

AGENDA
REGULAR MEETING
CITY OF BANNING
BANNING, CALIFORNIA

January 27, 2009
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 Franklin, Hanna, Machisic, Robinson, Mayor Botts

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.

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)

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.

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 13

Items to be pulled _____, _____, _____, _____ for discussion.

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

1.	Approval of Minutes – Special Joint Meeting – 12/01/08.	1
2.	Approval of Minutes – Special Joint Meeting – 01/10/09.	5
3.	Approval of Minutes – Regular Meeting – 01/13/09.	9
4.	Notice of Completion for Project No. 2007-07, Rubberized Asphalt Concrete (RAC) Overlay and Street Improvements Along Wilson Street, from 8 th Street to Stargaze Way.	25
5.	Approve Amendment to the Original Agreement with Norman A. Traub Associates for Investigation Services for the City of Banning	30
6.	Approve the Second Amendment to Original Agreement with Civic Solutions, Inc. for Interim Community Development Director Services for the City of Banning Community Development Department.	31

- Open for Public Comments
- Make Motion

IV. PUBLIC HEARINGS

(The Mayor will ask for the staff report from the appropriate staff member. The City Council will comment, if necessary on the item. The Mayor will open the public hearing for comments from the public. The Mayor will close the public hearing. The matter will then be discussed by members of the City Council prior to taking action on the item.)

1.	Zone Text Amendment #08-97509: City Council adoption of Ordinance No. 1396, Approving Zone Text amendment No. 08-97509 to Establish Development Regulations and Operational Standards for Wireless Communication Facilities in the City of Banning.	32
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Recommendation: The Planning Commission recommends adoption of Ordinance No. 1396 (Attachment 1) approving Zone Text Amendment No. 08-97509 to Establish Development Regulations and Operational Standards for Wireless Communication Facilities in the City of Banning.

Mayor asks the City Clerk to read the title of Ordinance No. 1396:

“An Ordinance of the City Council of the City of Banning, California, Approving Zone Text Amendment No. 08-97509 to Adopt Development Regulations and Operational Standards for Wireless Communication Facilities in the City of Banning.”

Motion: I move to waive further reading of Ordinance No. 1396.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1396 pass its first reading.

(A minimum of three votes required)

V. REPORTS OF OFFICERS

1. Kim Clinton, Senior Planner
 - A. City of Banning Draft 2008-2014 Housing Element: City Council Review of the Draft 2008-2014 Housing Element and Adoption of Resolution No. 2009-08, Authorizing Staff to Submit the Draft Housing Element to the State Department of Housing and Community Development (HCD) 97

Recommendation: **That the City Council receive public testimony and adopt Resolution No. 2009-08, authorizing staff to forward the Draft 2008-2014 Housing Element to the State Department of Housing and Community Development (HCD) to begin the 60-day HCD review period.**

2. Matthew C. Bassi, Interim Community Development Director
 - A. One Stop Shop Update: Presentation by the Community Development Department on the One Stop Shop Program 106

Recommendation: **That the City Council receive and file this report.**

- B. Adoption of Ordinance No. 1400 - Smoking in Public Parks: Adoption of Ordinance No. 1400 to Amend Section 8.56.030 of the Banning Municipal Code to Regulate Smoking in Public Parks in the City of Banning 121

Recommendation: That the Community Development Department recommends that the City Council adopt Ordinance No. 1400, amending Section 8.56.030 of the Banning Municipal Code to regulate smoking in public parks.

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)

3. Brian Nakamura, City Manager

A. City Council Adoption of Resolution No. 2009-11, In Accordance with Banning Municipal Code chapter 2.04, Section 2.04.010, Setting Its Regular, Holiday, and Vacation Meeting Schedule 165

Recommendation: That the City Council adopt Resolution No. 2009-11, Addressing Municipal Code Chapter 2.04, Section 2.04.010, Setting Its Regular, Holiday, and Vacation Meeting Schedule.

VI. FUTURE MEETINGS

- January 28, 2009 - Budget Workshop at 5:30 p.m. – Council Chambers
- February 4, 2009 - Workshop with City Attorney
5:30 p.m. - Closed Session; 6:30 p.m. - Public Session
- February 9, 2009 - Interview of Planning Commission Candidates at 6:00 p.m.

VII. CLOSED SESSION

1. The City Council will meet in Closed Session pursuant to Government Code Section 54957 with regard to City Manager evaluation.
 - 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].

MINUTES
CITY COUNCIL/
COMMUNITY REDEVELOPMENT AGENCY
BANNING, CALIFORNIA

12/01/08
SPECIAL JOINT MEETING

A special joint meeting of the Banning City Council and the Community Redevelopment Agency was called to order by Mayor Salas on December 1, 2008 at 6:02 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS/

AGENCY MEMBERS PRESENT:

Councilmember Botts
Councilmember Franklin
Councilmember Hanna
Councilmember Machisic
Mayor Salas

COUNCIL MEMBERS/

AGENCY MEMBERS ABSENT: None

OTHERS PRESENT:

Brian Nakamura, City Manager/Executive Director
David Aleshire, City Attorney/Agency Counsel
Bonnie Johnson, Finance Director
Leonard Purvis, Police Chief
Matthew Bassi, Consultant
Marie A. Calderon, City Clerk/Agency Secretary

PUBLIC COMMENTS

There were none.

REPORTS OF OFFICERS

1. Authorize City Manager to prepare documents and property at 311 E. Ramsey Street for disposition to Judicial Council California Administrative Office of the Courts for purchase of price of \$1,009,380.
(Staff Report, Brian Nakamura, City Manager)

City Manager said that this was a momentous evening for us to be here because this has been something that the Council, as well as, the staff has been working diligently on for the later part of the year if not more. Essentially we are here to have the Council provide to him the direction to prepare the documents and property at 311 E. Ramsey Street for disposition to the Judicial Council of California Administrative Office of the Courts for the purchase price of \$1,009,380. If you recall, we have had discussions on making sure that we allow this process to move forward and allow the courts to acquire the property. The Public Works Board for

the State of California will be meeting to discuss this matter and would hope to have the Council concurrence that we are moving forward with the sale of this property to the State at their January Public Works Board Meeting in Sacramento, California. As you know there is a lot of information that is out there at this point in terms of what we have invested in the property and what the costs have been and to date we have about \$3.7 million dollars into the property and that was for the acquisition and also the removal of a tank and some environmental issues that needed to be cleared up, as well as, some lien issues. He assured the Council that the investment is well worth it. At staff level they have seen some rough preliminary designs that the architect has put together and this is a \$58 million dollar investment by the State of California. He said he is asking for authorization from the Council to proceed to work with legal counsel to set the notice for the public hearings and dispose of the property hopefully in April or May of 2009.

City Attorney said that in regard to the process for the Redevelopment Agency to dispose of property under the Health and Safety Code Section 33433 requires that we have a report that discloses what the price is of the disposition, what the investment is to the extent that the purchase price is less than the value of the property, we explain to the public what the other benefits are that the City gets out of the project. So that requires both an action of the Agency and the City Council and it is required that we have this report available for public inspection prior to the hearing. Basically because of the holiday schedule the notice has not been sent out yet so that hearing would not occur until your first meeting in January. The meeting this evening is basically a report by the City Manager on the status of the discussions on what the State actions will be. Staff is asking the Council to authorize staff to move forward and prepare the reports and schedule the matter for public hearing at your meeting in January. He wanted it to be clear that nobody thinks that we've actually had a special meeting to meet and approve the project. There is a public hearing process and everybody is going to be getting the notice. In essence, the Council is setting the matter for hearing and authorizing staff to process and prepare the documents necessary for that hearing.

Councilmember Machisic asked what kind of confirmation does the Council need to give staff in regards to their feelings about the contact.

City Attorney said the Council could just adopt a motion authorizing the City Manager to set it for hearing. If there were any details about the document that you had issues or concerns with, you could bring them up publicly or under real estate negotiations in closed session to give instructions to staff. Staff thinks that in essence the major business points are agreed to and staff would go ahead and advertise it for hearing based upon that business deal.

Mayor Pro Tem Franklin said in the report that would be filed would it include talking about the jobs that would be created for our downtown, as well as, the revenue that would be generated.

City Attorney said the Health and Safety Code requirements are kind of vague. Fundamentally they are trying to get what is the subsidy that is being provided and then you are supposed to report on what the benefit is. So it behooves us to be a thorough and comprehensive as possible about what the many benefits of this project would be. He said

when you move into this hearing you want to look comprehensively at what all the potential spin offs of the project would be. As they prepare for the hearing the more details and information that can be put into that report the better the report will be.

Councilmember Botts said he would concur with Mayor Pro Tem Franklin. He thinks that they all qualitatively know what this means to us; it is a real milestone. He is certainly prepared to support this tonight but he does think that as this moves forward that there are some added costs. There are some new obligations in this document that he is willing to go ahead and support this but we need a price tag on those (offsite improvements, TUMF fees, development fees). If there are some costs to that, he is certainly willing to support that to move this project forward but we all need to have that information. We already know what we have put into it and it is a good investment but we are about to invest some more and at least at a minimum we need to know what the additional investment are going to be.

City Manager said that staff will be glad to compile that information for the Council and they do have some of that information and would be glad to have a discussion if the Council wishes but it was staff's intent to get the acknowledgement of the Council that we are moving forward so we can get this information to you and it will be public. We are not trying to not disclose anything. Staff clearly knows that this is a significant investment on behalf of the Community Redevelopment Agency, as well as the City.

Councilmember Hanna said that it sounds to her that we are giving reassurance to the State that we are as a Council are on board rather than making so much of a legal decision tonight so all of that information will come forward in that health and safety board report.

City Manager said that he believes that staff could make it part of that report. He said that staff will compile all of the information that they have so that the Council is very comfortable with where we are moving forward and how we are moving forward with the disposition of the property.

Councilmember Machisic thanked the Council for their commitment to this project. We have been working on this for awhile and he appreciated all of the hard work that staff did on this. He thinks that it will be such a boom to the east side of city hall and Banning and hopefully will be the fuse that lights the development in this particular area.

Councilmember Botts said he appreciated being a part of this Council and they have been unanimous in this all along. As well as unanimity as we developed our façade program and have that going forward. Obviously right now we have empty buildings but they are redone and ready to go and the look and the feel are there and as this court house moves forward those buildings are going to start filling up. So it is another one of those pieces of the building block with what he thinks that the Council has debated at times but we've said we do have a plan and a vision and let's stay with it and we have done that.

