, and/or roadway described below and as shown on the map attached hereto as Exhibit "A" and incorporated herein by reference, and the total amount of funding allocated to the Coachella Valley shall not be changed.

1. In Palm Springs, from the intersection of East Palm Canyon Drive and Gene Autry Trail, north on Gene Autry Trail to Vista Chino Drive, thence west on Vista Chino Drive to North Palm Canyon Drive, thence northerly on the existing Highway 111 alignment to Interstate 10;
2. In Indio, from the crossing of Golf Center Parkway over Indio Boulevard, northerly on Golf Center Parkway to Interstate 10; and
3. In Indio, from the intersection of Highway 111 and Indio Boulevard, southeasterly on Indio Boulevard and Grapefruit Boulevard, the existing and former Highway 111 alignment, through the city of Coachella and Riverside County to the intersection of State Route 195 (Avenue 66).

B. Revision to Map Included as Part of TIP. The map attached as part of the TIP shall be amended to include those segments of highway and/or roadway as shown in the map attached to this Resolution as Exhibit "A".

**Section III.** Approval of Findings. The City Council hereby approves the findings of the Commission Board related to adoption of the amendment to the TIP.

**Section IV.** Effective Date. This Resolution shall be effective on the date of its adoption. Notwithstanding the foregoing, the amendment to the TIP set forth herein shall not be effective unless and until approved by the Board of Supervisors of Riverside County, and a majority of the Cities within Riverside County.



**Section V.** Notice of Exemption. The City Council hereby finds that adoption of this Resolution is not subject to CEQA and authorizes and directs City staff to file a Notice of Exemption with the County Clerk of Riverside County and the State Clearinghouse within five (5) days following adoption of this Resolution.

**PASSED, ADOPTED AND APPROVED** this 28<sup>th</sup> day of October, 2008.

\_\_\_\_\_  
Brenda Salas, Mayor

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

\_\_\_\_\_  
David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon,  
City Clerk of the City of Banning

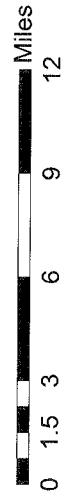
**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-117, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 28<sup>th</sup> day of October, 2008.

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Marie A. Calderon, City Clerk  
City of Banning  
Banning, California

**Map depicting new segments of highway and/or roadway to be included in the TIP**



44

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:**       **October 28, 2008**

**TO:**           **Honorable Mayor and City Council**

**FROM:**       **Duane Burk, Director of Public Works**

**SUBJECT:**   **Notice of Completion for Project No. 2008-02, "A.C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets"**

**RECOMMENDATION:** That the City Council accept Project No. 2008-02, "A.C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets," as complete and direct the City Clerk to record the Notice of Completion.

**JUSTIFICATION:** The contractor has completed the work as per the approved specifications.

**BACKGROUND:** On April 22, 2008 the City Council adopted Resolution No. 2008-39, "Awarding the Construction Contract for Project No. 2008-02, 'A.C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets,'" to International Pavement Solutions, Inc. of San Bernardino, California.

The scope of work under this project includes grinding/cold planing of existing asphalt; grading, placing new A.C. and base, and A.C. overlay per the City Engineer's recommendations; constructing A.C. berm, sidewalks, curbs, gutters, driveways, cross gutters, spandrels and handicap ramps in accordance with the City of Banning and CALTRANS Standard Specifications; adjusting manholes, fire hydrants, water meters, and water valve covers to grade; removing and replacing water services, water meter boxes, and mailboxes when required by the Public Works Inspector; striping improvements; and cleaning, on various streets. The sidewalk location was approved by the RCTC under the SB-821 Bicycle and Pedestrian Facilities Program and is shown with the street locations on the attached Exhibit "A."

**FISCAL DATA:** The original contract amount for this project was \$613,828.00, with a final contract amount of \$657,026.10. Due to unforeseen conditions, one change order was necessary amounting to \$43,198.10, which is approximately 7.1% of an increase for the original contract amount. Street improvements including curb and gutter, new A.C. and base, and striping were performed along Ramsey Street, from 933 West Ramsey Street to 1025 West Ramsey Street, to take advantage of low unit prices from the original bid. Change Order No. 1 was within the 10% construction contingency amount that was approved under City Council Resolution No. 2008-39.