Mayor Salas said we have come a long way and would like to ask that maybe we even consider as we move in to the public hearing section that there are advisory boards in the unincorporated areas and if we look to them and give them language to adopt something in

support of what we are doing here and make it a regional effort and not just a Banning thing because this definitely affects the entire Pass Area. She is sure that Supervisor Ashley could help us in getting it on the agenda for approval of these boards and they make up community leaders in the areas of Cabazon, Whitewater, as well as, Cherry Valley and San Timetao Canyon. So from one end of the Pass Area to the other this project affects everyone because those jobs go to people who live in all the cities out here.

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

Motion Franklin/Machisic authorizing the City Manager to move forward. Motion carried, all in favor.

ADJOURNMENT

By common consent the meeting adjourned at 6:16 p.m.

Marie A. Calderon, City Clerk/
Agency Secretary

MINUTES OF JOINT BOARD MEETING

SATURDAY, JANUARY 10, 2009

BANNING CITY COUNCIL/ BANNING UNIFIED SCHOOL DISTRICT BOARD OF TRUSTEES

1. The Joint Meeting between the Banning City Council and Banning Unified School District Board of Trustees was called to order by Board President, Amy Herr, at 9:05 a.m. on Saturday, January 10, 2009, in the Banning City Council Chamber located at 99 E. Ramsey Street in Banning, California.

OPEN SESSION
CALL TO ORDER
TIME/ PLACE

2. Banning Unified School District Board Clerk, Deborah Dukes, called the roll. Quorum established; members in attendance:

ATTENDANCE
ROLL CALL
ESTABLISHMENT
OF QUORUM

- Amy Herr, President
- Deborah Dukes, Clerk
- Pelton Teague, Member
- Alice Silverman, Member
- Larry Silverman, Member

Banning City Manager, Brian Nakamura, called the roll. Quorum established; members in attendance:

- Bob Botts, Mayor
- Barbara Hanna, Mayor Pro Tem
- Debbie Franklin, Council Member
- John Machisic, Councilman
- Don Robinson, Councilman

Staff Present:

STAFF PRESENT

- Brian Nakamura, Manager, City of Banning
- Lynne B. Kennedy, Ph.D., Superintendent, Banning Unified School District
- Gordon Fisher, Assistant Superintendent, Curriculum, Instruction and Assessment, Banning Unified School District
- Craig Newman, Director, Human Resources, Banning Unified School District
- Kathie Campbell, Superintendent's Secretary

Visitors:

Visitor's list available in Superintendent's office.

3. Board President, Amy Herr, led the flag salute. FLAG SALUTE

4. Board Member, Alice Silverman, presented the inspirational. INSPIRATIONAL

5. **Communication** COMMUNICATION

5.1. **Public Input** PUBLIC INPUT

There was no public input.

5.2. Board and Council members stated that they are pleased with the inception of the 2+2 meetings and the open dialog occurring between the City and School District, as they serve the same constituents. ESTABLISH PROTOCOL

Superintendent, Dr. Lynne Kennedy, distributed a suggested protocol for joint meetings, as follows:

There will be two joint Banning Unified School District/ Banning City Council meetings per year. One meeting will be in January and one meeting will be in June.

- Each entity will host one of the two meetings. The January meeting will be hosted by Banning Unified School District. The June meeting will be hosted by the City of Banning.
- The host of the meeting will be responsible for printing, posting, and distributing the agenda, recording/ publishing minutes, and conducting/ chairing the meeting. *It was requested that all reports be attached to the agenda at the time of distribution so that Board and Council members may review the materials in advance.*
- Agendas will be developed collaboratively based on issues of mutual interest and/ or of potential impact to the School District and City.
- During joint meetings, to ensure that all participants have equitable opportunities to contribute, members should raise their hands and be recognized by the chair prior to speaking. *Speakers will be alternated between Board and Council members.*

	<u>Information/ Discussion</u>	<u>INFORMATION/ DISCUSSION</u>
6.		
6.1.	Dr. Jay Hoffman, Superintendent of Nuview Union School District, discussed the community of Banning's demographics and the need for a pre-school program and gave a PowerPoint presentation on the preschool program currently operating in Nuview Union School District. The Board and City Council discussed the feasibility of such a program in Banning, including facilities issues, and the importance of "getting the programs out to the people." The Board and Council agreed that this program is a vision and it was the consensus of the Board and Council to move forward. Superintendent, Dr. Lynne Kennedy, will work with Dr. Hoffman and City supervisors to develop a timeline, and conduct a facilities study. This issue will be discussed and studied further at future 2+2 meetings.	<i>PRESCHOOL PROGRAM</i>
	Mr. Barry Bush from Supervisor Marion Ashley's office was present to show his support for the program.	
6.2.	Board President, Amy Herr, reviewed the progress of the District modernization projects and shared pictures of Nicolet Middle School.	<i>BHS ATHLETIC COMPLEX</i>
	Banning Unified School District Facilities Coordinator, Ken Miller, and Bill Gerth of Tilden Coil Constructors distributed and reviewed schematics of the Banning High School athletic complex. Board and Council members discussed joint use of the facility and what types of activities would be available to the community. City Manager, Brian Nakamura, discussed what the City may be able to contribute to the project.	
	City Council members stressed the importance of advertising what is being accomplished with the Bond money. It was suggested that the District organize a bus tour to familiarize community members with its facilities. It was also suggested that a link to Banning Unified School District be put on the City's website. Superintendent, Dr. Lynne Kennedy, will organize a tour of the District's facilities for Council members. The renderings of the Banning High School athletic complex will on exhibit at the City of Banning by the first week of February.	
6.3.	The item of joint use was discussed during agenda item 6.2. The 2+2 Committee will compile a comprehensive preliminary list and continue to discuss the issue of joint use.	<i>JOINT USE</i>

6.4. The Board and Council Members discussed City/ District partnerships. The importance of communicating events was stressed. Council members expressed an interest in the Board's Adopt-a-School Program. Mayor, Bob Botts, requested to adopt New Horizons High School and Council member, Debbie Franklin, requested Hoffer Elementary School. Superintendent, Dr. Lynne Kennedy, will assign the remaining schools to Council members and notify them of their "adoptions."

7. **Future Agenda Items**

FUTURE AGENDA ITEMS

- Gangs problem

8. **Next Meeting**

NEXT MEETING

The next Joint Meeting of the Banning City Council/ Banning Unified School District Board of Trustees will be held on Saturday, June 20, 2009 at 9:00 a.m. in the Banning City Council Chamber.

9. **Adjournment**

ADJOURNMENT

The Joint Meeting of the Banning City Council/ Banning Unified School District Board of Trustees adjourned at 11:00 a.m.

Adopted

Amy Herr, President

Deborah Dukes, Clerk

Adopted

Bob Botts, Mayor

Marie A. Calderon, City Clerk

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

1/13/09
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Botts on January 13, 2009 at 6:30 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Franklin
Councilmember Hanna
Councilmember Machisic
Councilmember Robinson
Mayor Botts

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Brian Nakamura, City Manager
David Aleshire, City Attorney
Bonnie Johnson, Finance Director
Duane Burk, Public Works Director
Jim Earhart, Public Utility Director
Matt Bassi, Consultant
Leonard Purvis, Police Chief
Hoyl Belt, Human Resource Director
Heidi Meraz, Recreation Director
George Thacker, Assist. Dir. of Water and Wastewater
Jeff Stowell, Battalion Chief
Marie A. Calderon, City Clerk

Mayor Botts invited the audience to join him in the Pledge of Allegiance to the Flag. The invocation was given by Mayor Pro Tem Hanna.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS
ANNOUNCEMENTS/APPOINTMENTS

PUBLIC COMMENTS – On Items Not on the Agenda

Bill Dickson and Al Lopez addressed the Council thanking them for their support of the Hispanic Chamber's event held on December 14, 2008 and without this support they could not have done it. They thanked all the volunteers and everyone involved. The count ended up in the neighborhood of 1200. Some people were also involved in making different items and they made piñatas for each of the Council members.

Ellen Carr, 471 W. George Street addressed the Council congratulating the Council on their election or reelection and hopes that this year they can all pull together to make Banning one big

happy city. She stated that she is still the spokesperson for the animals of this area and things are looking much better at the shelter but they still need a lot of things.

Chris McCallum, 757 W. Westward said that just before the end of the year through his company, Dreammakers Limousine he made an offer to anybody that was doing anything to help people or organizations during the holiday season that he would give a gift of a limousine, dinner and some kind of event for four people. He said he collected about 150 tickets for the raffle and he had a young lady in the audience pull the winning ticket and the group that has won is Sun Lakes District 9.

Dorothy McLean, 916 Linda Vista Dr. addressed the Council in regards to an article in the Press Enterprise entitled "Utilities Help to Keep the Lights/Heat On." It stated that with thousands of residents struggling to make payments to keep their lights on utility providers are reaching out with programs to help ease the financial burden. Southern California has payment plan options and reduced rates to those who meet certain income requirements. Due to the economy and job loss many people in Banning are struggling to make ends meet. Her question is what is the City doing to assist these people? Are you talking to them and showing them how to lower their utility bills? What has been actually implemented to assist the people of Banning who are struggling to meet their monthly electric or gas payments? It would be nice to know that we have something to help the people of Banning that are struggling.

George Nordquist, 4133 W. Wilson addressed the Council in regards to an item that was on the last Council agenda. He said he father and mother moved them to Banning in 1949 and his dad was builder and had built them a modest home in Clinton, Iowa which they sold before coming to Banning. Mom and dad purchased one of the residential lots that the Roberge Family had developed in the northwest part of Banning. Mr. Roberge was able to buy land and develop lots including sewer, water, electric, gas and telephone and sell them and make a profit for \$672 dollars for the lot. He said he asked the City Clerk to provide the Council with a copy of his dad's journal showing the complete cost of their home. As you can see on the journal page the complete cost of the home was \$9,434.52 which included the total development cost charged by the City of \$16.00 for a building permit. Incidentally, this home is still in use and is located across the street from the Armory. Recently there was an article in the Press Enterprise with the following headlines, "Special Tax Plan Considered". The present permit fees to build one individual home in the city of Banning already totals \$40,150.34 instead of the \$16.00 paid for home construction in 1950. The cost has escalated to over \$40,000.00. He said that they have recently constructed 19 residential lots in Banning which so far has cost them \$3,697 per lot in City building fees. This is in addition to the \$40,000 per house which they will be required to obtain a permit to build a home. Now, you are planning to add or have already added an additional several hundred dollar one time fees for more police costs plus, several hundred dollars in an annual fee on the tax bill to be collected every year thereafter.

Mayor Botts told Mr. Nordquist that his three minutes were up at this time.

Charlene Sakurai, 43000 Dillon Road addressed the Council stating that February 14th the Alliance will be holding the Second Annual Go Red for Women's Luncheon to created awareness about women's heart health disease and prevention of stroke. This is a national movement through the American Heart Association. The luncheon will be held from 11:30 a.m. to 1:30 p.m. and the cost

is \$10.00 and a heart healthy lunch will be served. There will be speakers, drawings and educational materials, etc. You will need to make reservations and for more information you can call 922-4911.

Dora Nordquist, 4133 W. Wilson addressed the Council stating that she was extremely concerned about the issue that George just brought up and the article in the paper that says, "The City of Banning is considering more fees to build a home." She and George were wondering if the average citizen knows that it now costs over \$40,000 for a permit to build one home. So they felt it was very important that they come and voice this to the citizens of Banning. She wanted to complete George's presentation and stating that over the years they have heard present residents say "oh well, what does it matter to have more fees for building. I don't have to pay it." But we are all going to be paying these costs. We are now in a recession started by purchasers of these homes in our community and across the whole nation who cannot now pay for their purchase. A lot of people were unqualified buyers given government purchased loans they could not afford so now we the taxpayers are going to pay the costs difference between an inflated sales price and the repossession price. We see these homes all over Banning with dried up lawns and dilapidated looks. It seems to them that instead of adding more fees, the city, the county, the school district ought to be devising ways to reduce spending and lowering some of these development costs. So they emphatically say as parents, grandparents we are fearful that our kids and our grandkids will not be able to afford a house if these costs continue to escalate. You might think it is funny that George brought his father's journal page for you to see but this home was built for \$9,000 with City fees at \$16.00 and that was not so long ago and how could they escalate from \$16.00 to over \$44,000. This is their concern.

Mayor Botts said that part of public comments it is not a place where the Council can enter into dialogue. There are times when they would like to respond but it is a point that they encourage and want people to come and talk. He said that everyone that comes to the podium is listened to and if there are issues, they can talk to staff. He said that the Council is cognizant of the issues that are going on and the City is facing drastic financial issues also that they will be addressing and the City staff deals with people everyday relating to utilities. He would encourage anyone that has some challenges to call city hall and they can talk with staff in the utilities department or the electric or water department. There are a number of programs and if you are having some challenges, please call us. We cannot fix everything but there a number of programs available.

Report by City Attorney

City Attorney said that they have four closed session item to add to the agenda and three of them involve real property negotiations (255 E. Ramsey, 310 E. Ramsey, Property at the Airport). He asked the Council to find that the need to take action on these items arose subsequent to the posting of the agenda and add them to the agenda for closed session.

Motion Machisic/Hanna to add this item to the agenda. Motion carried, all in favor.

City Attorney said the fourth matter involves a matter of personnel and this matter arose subsequent to the posting of the agenda.

Motion Hanna/Machisic to add this item to the agenda. Motion carried, all in favor.

Report by City Manager

City Manager said that there are programs available for those that need help with their utility bills.

CORRESPONDENCE: There was none.

PRESENTATIONS:

1. Presentation by Officer Mike Bennett and Banning High School Principal Raymond Johnson – Regarding Banning High School

Officer Bennett addressed the Council stating that in August he was given the assignment of School Resource Officer at Banning High School. He met with Mr. Ray Johnson, principal of the high school and during that meeting he mentioned that he had to set a new standard for Banning High School and from past practices they wanted to go above and beyond to make a safe environment for the students and to allow the parents to know within the community that it is safe to send their students to Banning High School and not have any fear. The three goals that he came up with were: 1) Insure safety; 2) accountability and positive discipline to the students; and 3) be a mentor. He said it is with great excitement that through the first four months of the school year through trials and tribulations he has accomplished all three of those goals. He went over how this was accomplished and also went over statistics for 2007/08 and year to date. He said he is very proud to have the help from the Banning Unified School District and his administration that he works with is amazing and they have all worked together. He said that through this he has developed a friendship through the principal at the high school and he is kind of a mentor to him and looks up to him and it is a pleasure to have him as a friend and that is Mr. Ray Johnson, Principal of Banning High School. Officer Bennett said in closing it is their goal and his goal for the remainder of this school year to make sure the students know that they are safe and have nothing to worry about and that they can relax and be themselves and they will deal with the problems that come and end the school year on a positive note and try to accomplish and beat the results that they have had in the last 3 to 5 previous school years.

Ray Johnson, Principal of Banning High School addressed the Council thanking the Council for having them here this evening and that Officer Bennett did a nice job in outlining some of the improvements that have taken place at Banning High School. The relationship between the Banning Police Department and Banning High School has been very, very good and he is very impressed. He said he was very impressed with Chief Purvis and his department has been outstanding and have always been a good working partner with them at the high school. The statistics that have been shared are a concerted effort between Officer Bennett, the administrative team, certificated and classified staff, parents and especially the students. The students are doing an outstanding job and their efforts are reflected in what you see here and he commended Officer Bennett for the great job of balancing his role as part of the staff and maintaining the integrity of his job as a police officer.

2. Consideration by the Banning City Council to Approve Resolution No. 2009-07, In Support of the Riverside County Detention Center near the Community of Whitewater.

Rob Fields, Dir. of Department of Facilities Management for Riverside County addressed the Council giving a brief slide presentation regarding the facility. He showed a rendering of what the facility would look like in Whitewater and stated that this is the preferred site and they are still going through the CEQA process. This is a central location for the facility and easy access to those that need to come to the facility from around the county. He said that this would be a detention center and not a prison. He continued his presentation showing various renderings of the facility and going over community benefits.

A representative of the Riverside County's Sheriffs Department spoke on behalf of Sheriff Sniff going over the critical need for this facility and the purpose and the intended use of this site. He said that currently have five correction facilities in Riverside County that are maintained by the Sheriff's Department to support all of the municipal agencies. Without a new detention center early releases will continue and the residents will be placed at risk. It is a vital need for public safety. Today there is a need for 1700 beds just to start to curtail early releases. The intended use of this site is not to be used as a booking and release facility. The intended use of this site is basically to relieve the overcrowding in Riverside County and to allow them to support the municipal agencies, their agency, the California Highway Patrol and the federal agencies that work in around the county and allow them to have bed space. Most movement of inmates will be when they are transported in and moved to their housing unit. There will be video visitation and most activities will be inside and there are no windows so the inmates cannot look out on to the community around them.

Mr. Fields said that there is website you can visit to get information about the Riverside County Regional Detention Center Project at saferstreets.countyofriverside.us.

There were Council questions in regards to the release of prisoners, the number of beds needed, the buffer zone, traffic impacts, when environmental impact report will be available, and when first phase will start and be completed.

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

Mayor Pro Tem Hanna said her predisposition is not to want to take a position until she had had a chance to see the environmental impact report. There are things beyond her knowledge at this point to go out on a limb and support this. She thinks there are various reasons why it should be supported but would prefer to see the environmental impact report before she makes a decision.

Councilmember Machisic said we are part of the County of Riverside and thinks we have a major problem dealing with criminals, court decisions and a number of other things. He thinks we need to help be part of the solution and he thinks the County has done a good job in seeking out various sites. We need to be part of the solution and he would be in favor of going forward and supporting this particular project.

Councilmember Robinson asked why are they coming forward at this time with out the EIR to get our support.

Mr. Fields said they are not necessarily tied to each other.

Councilmember Franklin said the closest neighbors would really be Morongo and has he had any conversation with any of their tribal council and what has their response been.

Mr. Fields said that it has been very brief and they are scheduled to appear before the tribal council some date in the future. They are in discussions with potentially everyone in the surrounding area.

There was Council discussion and concern in regards to the Morongo Tribal Council consideration of this project since they are immediately adjacent to this proposed facility. There was some discussion in regards to tabling this item until the EIR is available and the Tribe has had a chance to consider this project.

Motion Robinson that the Council table this resolution until we have had a chance to take a look at the draft EIR at possibly one of the Council's meetings in March. Mayor Pro Tem Hanna recommended changing the date to April 14th which is an actual City Council meeting date.

Councilmember amended his motion to change the date to April 14th. Mayor Pro Tem Hanna seconded the motion.

There was Council discussion in regards to looking at this item sooner if the tribal council considers this project earlier than April.

City Attorney said that if this is actually Council's intent one possibility might be that you could approve it subject to the condition that the Morongo's also approve the location. That way if they did approve it, you wouldn't have to bring it back.

Mayor Botts asked the Council to vote on the motion made by Councilmember Robinson and seconded by Mayor Pro Tem Hanna to table this item until April 14, 2009.

Motion died 4/1 with Mayor Pro Tem Hanna voting yes.

City Attorney said he thinks perhaps the Council is in favor of the resolution adding the condition that your approval is subject to the Morongo Tribe also approving that location. We would add that language to the resolution and the Council would be approving it with that addition to the resolution.

Motion Robinson/Franklin to approve Resolution No. 2009-07, In Support of the Riverside County Detention Center near the community of Whitewater with the amendment "if the Morongo Tribe does not object." Motion carried, 4/1 with Mayor Pro Tem Hanna voting no.

APPOINTMENTS:

1. City Council Committee Assignments

WRCOG (Western Riverside Council of Governments) – Assignment: Machisic; Alternate: Botts
RTA (Riverside Transit Agency) – Assignment: Franklin; Alternate: Robinson

RCTC (Riverside County Transportation Commission) – Assignment: Botts; Alternate: Robinson
Pass Area Transportation NOW Committee: Assignment: Franklin; Alternate: Robinson
Regional Conservation Authority: Assignment: Machisic; Alternate: Franklin
Tribal Distribution Fund Committee: Machisic (*County Appointment*)
Economic Development Committee Liaison: CRA Chairman Robinson
Government Access Channel Committee: Assignment: Botts and Robinson
Public Utility Advisory Committee for City of Banning: Assignment: Hanna
TUMF Zone Committee: Assignment: Machisic; Alternate: Franklin
SCAG (Southern California Association of Governments: Assignment: Robinson
League of California Cities (Contact and Executive Board Representative): Botts
Banning Chamber of Commerce: Assignment: Hanna; Alternate: Robinson
San Gorgonio Pass Water Agency: Assignment: Robinson; Alternate: Botts
Community Action Agency: Assignment: Franklin; Alternate: City Staff

2x2 Working Groups

Banning Unified School District: Assignment: Franklin and Hanna
Morongo Band of Mission Indians: Assignment: Botts and Machisic
Mt. San Jacinto College: Assignment: Robinson and Franklin

Motion Hanna/Robinson to approve the City Council Committee Assignments as noted.
Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

ANNOUNCEMENTS/COUNCIL REPORTS

None were given.