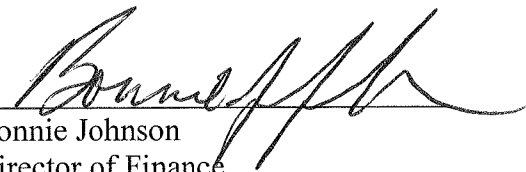
**SIGNATURES NEXT PAGE**

**RECOMMENDED BY:**



Duane Burk  
Director of Public Works

**REVIEWED BY:**



Bonnie Johnson  
Director of Finance

**APPROVED BY:**



Brian Nakamura  
City Manager

1 WHEN RECORDED MAIL TO:

2  
3 City Clerk's Office  
4 City of Banning  
5 P.O. Box 998  
6 Banning, California 92220

7  
8 FREE RECORDING:  
9 Exempt Pursuant to  
10 Government Code §6103  
11

---

12  
13 NOTICE OF COMPLETION

14 A.C. OVERLAY, PAVEMENT REHABILITATION AND SIDEWALK  
15 IMPROVEMENTS ON VARIOUS STREETS  
16 PROJECT NO. 2008-02

17  
18 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the  
19 City of Banning, a municipal corporation, pursuant to the provisions of Section 3093 of  
20 the Civil Code of the State of California, and is hereby accepted by the OWNER, the City  
21 of Banning, pursuant to authority conferred by the City Council this October 28, 2008,  
22 and the grantees consent to recordation thereof by its duly authorized agent.

23  
24 That the OWNER, the City of Banning, and International Pavement Solutions, Inc. of  
25 San Bernardino, Calif., the vendee, entered into an agreement on May 8, 2008, for A. C.  
26 overlay, pavement rehabilitation and sidewalk improvements on various streets. The  
27 scope of work under this project includes grinding/cold planing of existing asphalt;  
28 grading, placing new A.C. and base, and A.C. overlay per the City Engineer's  
29 recommendations; constructing A.C. berm, sidewalks, curbs, gutters, driveways, cross  
30 gutters, spandrels and handicap ramps in accordance with the City of Banning and  
31 CALTRANS Standard Specifications; adjusting manholes, fire hydrants, water meters,  
32 and water valve covers to grade; removing and replacing water services, water meter  
33 boxes, and mailboxes when required by the Public Works Inspector; striping  
34 improvements; and cleaning, on various streets. The sidewalk location was approved by

1 the RCTC under the SB-821 Bicycle and Pedestrian Facilities Program and is shown with  
2 the street locations on the attached Exhibit "A" ("work of improvement").  
3

4 (1) That the work of improvement was completed on October 10, 2008, and  
5 the Nature of Interest was to perform A.C. overlay, pavement rehabilitation and sidewalk  
6 improvements on various streets throughout the City of Banning.

7 (2) That the City of Banning, a municipal corporation, whose address is  
8 Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is completing work  
9 of improvement.

10 (3) That the said work of improvement was performed at various locations,  
11 shown attached as Exhibit "A".

12 (4) That the original contractor for said improvement was International  
13 Pavement Solutions, Inc., State Contractor's License No. 729226.  
14

15 Dated: October 28, 2008

CITY OF BANNING  
A Municipal Corporation

21 By \_\_\_\_\_  
22 Duane Burk  
23 Director of Public Works  
24

25 APPROVED AS TO FORM:  
26  
27

28 \_\_\_\_\_  
29 David J. Aleshire, City Attorney  
30 Aleshire & Wynder, LLP  
31  
32  
33  
34  
35



1  
2 STATE OF CALIFORNIA)

3 ) ss

4 COUNTY OF RIVERSIDE)

5  
6 MARIE A. CALDERON deposes and says:

7  
8 That she is the City Clerk of the City of Banning, which City caused the work to  
9 be performed on the real property hereinabove described, and is authorized to execute  
10 this Notice of Completion on behalf of said City; that she has read the foregoing Notice  
11 and knows the contents thereof, and that the facts stated therein are true based upon  
12 information available to the City of Banning, and that she makes this verification on  
13 behalf of said City of Banning.

14  
15 \_\_\_\_\_  
16 City Clerk of the City of Banning  
17  
18

19 Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20 2008, by \_\_\_\_\_, proved to me on the basis of  
21 satisfactory evidence to be the person (s) whose name is subscribed to the within  
22 instrument and acknowledged to me that she executed the same in her authorized  
23 capacity and that by her signature on the instrument the person, or the entity upon behalf  
24 of which the person acted, executed the instrument..

25  
26 I certify under PENALTY OF PERJURY under the laws of the State of California that  
27 the foregoing paragraph is true and correct.