CONSENT ITEMS

Consent Items 3 and 7 were pulled by Councilmember Franklin for discussion and Councilmember Robinson pulled Consent Item No. 8 for discussion.

1. Approval of Minutes – Regular Meeting – 12/10/08

Recommendation: That the minutes of the Regular Meeting of December 10, 2008 be approved.

2. Approval of Minutes – Special Meeting – 12/20/08

Recommendation: That the minutes of the Special Meeting of December 20, 2008 be approved.

4. Resolution No. 2009-02, Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2009/2010.

Recommendation: That the City Council adopt Resolution No. 2009-02.

5. Resolution No. 2009-03, Accepting the 2009 Supplemental Law Enforcement Services Fund Allocation and Authorizing the Banning Police Department to Use the Funds

Towards the Purchase of Law Enforcement Related Equipment and Training.

Recommendation: That the City Council adopt Resolution No. 2009-03.

6. Resolution No. 2009-04, Authorizing the Appropriation of General Account Funds for the P.O.S.T. Law Enforcement Command College Program in the Amount of \$4,206.00 Which Will Be Reimbursed to the City of Banning Through the California Commission on Peace Officer Standards and Training Upon Completion of Each Session Completed.

Recommendation: That the City Council adopt Resolution No. 2009-04,

9. Emergency Booster Pump Repairs at Water Well C-2 Site.

Recommendation: That the City Council approve the repairs to the booster pump at Water Well C-2 Site in the amount of \$11,015.13 and direct the City Clerk to record the Notice of Completion.

10. Emergency Booster Pump Repairs at Water Well C-3 Site.

Recommendation: That the City Council approve the repairs to the booster pump at Water Well C-3 Site in the amount of \$18,887.78 and direct the City Clerk to record the Notice of Completion.

11. Notice of Completion for Project No. 2001-02, Construction of the 30" & 24" Water Transmission Pipeline.

Recommendation: That the City Council accept the project entitled Project No. 2001-02, Construction of the 30" & 24" Water Transmission Pipeline as complete and direct the City Clerk to record the Notice of Completion.

12. Notice of Completion for Project No. 2008-01WW, Cleaning of Anaerobic Digesters.

Recommendation: That the City Council accept the project entitled Project No. 2008-01WW, Cleaning of Anaerobic Digesters as complete and direct the City Clerk to record the Notice of Completion.

13. Authorizing Public Utilities Director to Purchase Water Supply from Various Sources and Approval of Payment of Two Invoices.

Recommendation: That the City Council authorize the Public Utilities Director to purchase Water Supply from varying sources on an as needed basis within the approved funding levels set forth in the annual adopted budget for the City's Water Department. Such purchases will not require any further formal action by the City Council. Approve payment of two invoices submitted for water supply; one with Beaumont Cherry Valley Water District (BCVWD) in the amount of \$29,978.68 and the other with San Gorgonio Pass Water Agency (SGPWA) for \$46,420.00.

Motion Hanna/Robinson to approve Consent Items 1, 2, 4, 5, 6, 9, 10, 11, 12, and 13. Motion carried, all in favor.

3. Resolution No. 2009-01, Approving the Project Development Cooperative Agreement with the State of California, Department of Transportation (Caltrans), for the Grade Separation and Ramps Modifications at Sunset Avenue.

Councilmember Franklin said having sat in one of the meetings that City staff had with Caltrans almost a year ago and listening to Caltrans completely change some of the requirements they had of the City her question is if we enter into this agreement, does that mean that they are going to not make changes once they move forward with the plan with us.

Mr. Burk said he thinks we cannot enter into the agreement without modifying their ramps with having the cooperative agreement because we are going to enter on to their property. She would say no and they are always going to leave the ability to change their mind.

City Attorney said he thinks that if Caltrans changed its mind there is nothing that prevents them from doing that and the expense if funded by the City. Caltrans requires everybody to enter into their boiler plate agreements. And if we don't, they won't go forward with the project.

Councilmember Franklin asked if this has any impact in where we stand in the pecking order for getting funding for this project.

Mr. Burk said no and he thinks this actually helps move the pecking order up a little bit because it is another step in that ladder as you move closer to the project. This is just a formality of sorts.

Mayor Botts said everyone is telling us that you have got to have your project ready and we have deadlines by which we have to do this and anything that would delay that could, he believes, jeopardize the project.

Mr. Burk said the thing about the cooperative agreement he thinks the term "cooperative" is basically after it gets done with the design there is going to be another group of people we have to deal with at that level of bureaucracy to get it built and the cooperative agreement is to bring their managers on their team to go ahead and do the field work. But as far as getting the project through any faster, this is just a step in that ladder. He doesn't think it jeopardizes anything else as far as the project goes. This is a boiler plate application.

Councilmember Franklin asked about the current cost for this grade separation. Mr. Burk said the grade separation estimate is around \$36 million dollars.

Motion Hanna/Machisic to approved Consent Item No. 3 adopting adopt Resolution No. 2009-01 and authorize the Mayor to execute the Project Development Cooperative Agreement. Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

7. Resolution No. 2009-05, Awarding An Agreement to Allsup Corporation of Upland, CA in an Amount 'Not of Exceed" \$52,459.00 for the Emergency Repair of the CNG Fueling Station at the City Yard.

Councilmember Franklin asked about Beaumont have a CNG site, regular maintenance of the City's facility and the bid process to repair.

Mr. Burk said that the City of Beaumont has approved a site but it has not been completed yet. In regards to maintenance it is done every day and basically these are just compressors that inject the fuel into the gas tank. He gave some back ground on the CNG facility. In regards to the bid process that was not done. He said that Allsup is the one that installed this originally and this is kind of an isolated, prioritized, proprietary project.

There was some brief discussion in regards to other agencies using Banning's CNG facility and the need to look at costs for fuel and maintenance.

Motion Machisic/Franklin to approved Consent Item No. 7 adopting Resolution No. 2009-05 and authorize the Director of Finance to make necessary budget adjustments and appropriations to cover expenses in an amount of \$52,459.00. Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

8. Resolution No. 2009-06, Approving Participation In the Green Path North Transmission Project Feasibility Study.

Councilmember Robinson asked if this was the same proposed transmission project that is supposed to go over to the Oak Glen area to go into Los Angeles and will people have a chance to comment on this project.

Mr. Earhart said it is the same project and there are six optional alternative routes as this point in time and they are just looking at the feasibility of all those routes. Right now the two routes they are going to study and they are Route A-3 – the southern route and the other route runs up Highway 62 and across. The southern route is not in the City of Banning but everyone will have a chance to comment on the project which is the El Casco Project.

Motion Hanna/Botts to approve Consent Item No. 8 approving the City's participation in the Green Path North Transmission Project feasibility study, which will determine the viability of building transmission facilities to bring renewable energy from the Imperial Valley to the Greater LA Basin. Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

PUBLIC HEARINGS

1. Public Hearing Soliciting Public Comment on the City's Neighborhood Stabilization Program.

City Manager said unfortunately the public hearing cannot be held this evening because last night staff received some information from Housing/Community Development that required noticing the public hearing with certain language within the public hearing notice that the City did not receive. It was not an error on anyone's part other than trying to move the project forward as quickly as possible. It will be moved to the next meeting as a public hearing.

REPORTS OF OFFICERS

3. C Smoking in Public Parks – Review of Ordinance No. 1400: An Update by the Community Development Department on Draft Ordinance No. 1400 to Amend Section 8.56.030 of the the City of Banning.

City Manager said also the smoking in the public parks was supposed to be a public hearing this evening because of the fact it was a municipal code change. Unfortunately he did not catch that and he would recommend, unless the Council wishes to listen to people who are here for this matter this evening, to postpone this to the following meeting as a public hearing.

Mayor Botts opened the item for public comments.

Gary Hironimus, 620 12th Street addressed the Council stating that he was not here this evening to defend smoking but he is here to defend smokers who seem to be the last group in our society that it is perfectly acceptable to attack and they rarely fight back because they hear almost daily how our habit is killing all those around us. We have been pushed out of restaurants, bars, city buildings, work places and all of that is understandable because it is all indoors. But out doors; what is left? Outdoors smoke rises and dissipates in the air most of the time and most smokers today will move away if their smoke drifts towards others. An occasional whiff of smoke does not cause cancer, asthma or sudden infant death syndrome. Exhaust flumes from passing cars are more of a health issue at our parks than second hand smoke. He mainly wanted to address some comments made that were made back in October by Dr. James Jo of the Riverside County Department of Public Health. While they were technically true they were also way out of context. He stated that 6000 high school students in California try smoking every year and of those, 3000 become smokers. It sounds like a big number until you realize there are nearly 2 ½ million high school students in California, so that actually works out to less than 1/8 of 1%. In other words, over the course of 8 years at that rate one percent of high school students start smoking. In fact, youth smoking rates are near their lowest level in decades and the vast majority of youth have an extremely negative view of smoking. The few that do start smoking don't do it because they saw somebody smoking at our public parks. He said that 74% of those polled in Banning supports smoke free parks. Of course, 75% of those polled were non-smokers so that number is not a surprise. And he also admitted that only 43 people were polled; 32 of which supported the idea. He showed a jar of cigarette butts picked up at our parks but that seems more of a littering issue and not a smoking issue. And of course he did not mention the fact that there are no ash cans or cigarette butt receptacles available at our parks so what is a smoker supposed to do. Maybe if the City provided an alternative, the cigarette problem would disappear or at least be minimized. This ordinance, he believes will have no affect on youth smoking rates, it will have very little or any affect on park goers health; it would be difficult at best to enforce; it further divides our community and it turns our over burden police and City staff into community smoke busters. This City has real issues. Issues like sufficient water and affordable power; residential and commercial development, redevelopment and those were the issues you were elected for and not to educate us or dictate to us what our lifestyle should look like and certainly not to protect us from every possibility of being bothered or offended. Contrary to some of the comments he has heard our public parks are not just for children. They are also for families and adults some of whom smoke. They belong to all of us and not just the desirables. Instead of park-wide band why simply designate the areas around the structures and playground areas non-smoking, posting the necessary

signs and providing ash cans or cigarette receptacles at our parks for those that do smoke. You can still designate large park-wide events non-smoking on a case by case basis without dividing the community. The only thing this ordinance really accomplishes is to once again stick it to the evil smokers in our community. He said even though he smokes he doesn't believe that he is evil and he doesn't believe he is killing anybody he comes in contact with. His friends and family are very much alive.

Councilman Machisic asked Mr. Hironimus if he could get this in a written format and give to the City Clerk for future reference because there will be a hearing on this subject.

REPORTS OF OFFICERS

1. Adoption of City Manager Goals for 2009
(Staff Report – Brian Nakamura, City Manager)

City Manager said that it has been a pleasure serving for the last year and this is a very important document because it really clarifies the direction they need to take the City through the Council and he will hopefully work diligently to accomplish all of these goals that have been set and not just for evaluation purposes but clearly because we honestly believe these are the goals and objectives set forth to improve our quality of live here in the city of Banning.

Councilmember Franklin said that under Item C. Economic Development she did take the opportunity to speak to some other cities, economic development managers and in terms of looking at a request for proposal when we are talking about developments the information she received was that it was probably not really necessary. That really we want to focus on the request for qualifications and then work with staff in terms of moving on a project that meets the requirements that we set forth already.

There was a brief discussion.

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

Motion Hanna/Machisic to adopt the 2009 goals and objectives for the City Manager with the amendment to add “as needed” to the RFP sentence in 1.c. under C. Economic Development.

Councilmember Robinson said that they talked a little bit about a system for tracking complaints and citizens concerns and was told it was in place and he would like it brought forward to the next meeting to explain what that is and also a little bit of more discussion on the 311 project from Riverside.

Motion carried, all in favor.

2. 2009-2014 Five Year Consolidated Plan Needs Assessment Survey
(Staff Report – Duane Burk, Public Works Director)

Mr. Burk gave the staff report as contained in the agenda packet. He said that a mailed was sent to each of our customers in the City which is about 11,000 plus and received back 482 surveys and what is in this report is the tabulated percentages. He went over the percentages. He said that the recommendation is to receive and file this information.

There was some discussion in regards to this survey and surveys in general.

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

Motion Hanna/Robinson that the Council receive and file this report. Motion carried, all in favor.

3. A. City Council Resolution No. 2008-121: City Council Review of an Agreement for the Deferral of Development Impact Fees in Amount of \$447,006.12 between the City of Banning and CA Kabir, Inc. for the Holiday Inn Express & Suites Hotel project located at 3020 W. Ramsey Street.

(Staff Report – Matthew Bassi, Interim Community Development Director)

Mr. Bassi gave the staff report as contained in the agenda packet. This item was before the Council at the December 10, 2008 Council meeting. The original request was to defer it over an eight year period and the Council raised some issues in terms of security and being in a first lien position on the project and as a result the item was continued to allow staff to meet with the developer to discuss a revised deferral agreement. He and the Finance Director did meet with Mr. Bhakta to discuss a revised agreement with other alternatives and also discussed other Council concerns. What the applicant has agreed to is to come up with \$100,000 initial deposit at the time of Certificates of Occupancy are issued, he will provide the City with \$50,000 installments every six months until the balance is paid off and this is much better than the original eight years. In conclusion at a staff level they have done all they can with the exception of getting the money up front. He believes this a good step forward and the applicant has made a good faith effort. It is staff recommendation to approve the resolution.

There was some Council discussion in regards to the interest rate.

Mr. S. Bhakta owner and general manager for the hotel addressed the Council stating that they are coming to the Council to set up a deferral agreement with the City so that they can get the Certificate of Occupancy issued and are looking to open in March. However, with construction costs and other costs they incurred they are not able to meet the total amount for the impact fees and that is the main reason why they came to the Council to set up some sort of deferral agreement. They want to get started and get the bed tax for the City.

Motion Hanna/Machisic that the City Council adopt Resolution No. 2008-121, authorizing an Agreement between the City of Banning and CA Kabir, Inc., for the deferral of \$447,006.12 in Development Impact Fees for the Holiday Inn Express & Suites hotel project. Motion carried, all in favor.

3. B Holiday Inn Express & Suites Sign Proposal: A status update from the Community Development Department on a Proposal by Holiday Inn Express & Suites for an 80-foot

Freeway-Oriented Sign.

Mr. Bassi gave the staff report as contained in the agenda packet. He said that at the December 10th meeting Holiday Inn Express submitted a graphic for an 80-foot tall highway sign. There was discussion about that and Council has staff to research the matter and come back to the Council. Mr. Bassi commented further on the current sign ordinance. He said that they can have building signs and a monument sign out on the street. He said that staff's recommendation is that the Council affirm that the request by Holiday Inn Express to install an 80-foot sign is not allowed under the current sign regulations and to direct staff to prepare a zone text amendment that might address these kinds of requests in the future. More specifically that request would be to modify the existing sign ordinance maybe to allow individual freeway-oriented signs because of the economy and at a later date come back and re-implement the current sign regulations that try to group all the monument signs into districts.

There was Council and staff discussion in regards to the sign ordinance, height of the sign, and possibility of leaving the existing ordinance in place but move forward with an exception.

City Attorney said that the change in the zoning needs to go through the normal process which means it will go to the Planning Commission. The one possibility would be through a moratorium sort of situation. With a moratorium ordinance you can adopt interim regulations while you study something. So you could adopt through the moratorium which can be adopted on an urgency measure. Unless you went that direction anything else involves going through the Planning Commission and then back to the City Council. He can talk with Mr. Bassi as to whether there might be way of crafting interim rules that would apply during the period of the moratorium ordinance. A moratorium ordinance can last anywhere from 45 days to 2 years.

There was Council and staff discussion in regards to a moratorium ordinance and the process and time involved.

Councilmember Robinson said that he has two businesses that front the I-10 freeway and should he not vote on this item.

City Attorney asked Councilmember Robinson if the businesses are businesses that would potentially be eligible for this type of signage. Councilman Robinson said yes. City Attorney said it sounds to him like he should not participate on this matter and if he has a conflict he should leave the room. At this time Councilmember Robinson left the room.

Motion Hanna/Machisic that the City Council's intent is to direct staff to amend the existing sign ordinance to reestablish the freeway-oriented sign requirements that existed prior to Sept. 25, 2007 and in the interim to create a moratorium of the existing ordinance which would allow during the period of the moratorium the previous freeway-oriented sign requirements.

Mayor Botts opened the item for public comments.

Bill Dickson, 5700 W. Wilson addressed the Council stating that this sign ordinance existed when this gentleman submitted his plans for this hotel. His only concern is that you have the Hampton Inn and a few other hotels in that same area and if he is not mistaken they spent an awful lot of

time looking at sign ordinances to try to get rid of all of those lollipop signs up and down the freeway. This is not something where the construction of this just started a week or two ago. Suddenly we are sitting here trying to make a decision to try to change an ordinance that we spent months and months and months working on to try to make the city of Banning a lot more appealing. He thinks that to go through and change it for one person is a big mistake.

Motion carried with Councilmember Robinson abstaining.

ITEMS FOR FUTURE AGENDAS

Mayor Botts said as a reminder they just voted to eliminate this from our agendas in the future. They decided that they would submit potential agenda items to the City Manager and he would do some analysis on how long it would take staff to develop an issue and he will bring those to the Council for brief discussion and the Council would then decide whether to direct staff to make it a full blown agenda item.

Mayor Botts asked the Council if they wanted to drop some of these and/or shift to the City Manager for a new process.

There was Council discussion to move forward on these items. In regards to Item No. 1, City Manager will get a letter ready for the Mayor's signature to send to the Mayor of Beaumont to initiate some dialogue between the cities in regards to the Neighborhood Stabilization Program and the cities working jointly together on this program and then possibly the two Council's meeting together. In regards to Item No. 2, the Mayor and City Manager will develop a schedule. In regards to Item No. 3, a report will be brought back to the Council. In regards to Item No. 6, this really doesn't take much in terms of Council action. This is about getting information out to the public about what services are provided by City departments and staff needs to work on what is the best way to share information with the community.

Pending Items –

1. Schedule Meeting with the Beaumont City Council (*Pending*) (*City Mgr.*)
2. Schedule Special Jt. Meetings with the City's Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) (*Pending*) (*City Manager*)
3. Review of Ordinance regarding the selling of cars in shopping center parking lots (*Salas – 9/9/08*) (*Hansen*) (*ETA 2/10/09*)
4. Report on "One Stop Shop" (*Franklin – 8/12/08*) (*Hansen/Nakamura*) (*ETA 1/27/09*)
5. Development of Bridge & Thoroughfare District to fund grade separation at Hargrave (*Hanna – 8/12/08*) (*Burk/Nakamura*) (*ETA 2/09*)
6. 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 2/09*)
7. Policy on Summer/Winter Breaks for Council Meetings (*Franklin – 9/23/08*) (*Nakamura*) (*ETA 1/27/09*)

FUTURE MEETINGS

1. Need to schedule a Special City Council Meeting to interview Planning Commission

Candidates.

There was Council discussion on some future meetings and the following dates were set as follows:

- Budget Workshop – January 28, 2009 at 5:30 p.m.
- Workshop with City Attorney – February 4, 2009 at 5:30 p.m. with a Closed Session and Public Session at 6:30 p.m.
- February 9, 2009 interview of Planning Commission Candidates at 6:00 p.m.

CLOSED SESSION

City Attorney said that the City Council will meet in closed session to discuss the matters that were added to the agenda which where the three real property items: 255 E. Ramsey, 310 E. Ramsey and the Airport Property and the Personnel Matter.

Meeting went into closed session at 9:24 p.m. and returned to regular session at 10:43 p.m. with no reportable action.

ADJOURNMENT

By common consent the meeting adjourned at 10:43 p.m.

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.