28  
29 WITNESS my hand and official seal.  
30

31  
32 \_\_\_\_\_  
33 Notary Public in and for said County  
34 and State  
35  
36

## EXHIBIT "A"

### STREET AND SIDEWALK LIST

#### STREET PAVING LIST

No.	Street Locations	1-1/2" to 2-1/2" of A.C. Overlay	1-1/2" of A.C. Overlay	6" A.C. Berm	4" of A.C. over Base	Grade, Compact, and Place Specified Base
1.	Westward Avenue, from Sunset Avenue to 22 <sup>nd</sup> Street (south side)				*	* 6" Base
2.	Wesley Street, from about 450 easterly of San Gorgonio Avenue to Hargrave Street		*		*	* 6" Base
3.	Hathaway Street, from Wesley Street to Porter Road				*	* 6" Base
4.	1 <sup>st</sup> Street, from Hays Street to Ramsey Street	*				
5.	Florida Street and Repplier Road intersection				* 3" A.C.	* 4" Base
6.	Wesley Street and Hargrave Street intersection (southeast corner)			*	*	* 6" Base
7.	Alessandro Road, from Hoffer Street to King Street (west side)			*	*	* 6" Base
8.	Wilson Street, from Apex Street to Highland Springs Avenue (north side)			*		
9.	Williams Street, north side, west of 381 E. Williams Street			*	*	* 8" Base
11.	Ramsey Street, berm in median, east of Omar Street on east bound side			*		
12.	San Gorgonio Avenue and Hoffer Street intersection (northeast corner)			*		
13.	Sydney Street, from Repplier Road to north end		* 2" over native			
14.	Ramsey Street, from 933 W. Ramsey St. to 1025 W. Ramsey (north side)		* In 1st lane		* 6" A.C.	* 12" Base

#### SIDEWALK IMPROVEMENT LIST FISCAL YEAR 2007/2008 SB-821 FUNDED

No.	Sidewalk Locations	From	To
1.	Williams Street (north side)	Martin Street	Hargrave Street

**CITY COUNCIL  
STAFF REPORT**

**Date:** October 28, 2008

**TO:** Honorable Mayor and City Council Members

**FROM:** George Hansen, Community Development Director

**SUBJECT:** **Adoption of Ordinance No. 1400 – Regulations for Smoking in Public Parks:**  
A recommendation by the Community Development Department to amend Section 8.56.030 of the Banning Municipal Code to regulate smoking in City public parks.

**RECOMMENDATION:**

The Community Development Department recommends that the City Council adopt Ordinance No. 1400 amending Section 8.56.030 of the Banning Municipal Code precluding smoking in all enclosed City-owned facilities to include the premises/boundaries of City public parks.

**BACKGROUND/ANALYSIS:**


At the direction of the City Council, staff has prepared an amendment to the Banning Municipal Code which expands the provision of smoking in City owned facilities to include the premises of public parks. Currently, Chapter 8.56 of the Municipal Code precludes smoking in all City-owned facilities, but does not address smoking in public parks; thus, adoption of the proposed amendment to Chapter 8.56 (Ordinance No. 1400 - Attachment 1) will address smoking in public parks. The actual amended text in Ordinance No. 1400 (Section 2) has been highlighted/shaded to facilitate review. Staff has also provided a copy of the existing text of Chapter 8.56 for Council comparison (Attachment 2).

With the adoption of Ordinance No. 1400, smoking within the boundaries of public parks will be prohibited, including smoking on sidewalks and in off-street parking areas adjacent to or within a public park. Enforcement of this Ordinance will be governed by the provisions and procedures found in Section 8.56.070 and 8.56.080 of the same Chapter.


**FISCAL IMPACT:**

There will be no fiscal impact with the adoption of this Ordinance.

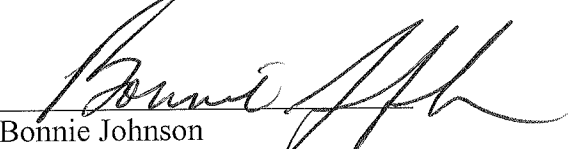
**PREPARED BY:**

  
Matthew C. Bassi  
Planning Consultant


**REVIEWED BY:**

  
George Hansen, AICP/ASLA *by ss*  
Community Development Director

**REVIEWED BY:**

  
Bonnie Johnson  
Finance Director

**APPROVED BY:**

  
Brian Nakamura  
City Manager

**CC Attachments:**

1. Ordinance No. 1400
2. Copy of Chapter 8.56 of the Banning Municipal Code

G:\Smoking in Public Parks Ordinance\CC Report 10-28-08.doc

**ATTACHMENT 1**

**PROPOSED AMENDED ORDINANCE NO. 1400**

## **ORDINANCE NO. 1400**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING SECTION 8.56.030 OF THE BANNING MUNICIPAL CODE TO REGULATE SMOKING IN PUBLIC PARKS IN THE CITY OF BANNING**