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: **January 27, 2009**

TO: **Honorable Mayor and City Council**

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

SUBJECT: **Notice of Completion for Project No. 2007-07 "Rubberized Asphalt Concrete (RAC) Overlay and Street Improvements Along Wilson Street, from 8th Street to Stargaze Way"**

RECOMMENDATION: That the City Council accept Project No. 2007-07, "Rubberized Asphalt Concrete (RAC) Overlay and Street Improvements Along Wilson Street, from 8th Street to Stargaze Way," 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: In late February of 2007, the Public Works Department's Engineering Division submitted a grant request to the California Integrated Waste Management Board (CIWMB) for a street improvement project along Wilson Street, from 8th Street to Stargaze Way, utilizing Rubberized Asphalt Concrete. The CIWMB staff evaluated the proposed project in March of 2007 and approved the maximum grant application award available, in the amount of \$150,000.00. Staff prepared the specifications in house and on September 12, 2008 received and opened 10 bids. On September 23, 2008 the City Council adopted Resolution No. 2008-107, "Awarding the Construction Contract for Project No. 2007-07, 'Rubberized Asphalt Concrete (RAC) Overlay and Street Improvements Along Wilson Street, from 8th Street to Stargaze Way,'" to Cooley Construction, Inc., of Hesperia, California.

The scope of work under this project included grinding/cold planing of existing asphalt; placing 1-1/2" to 2" of Asphaltic Rubber Hot Mix (ARHM) overlay per the City Engineer's recommendations; constructing sidewalks, curbs, gutters, cross gutters, spandrels and handicap ramps in accordance with the City of Banning and CALTRANS Standard Specifications; adjusting manholes, water meters, and water valve covers to grade; striping improvements; and cleaning on Wilson Street, between 8th Street and Stargaze Way.

FISCAL DATA: The original contract amount for this project was \$667,204.65, and the final contract amount is \$602,822.15.

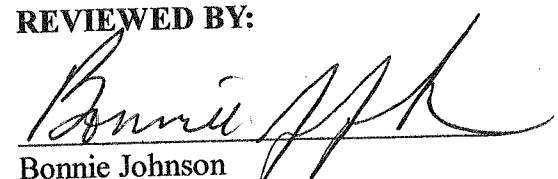
SIGNATURES NEXT PAGE

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

12
13 NOTICE OF COMPLETION

14 RUBBERIZED ASPHALT CONCRETE (RAC) OVERLAY AND STREET
15 IMPROVEMENTS ALONG WILSON STREET, FROM 8TH STREET TO STARGAZE
16 WAY

17 PROJECT NO. 2007-07

18
19 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the
20 City of Banning, a municipal corporation, pursuant to the provisions of Section 3093 of
21 the Civil Code of the State of California, and is hereby accepted by the OWNER, the City
22 of Banning, pursuant to authority conferred by the City Council this January 27, 2009,
23 and the grantees consent to recordation thereof by its duly authorized agent.

24
25 That the OWNER, the City of Banning, and Cooley Construction, Inc., of Hesperia,
26 Calif., the vendee, entered into an agreement on September 18, 2008, for rubberized
27 asphalt concrete overlay on Wilson Street. The scope of work under this project includes
28 grinding/cold planing of existing asphalt; placing 1-1/2" to 2" of Asphaltic Rubber Hot
29 Mix (ARHM) overlay per the City Engineer's recommendations; constructing sidewalks,
30 curbs, gutters, cross gutters, spandrels and handicap ramps in accordance with the City of
31 Banning and CALTRANS Standard Specifications; adjusting manholes, water meters,
32 and water valve covers to grade; striping improvements; and cleaning on Wilson Street,
33 between 8th Street and Stargaze Way.

(1) That the work of improvement was completed on January 16, 2009, and the Nature of Interest was to perform "Rubberized Asphalt Concrete (RAC) Overlay and Street Improvements along Wilson Street, from 8th Street to Stargaze Way".

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

(3) That the said work of improvement was performed along Wilson Street, from 8th Street to Stargaze Way.

(4) That the original contractor for said improvement was Cooley Construction, Inc., State Contractor's License No. 348038.

Dated: January 27, 2009

CITY OF BANNING
A Municipal Corporation

By _____
Duane Burk
Director of Public Works

APPROVED AS TO FORM:

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

JURAT

State of California

County of Riverside

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 2009 by _____ proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(Seal)

Notary Public in and for said County
and State

1 STATE OF CALIFORNIA)

2) ss

3 COUNTY OF RIVERSIDE)

6 MARIE A. CALDERON, being duly sworn, deposes and says:

7
8 That I am the City Clerk of the City of Banning, which City caused the work to be
9 performed on the real property herein described, and that I am authorized to verify this
10 Notice of Completion on behalf of said City; that I have read the foregoing Notice and
11 know the contents thereof, and that the facts stated therein are true based upon
12 information available to the City of Banning, and that I make this verification on behalf
13 of said City of Banning. I declare under penalty of perjury that the foregoing is true and
14 correct.

15 Executed on _____, 2009 at Banning, California

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City Clerk of the City of Banning

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: January 27, 2009

TO: City Council

FROM: Leonard Purvis, Chief of Police

SUBJECT: Approve Amendment to the Original Agreement with Norman A. Traub Associates for Investigation Services for the City of Banning.

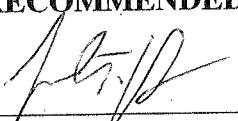
RECOMMENDATION: "The City Council amend the current limit on compensation for services (\$25,000) with Norman A. Traub Associates for Investigation Services for the City of Banning to \$45,000."

JUSTIFICATION: Amendment of this contract allows the Police Department, and other City Departments, to continue utilizing the investigative services of Norman A. Traub Associates for sensitive personnel matters.

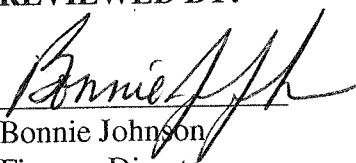
BACKGROUND & ANALYSIS: During the course of this fiscal year, the Banning Police Department and Public Works Department required the professional and independent services of Norman A. Traub Associates for personnel investigations involving employees of the City of Banning. Because of the number of investigations required this fiscal year, the limit on compensation for services with Norman A. Traub Associates of \$25,000 has been reached, as documented in the City's Consultant Services Agreement between the City of Banning and Norman A. Traub Associates, dated July 20, 2008. The requested increase in the spending limit for services with Norman A. Traub Associates is necessary to complete current and possible future personnel investigations this fiscal year.

FISCAL DATA: Sufficient funds are available to cover this increase in the Police Department's 2008-09 adopted budget under the Professional Services account (#001-2200-421.33-11).

RECOMMENDED BY:


Leonard Purvis
Chief of Police

REVIEWED BY:


Bonnie Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: **January 30, 2009**

TO: **City Council**

FROM: **Bonnie J. Johnson, Finance Director**

SUBJECT: **Approve the Second Amendment to Original Agreement with Civic Solutions, Inc for Interim Community Development Director Services for the City of Banning Community Development Department.**

RECOMMENDATION: "The City Council approve the second amendment to the Original Agreement with Civic Solutions, Inc for Interim Community Development Director Services for the City of Banning Community Development Department."

JUSTIFICATION: Amendment of this contract allows the Community Development Department to continue to move forward with projects while recruiting for a permanent Director.

BACKGROUND & ANALYSIS: In March of 2008 the City's Community Development Director resigned from the City of Banning. This vacancy left the City without a professional liaison to conduct City business for the Community Development Department. The City has budgeted for a Director although the position is currently vacant.

On April 7, 2008 the City of Banning entered into an agreement with Civic Solutions, Inc to provide the necessary professional services to conduct business for the City's Community Development Department. This agreement is for the period April 7, 2008 through September 30, 2008 in the amount of \$25,000. The City has benefited by having a professional liaison to conduct business for the Community Development Department. At the Council meeting of May 13, 2008 the City Council approved the first amendment to the original contract in the amount of \$65,000 for a total contract amount of \$90,000. Currently the Community Development Director's position is not filled by a permanent employee. If the position is to remain without a director this would result in a void in the Cities ability to maintain the appropriate service levels required by this position. Staff feels it is necessary to continue to have an Interim Director available to work fulltime and conduct City business. The City Manager has initiated the recruitment of a permanent Director and it is anticipated that this position will be filled no later than March 31, 2009. Staff recommends the City Council approve the second amendment to the original contract in the amount not to exceed \$80,000. The amendment will allow the Community Development Department to continue with its current projects without interruption.

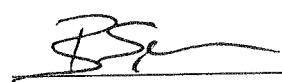
FISCAL DATA None. The funds are available in the contract employment services account and will be used until the permanent appointment is made.

RECOMMENDED BY:



Bonnie J. Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

**CITY COUNCIL
PUBLIC HEARING**

Date: **January 27, 2009**

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

FROM: **Matthew C. Bassi, Interim Community Development Director**

SUBJECT: **Zone Text Amendment #08-97509:**

City Council adoption of Ordinance No. 1396 approving Zone Text Amendment No. 08-97509 to establish development regulations and operational standards for Wireless Communication Facilities in the City of Banning.

RECOMMENDATION:

The Planning Commission recommends adoption of Ordinance No. 1396 (Attachment 1) approving Zone Text Amendment No. 08-97509 establishing development regulations and operational standards for Wireless Communication Facilities in the City of Banning.

BACKGROUND:

In December 1996, the Planning Commission adopted "Policy Guidelines for the Establishment of Wireless Antennas" in the City of Banning. These guidelines established development and design regulations for wireless communication facilities and formed the foundation for identification of suitable zoning districts within the City to accommodate these facilities. A major component of the guidelines was to allow wireless communication facilities in either the commercial and industrial zones only.

In November 2000, the Planning Commission amended the 1996 policy guidelines to allow, through the Conditional Use Permit process, wireless facilities to be located on city-owned properties having water storage tanks located in the R-1 (Single Family) zone. A copy of the current "Policy Guidelines for Wireless Antennas" is provided for Council review (Attachment 2).

Since the November 7, 2000 Commission action, many technological advances in the wireless communication field have been accomplished. During the same period, many cities have adopted ordinances to regulate these types of facilities in an effort to streamline the application review process. It is staff's intent with this Ordinance to "codify" the current wireless guidelines into zoning law and to create a more streamlined review process for wireless facilities that are "stealth" design.

Planning Commission Action:

On November 5, 2008, the Planning Commission approved Resolution No. 2008-20 recommending City Council approval of Zone Text Amendment No. 08-97509. A copy of the Commission Resolution is provided for Council consideration (Attachment 3).

ANALYSIS:

Ordinance No. 1396 establishes a new chapter in the Banning Zoning Ordinance specifically for Wireless Communication Facilities (Chapter 17.41). Chapter 17.41 contains 10 sections ranging from "Purpose and Intent" to "Health and Safety". This Chapter will also contain definitions and a review process section that are not contained in the City's current wireless guidelines. It is important to point out that 95% of the information contained in the City's current wireless guidelines have been proposed in Ordinance No. 1396. At the request of the City Attorney's office, some items were deleted (e.g., special notes and redundant information deemed non-essential).

Three (3) major additions proposed that are not addressed in the City's current wireless guidelines are the establishment of processing procedures and revised application types for all wireless communication facilities. First, staff is proposing to create two (2) new application types. Wireless Communication Facilities (WCF's) will now be referred to as Minor or Major WCF permits. These application types have been placed into an easy reference table (Table 17.41.040.A - Page 7 of Ordinance No. 1396). Staff believes that these new application types better reflect the type of wireless communication facilities being proposed by telecommunication carriers and is consistent with what other local agencies are implementing.

Second, staff is proposing a streamlined review process. Currently, all wireless facilities are processed as a Conditional Use Permit (CUP) and are reviewed by the Planning Commission at a public hearing. Staff is proposing to create a two (2)-tiered approach that will result in an expedited review process. This review process is reflected in Table 17.41.070.A (Page 13 of Ordinance No. 1396). For example, Minor WCF permits are proposed to be reviewed and approved by the Director of Community Development at an "administrative hearing" that will include public notices being sent out to property owners & occupants within a 300-foot radius (no legal notice/advertisement is needed for this administrative hearing). Major WCF permits are proposed to be reviewed and approved by the Planning Commission at a public hearing (public notices will be sent out to property owners & occupants within a 300-foot radius, as well as a legal notice/advertisement in the local paper). The determination for what is a Minor or Major WCF permit depends on the location and design of the wireless communication facility (refer to Table 17.41.040.A – Page 7 of Ordinance No. 1396).

Third, is the creation of a reference table that lists all the development standards applicable to wireless communication facilities. All of the current development standards in the City's wireless guidelines have been included in Ordinance No. 1396 (refer to Table 17.41.050.A -

Page 7 of Ordinance No. 1396). In addition to these development standards, staff is also including operational standards for wireless communication facilities. The operational standards are provided in Section 17.41.060 of Ordinance No. 1396 (Page 11 of the ordinance), and have been taken from the City's current wireless guidelines. Since the current guidelines comprehensively address operational standards, staff has not proposed any new operational standards.

A final component of the Ordinance is that wireless communication facilities will only be allowed in the Commercial, Professional Office, Industrial and Open Space zones. Wireless communication facilities will be prohibited in all residential zones consistent with the current wireless guidelines, with the exception that Utility Mounted and Micro WCF's will be allowed with a Minor WCF permit. Table 17.41.040.A (page 7 of Ordinance No. 1396) shows the zone districts in which wireless communication facilities will be allowed.

Public Outreach Efforts

In an effort to involve the various wireless carriers in the preparation of the Wireless Communication Facilities ordinance, staff held a team meeting on October 14, 2008. Approximately 12 people representing the major carriers and their subconsultants were invited to the meeting. A copy of Ordinance No. 1396 was provided to everyone two (2) weeks before the meeting. While staff was hopeful to get input from all the wireless carriers, only two (2) persons came to the meeting (Verizon and T-Mobile representatives). A copy of the sign-in sheet is provided for Council consideration (Attachment 4). One correspondence letter from Verizon was officially provided to staff at the meeting and has been included in the report packet for Council consideration (Attachment 5). Staff also met with Mr. Sean Scully on December 23, 2008 to discuss the draft Ordinance. Mr. Scully's comments have been provided for Council consideration (Attachment 5).

CONCLUSION:

Staff believes that the proposed Ordinance accomplishes three (3) things. First, there will be an expedited review process for wireless communication facilities that are consistent with the provisions of the Ordinance, are located in zones where there is a minimal impact to surrounding uses and that are designed so they are not visible. Second, most of the current wireless guidelines have been placed into the draft Ordinance, thereby, preserving what the Commission has already approved and established for wireless communication facilities. Third, since wireless communication facilities will be regulated as part of the Zoning Ordinance, the development and operational standards will have more legal standing as zoning law rather than as general guidelines which typically tend to be less enforceable.

FISCAL DATA:

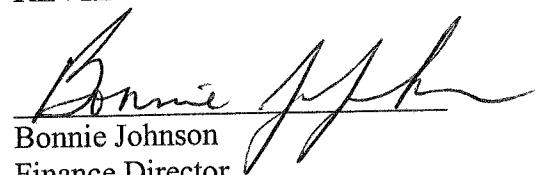
The proposed Zone Text Amendment will not result in any fiscal impacts.

RECOMMENDED BY:



Matthew C. Bassi
Interim Community Development Director

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

CC Attachments:

1. City Council Ordinance No. 1396
2. 1996/2000 Wireless Guidelines (information only)
3. Copy of PC Resolution No. 2008-20 (November 5, 2008)
4. Sign-In Sheet from October 14, 2008 Meeting
5. Correspondence Letters

ATTACHMENT 1

**CITY COUNCIL ORDINANCE NO. 1396
FOR
ZTA NO. 08-97509**

ORDINANCE NO. 1396

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
BANNING, CALIFORNIA APPROVING ZONE TEXT
AMENDMENT NO. 08-97509 TO ADOPT DEVELOPMENT
REGULATIONS AND OPERATIONAL STANDARDS FOR
WIRELESS COMMUNICATION FACILITIES IN THE CITY OF
BANNING**

WHEREAS, the proposed Zone Text Amendment 08-97509 has been duly initiated by the City of Banning; and

WHEREAS, it is recognized that the Federal Telecommunications Act of 1996 limits the regulatory authority of local governments prohibiting them from considering radio frequency emissions or environmental health risks in their decision making process; and

WHEREAS, on December 2, 1996, and as amended on November 7, 2000, the Planning Commission adopted "Policy Guidelines for the Establishment of Wireless Antennas" pertaining to aesthetics, and location; and

WHEREAS, the City's current policy guidelines for the establishment of wireless antennas does not comprehensively address wireless communication facilities to consider the rapid changes in technology over the past eight (8) years, and which does not effectively encourage camouflaged facilities (i.e., "stealth"); and

WHEREAS, the wireless communications technology is changing rapidly and the most advanced technology today may become obsolete in a few years; and

WHEREAS, after due consideration, the Council of the City of Banning has determined that these regulations and standards contained in this in Ordinance No. 1396 meet the City's needs in terms of the type of development envisioned and consistency with the General Plan for Wireless Communication Facilities; and

WHEREAS, on November 5, 2008, the Planning Commission held a noticed public hearing at which time interested persons had an opportunity to testify in support of, or opposition to Zone Text Amendment No. 08-97509 and at which time the Planning Commission considered the proposed Zone Text Amendment and recommended City Council approval; and

WHEREAS, the Planning Commission analyzed Zone Text Amendment No. 08-97509, which is considered a project under the California Environmental Quality Act (CEQA) guidelines, has determined that Zone Text Amendment No. 08-97509 is Exempt from CEQA under Section 15061(b)(3) of the CEQA Guidelines, and recommended City Council adoption of the aforementioned Exemption; and

WHEREAS, on January 16, 2009, the City published a public hearing notice for Zone Text Amendment No. 08-97509 in the Record Gazette newspaper in compliance with state law and Section 17.68 of the Banning Zoning Ordinance; and

WHEREAS, on January 27, 2009, the City Council held a noticed public hearing at which time interested persons had an opportunity to testify in support of, or opposition to Zone Text Amendment No. 08-97509; and

WHEREAS, at said public hearing on January 27, 2009, the City Council considered and heard public testimony and comments regarding Zone Text Amendment No. 08-97509; and

WHEREAS, the City Council has carefully considered all pertinent documents and the staff report offered in this case as presented at the public hearing held on January 27, 2009.

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 January 27, 2009, 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: Zone Text Amendment No. 08-97509 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 approving this Ordinance there is no possibility that this action will result in any physical changes to the environment, and thus, will not have a significant effect. Further, the proposed text amendment is a legislative change to the Zoning Ordinance text and does not relate to a specific wireless facility project proposal. Therefore, adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 2 ZTA NO. 08-97509 REQUIRED FINDINGS

Finding No. 1:

The proposed amendment is consistent with the goals and policies of the General Plan.

Facts:

Zone Text Amendment No. 08-97509 is consistent with the goals and policies of the General Plan. First, the proposed ordinance regulating wireless communications facilities will not result in any changes to the General Plan text or land use map which will

maintain internal consistency. Second, the regulations and development standards proposed in Zone Text Amendment No. 08-97509 will help to: 1) preserve and enhance the City's residential neighborhoods by minimizing potential impacts (Goal 1 – Residential); 2) provide complimentary commercial opportunities to meet the needs of the City's residents and increase revenues (Goal 1 – Commercial); and 3) provide for and appropriately locate public facilities to serve the needs of the City's residents (Goal 1 – Public Facilities)

Finding No. 2:

The proposed Amendment is internally consistent with the Zoning Ordinance.

Facts:

Zone Text Amendment No. 08-97509 is consistent the provisions of the Zoning Ordinance in that the proposed amendment will establish specific development and operational standards, and land use regulations for reviewing and processing wireless communication facilities in the City. It is the intent of the Zoning Ordinance to provide specific development standards for a variety of land use types in the City of Banning, and wireless communication facilities fall into this category.

Finding 3:

That the Planning Commission and City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

Facts:

The City Council, upon recommendation from the Planning Commission, has analyzed Zone Text Amendment No. 08-97509 and determined that the project 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 approving Zone Text Amendment No. 08-97509 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.

SECTION 3. The "Policy Guidelines For The Establishment Of Wireless Antennas" approved by the Planning Commission on December 2, 1996, and amended on November 7, 2000 is hereby repealed and replaced by Chapter 17.41 (Wireless Communication Facilities).