**WHEREAS**, the City has considered amending regulations related to smoking in public parks in the City of Banning; and

**WHEREAS**, public response to the issue demonstrated a strong desire on the part of citizens in neighborhoods throughout the City for such regulations; and

**WHEREAS**, the City desires to enact restrictions to regulate smoking in public parks to mitigate the negative effects on neighborhood citizens utilizing the City's public parks; and

**WHEREAS**, City staff has recommended the passage of such restrictions to the City Council to protect the public health, safety and welfare; and

**WHEREAS**, on October 28, 2008, the City Council held a public meeting at which time interested persons had an opportunity to testify in support of, or opposition to the adoption of Ordinance No. 1400; and

**WHEREAS**, at said public meeting on October 28, 2008, the City Council considered and heard public testimony and comments regarding the adoption of Ordinance No. 1400; and

**WHEREAS**, the City Council has carefully considered all pertinent documents and the staff report offered in this case as presented at the public meeting held on October 28, 2008.

**NOW THEREFORE, BE IT HEREBY ORDAINED** by the City Council of the City of Banning as follows:

#### **SECTION 1. ENVIRONMENTAL FINDINGS**

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the Staff Report dated October 28, 2008, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and §21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

**CEQA:** The City Council has analyzed Ordinance No. 1400 and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. It is the City Council's independent judgment that in adopting Ordinance No. 1400 that there is no possibility that the activity in question will have a significant effect on the environment; thus, the activity is not subject to CEQA. The proposed amendment to the Banning Municipal Code does not relate to any one physical project and will not



result in any physical change to the environment. Therefore, the adoption of Ordinance No. 1400 is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

**SECTION 2.** Chapter 8.56.030 of the Banning Municipal Code is hereby amended to read as follows:

**8.56.030 Regulation of Smoking in City Facilities and City Public Parks**

Smoking shall be regulated in the following places within the City:

A. No person shall smoke or use any tobacco product within any enclosed City facility or within the boundaries of any public park within the City of Banning. This prohibition shall not ban smoking or tobacco product use in or upon public streets or alleys adjacent to any City facility or public park, but shall prohibit such acts on sidewalks and in off-street parking areas within City public parks.

B. Smoking in all enclosed City facilities and within the boundaries of all City public parks owned by the City of Banning shall be subject to the enforcement and penalty provisions of Section 8.56.070 and Section 8.56.080.

**SECTION 3.** Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 4.** Effective Date. This Ordinance shall take effect thirty (30) days after its 2nd reading in accordance with California law.

**SECTION 5.** Publication. The City Clerk is directed to cause this Ordinance to be published within 15 days of its passage in a newspaper of general circulation published and circulated within the City of Banning.

**PASSED, APPROVED, AND ADOPTED** this 28th day of October, 2008.

---

Brenda Salas, Mayor  
City of Banning

**APPROVED AS TO FORM AND LEGAL  
CONTENT:**

\_\_\_\_\_  
David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP  
City of Banning, California

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1400 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 28th day of October, 2008, and was duly adopted at a regular meeting of said City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Marie A. Calderon, City Clerk  
City of Banning  
Banning, California

**ATTACHMENT 2**

**COPY OF SECTION 8.56 FOR COUNCIL CONSIDERATION**

**Chapter 8.56****SMOKING****Sections:**

- 8.56.010 Purpose and findings.**
- 8.56.020 Definitions.**
- 8.56.030 Regulation of smoking in city facilities.**
- 8.56.040 Prohibition of smoking in certain enclosed spaces.**
- 8.56.050 Regulation of smoking in places of employment.**
- 8.56.060 Posting requirements.**
- 8.56.070 Enforcement.**
- 8.56.080 Penalties.**
- 8.56.090 Other applicable laws.**

**8.56.010 Purpose and findings.**

The city council of the City of Banning does hereby find that:

A. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution.

B. Reliable studies have shown that breathing side-stream or secondhand smoke is a significant health hazard, especially for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function.

C. Health hazards induced by breathing side-stream or secondhand smoke including lung cancer, respiratory infection, decreased respiratory function, bronchoconstriction, and bronchospasm.

D. Nonsmokers with allergies, respiratory disease and those who suffer other ill effects of breathing sidestream or secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions.

E. The Surgeon General of the United States had advised nonsmokers to avoid exposure to tobacco smoke wherever possible, and, in particular, to protect infants and children from this smoke.

F. The breathing of smoke from tobacco or any other weed or plant is a proven danger to health.

Accordingly, the health, safety and general welfare of the residents of, persons employed in, and persons who frequent this city would be benefited by the regulation of smoking in designated enclosed places. (Code 1965, § 8-90.)

**8.56.020 Definitions.**

As used in this chapter:

“Employee” means any person who is employed by the City of Banning in consideration for direct or indirect monetary wages or profit.

“Employer” means the City of Banning.

“Enclosed” means closed in by roof and four walls with appropriate opening for ingress and egress.

“Place of employment” means any enclosed area under the control of employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges, conference rooms, and employee cafeterias.

“Smoking” means the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind. (Code 1965, § 8-91.)

\* **8.56.030 Regulation of smoking in city facilities.**

All enclosed facilities owned by the City of Banning shall be subject to the provisions of this chapter. (Code 1965, § 8-92.)

**8.56.040 Prohibition of smoking in certain enclosed spaces.**

Smoking shall be prohibited in the following places within the city:

A. All enclosed areas available to and customarily used by the general public and patronized by the public.

B. Hearing rooms, conference rooms, chambers and places of public assembly in which public business is conducted, when the public business requires or provides direct participation or observation by the general public. (Code 1965, § 8-93.)

### **8.56.050 Regulation of smoking in places of employment.**

A. It shall be the responsibility of the city to provide smoke-free areas for nonsmokers within facilities to the maximum extent possible, but the city is not required to incur any expense to make structural or other physical modifications in providing these areas.

B. Within ninety days of the effective date of the ordinance codified in this chapter, the city manager shall adopt, implement, make known, maintain, and promulgate a written smoking policy which shall contain at a minimum the following regulations:

1. Smoking shall be prohibited in restrooms, hallways, employee work areas and in any space in use for employee conferences, meetings or classes, except for a private closed office or a room occupied exclusively by smokers.

2. Any employee shall have the right to designate his or her immediate work area as a nonsmoking area and to post the same with an appropriate sign or signs to be provided by the city. The policy adopted by the city shall include a reasonable definition of the term "immediate work area."

3. In any dispute regarding the implementation of this smoking policy, the health concerns of the nonsmoker shall be given preference.

4. A separate and contiguous nonsmoking area of not less than forty percent of the seating capacity and floor space shall be provided and maintained in lunchrooms and employee lounges.

C. This smoking policy shall be communicated to new employees upon hiring. The city manager shall communicate this smoking policy to all existing employees within sixty days of its adoption.

D. Notwithstanding the provisions of subsection A of this section, the city shall have the right to designate any place of employment, or portion thereof, as a nonsmoking area.

E. Employees whose work area is divided into a public area and a place of employment which is off limits to the public shall be allowed to smoke in their place of employment at a reasonable distance from the public area, but only if consistent with the other provisions of this chapter. (Code 1965, § 8-94.)

### **8.56.060 Posting requirements.**

"Smoking" or "No Smoking" signs with letters of not less than one inch in height, or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted, in every building or other place where smoking is controlled by this ordinance, by the manager or other person having control of such building or other place. (Code 1965, § 8-95.)

### **8.56.070 Enforcement.**

A. Administration of this chapter shall be by the city manager or his designees.

B. Any employee who desires to register a complaint hereunder may initiate enforcement consideration with the city manager or his designees.

C. A violation of any of the provisions of this chapter shall constitute a public nuisance and may be abated by the city or by any affected employee of the city through civil process by means of restraining order, preliminary or permanent injunction or in any other manner provided by law for the abatement of such nuisance.

D. Any employee or manager of any department controlled by this chapter may inform persons violating this chapter of the appropriate provisions thereof. (Code 1965, § 8-96.)

### **8.56.080 Penalties.**

A. It is unlawful for any person who owns, manages or otherwise controls the use of any premises subject to the restrictions of this chapter to fail to:

1. Post signs required hereunder;
2. Provide signs for the use of employees in designating their areas as properly set aside "No Smoking" areas; or
3. Comply with any other requirements of this chapter.

B. It is unlawful for any person to smoke in any area in which smoking is prohibited by the provisions of this chapter.

C. Any person who violates subsections A or B of this section, or any other provision of this chapter, shall be guilty of an infraction, and shall also be punishable by disciplinary action. (Code 1965, § 8-97.)

**8.56.090 Other applicable laws.**

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws or regulations. (Code 1965, § 8-98.)