SECTION 4. Title 17 of the Banning Municipal Code (Zoning Ordinance) is hereby amended by adding a new Chapter "**Chapter 17.41 – Wireless Communication Facilities**" to read as follows:

Sections:

17.41.010

Purpose and Intent

17.41.020

Definitions

17.41.030

Wireless Communication Facility Permit Required

17.41.040	Applicability
17.41.050	Development Standards
17.41.060	Operational Standards
17.41.070	Wireless Communication Facility Review Process
17.41.080	Environmental Review Process
17.41.090	Removal of Abandoned Wireless Communication Facilities
17.41.100	Health and Safety

17.41.010 Purpose and Intent

The purpose of these requirements is to regulate the location, design and operation of Wireless Communication Facilities (WCF's) in a manner that promotes the public health, safety, and community aesthetics and that is consistent with the goals and objectives of the City of Banning General Plan. These regulations are intended to protect property values and enhance the aesthetics of the community by minimizing the visibility and the number of wireless communication facilities in the City, and providing expedited processing for well-designed proposals in appropriate locations, as well as, providing guidelines for the timely removal of abandoned wireless communication facilities.

17.41.020 Definitions

The following definitions shall apply to all Wireless Communications Facilities as outlined in Chapter 17.41 of the Banning Zoning Ordinance.

Abandonment - Wireless Communication Facility (WCF) shall be considered abandoned if the WCF is discontinued for 90 days or more, or that written notification to the City of Banning from the Permittee of abandonment of the WCF is being made.

Antenna - Equipment used to transmit and receive radio waves carrying conversation, signals, and/or data.

Co-location - The location of one or more wireless communication facility antennas on a single WCF as allowed in this Chapter.

Co-location, Approved Facility – A WCF that is designed to accommodate more than one wireless antenna on an approved facility that is constructed by a single provider. A second antenna on a WCF will be considered a multiple user facility when a second antenna is installed by a permittee on the same facility.

Co-location, Non-Conforming Facility - Location of a new Wireless Communication Facility on a WCF that was legally constructed prior to the adoption and effective date of this Ordinance. The new facility proposed to be co-located shall comply with all the development and design standards and of this Ordinance.

Concealed Antenna - A wireless communication facility antenna that is not visible and which is architecturally designed to resemble part of a building structure or landscape feature.

Concealed Antenna, Building Mounted - A wireless communication facility antenna attached to a building or is roof-mounted and is architecturally screened so it is not visible. Bell towers, clock towers, steeples, parapets, false windows, and other types of architectural features that are designed to camouflage the wireless communication facility meet this definition.

Concealed Antenna, Existing Freestanding Structure - A wireless communication facility antenna that is to be located on an existing freestanding wireless communication facility structure such as a light poles, freestanding sign, clock tower or other types of existing structures that are not buildings.

Concealed Antenna, New Freestanding Structure - A new wireless communication facility antenna that is architecturally design to be camouflaged (not visible). Examples of this type of facility include wireless facilities design as a "mono-palm" and "mono-pine" (or other new technological design), bell tower, clock tower, freestanding signage, flagpoles, light poles and other types of concealed freestanding structures.

Equipment Shelter - A room, cabinet(s), or building used to house operating support equipment for an approved wireless communication facility provider.

Major Wireless Communication Facility Permit - Any wireless communication facility that requires public noticing and a public hearing before the Banning Planning Commission (refer to Table 17.41.040.A of this Chapter).

Micro Wireless Communication Facility - A wireless communication facility antenna and support equipment, such as "microcells" and "micropans," that are not greater than 16" x 22" x 8".

Minor Wireless Communication Facility Permit - Any wireless communication facility permit that requires public noticing and approval by the Director of Community Development, but does not require a public hearing by the Banning Planning Commission (refer to Table 17.41.040.A of this Chapter).

Monopole - A freestanding structure composed of a single spire, pole or tower used to support antennas and/or related equipment.

Property Owner - Means the individual or institution who owns the real property on which a Wireless Communication Facility is located or proposed to be located.

Slim line, Unipole - A freestanding structure composed of a pole where one or more antenna is mounted on or inside the pole and concealed by a circular metal ring that is no greater than 24 inches in diameter.

Support Equipment – Telecommunications equipment that supports a wireless communication facility that is installed inside an enclosed equipment shelter/structure installed on the ground or in a building or other structure.

Utility Mounted – A Wireless Communication Facility attached to a public utility structure, such as an SCE tower, City light standard/electric pole or a water storage tank.

Wireless Communication Facility (WCF) - A telecommunication facility that is defined as equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services.

Wireless Communication Facility Permittee – An individual company/business or entity that is licensed by the federal government to own and operate a wireless communication facility that provides wireless services to the community.

17.41.030 Wireless Communication Facility Permit Required

A Wireless Communication Facility (WCF) permit is required for all WCF's in the City of Banning and must be obtained prior to operation of the facility.

17.41.040 Applicability

Wireless Communication Facilities shall be permitted in various land use districts throughout the City of Banning. Table 17.41.040.A below specifies the zones in which Wireless Communication Facilities are allowed, and the applicable permit required to be processed for each type.

Table 17.41.040.A
WCF as a Permitted Use & Required Processing

Zoning Districts	Mono-pole, Slim Line, Unipole, Not Concealed	Wireless Communication Facility Type							Utility Mounted	Micro WCF		
		Concealed Antenna			Co-Location		Approved-Existing Facility	Non-Conforming Facility				
		Building/Structure Mounted	Existing Freestanding	New Freestanding								
Residential Zones	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Minor WCF Permit	Minor WCF Permit		
Commercial Zones	Prohibited	Minor WCF Permit	Minor WCF Permit	Major WCF Permit	Minor WCF Permit	Prohibited	Prohibited	Prohibited	Minor WCF Permit	Minor WCF Permit		
Professional Office Zones	Prohibited	Minor WCF Permit (non-residential site)	Minor WCF Permit	Major WCF Permit	Minor WCF Permit	Prohibited	Prohibited	Prohibited	Minor WCF Permit	Minor WCF Permit		
Industrial Zones	Prohibited	Minor WCF Permit	Minor WCF Permit	Minor WCF Permit	Minor WCF Permit	Prohibited	Prohibited	Prohibited	Minor WCF Permit	Minor WCF Permit		
Open Space Zones	Prohibited	Major WCF Permit	Major WCF Permit	Major WCF Permit	Major WCF Permit	Prohibited	Prohibited	Prohibited	Minor WCF Permit	Minor WCF Permit		

Special Notes:

1. Residential Zones Include: Approved specific plan residential zones and the LDR zone district (on water storage tanks only).
2. Commercial Zones Include: Approved specific plan commercial zones and the DC; GC; & HSC zone districts.
3. Professional Office Zones Include: Approved specific plan office zones and the PO zone district.
4. Industrial Zones Include: Approved specific plan industrial zones and the AI; BP; IMR & I zone districts.
5. Open Space Zones Include: Approved specific plan open space zones and the OS-P & OS-R zone districts.
6. Concealed wireless antenna facilities mounted on utility structures within the city-owned public right-of-way shall be permitted with an Encroachment Permit subject to the development standards of Section 17.41.050.

17.41.050 Development Standards

Wireless Communication Facilities Permittees are required to design and develop wireless facilities that are aesthetically sensitive to the project site property and the surrounding neighborhood(s). Therefore, all wireless communication facilities shall comply with the general development standards outlined in Table 17.41.050.A below:

Table 17.41.050.A
General Development Standards

Feature	Requirement
Access	Access to the Wireless Communications Facility lease areas shall have a minimum width of 10 feet.
Aesthetics	The WCF shall not interfere with significant visual features, visual amenities, view corridors and other aesthetic values. The wireless facility, and equipment shelters, shall be designed to be un-obtrusive. This may include locating the wireless facility within an existing building, mounted on the rooftop or be stealth design (i.e., mono-pine, etc.). In all cases, the wireless facility needs to be in context with the immediate surrounding area and be architecturally compatible with the existing structures on the site with respect to design, color and materials.

Area	The subject site shall be of a size and shape sufficient to provide adequate setback from the base of the wireless communication facility, including equipment shelters, to any property line abutting a residential use.
Co-Location	The applicant shall cooperate with others in co-locating additional antennae on existing facilities and/or on the tops of buildings and/or clustering of facilities. An applicant for a wireless facility permit shall demonstrate a good faith effort in co-locating with others and sharing the permitted site, provided such shared use does not give rise to a substantial technical level or quality of service impairment of the permitted use (as opposed to a competitive conflict or financial burden). In the event a dispute arises as to whether the applicant has exercised good faith in accommodating other users, the City may require a third party technical study at the expense of either or both the applicant and complaining existing users. This condition in no way obligates the City to approve any co-location proposal if it is determined by the City not to be desirable in a specific case. To the extent possible, the City will provide incentives to the owners of existing wireless communication facilities to encourage the co-location of transmission devices on their structures. Existing and new towers shall allow the placement of governmental transmitters for emergency services or other uses as a public service.
Colors	Colors shall be matte and chosen to minimize visibility.
Complementary Design	<u>All types of Wireless Facilities</u> – Must be designed so that the wireless facility antennas are not distinguishable from rest of structure or disguised to be consistent with the intent of the structure. They shall also be designed to be compatible with surrounding environment (additional landscaping may be required).
Concealment	Building mounted antennas shall be concealed to the greatest extent possible if the antennas are visible to adjacent properties and adjacent to public rights-of-way-way. The concealment may include parapets, walls, or similar architectural elements provided that it is painted and textured to integrate with the architecture of the building. As an alternative method, landscaping positioned on the premises to screen antennas from adjacent properties may be proposed in lieu of architectural concealment. Concealment shall include consideration of the following: a) Incorporation with other structures such as lighting poles, signage artificial trees, clock towers, steeples, flagpoles, silos, water towers, etc. b) Facade disguises such as parapets, decorative walls, etc.
Easement	The property owner shall file an easement granting the City access to the property for inspection and removal purposes after a Wireless Communication Facility is abandoned. Proof of recordation shall be filed with the Building Division prior to the issuance of building permits.
Fencing Material	Fencing associated with a wireless communication facility shall be decorative block material when the location of the wireless facility is visible from a street. The use of chain link is prohibited at all times.
General Criteria	1) The proposed wireless communication facility shall not create any non-conformities to the subject site such as, a reduction of required parking, landscaping, trash enclosure, loading zones, etc. 2) Comply with any property-specific restrictions. 3) Meet any applicable specific plan or development guidelines.

	<ul style="list-style-type: none"> 4) Meet UBC, electrical code, fire code, etc. 5) Meet General Plan and Ordinance Code Noise Element standards. 6) Comply with any applicable ALUC regulations and/or FAA requirements. 7) Meet all regulations of any applicable district or plan. 8) Each permit shall specify the maximum allowable gross cross-sectional area, or silhouette, of the permitted facility.
General Specifications	<ul style="list-style-type: none"> 1) Wireless communication facilities shall meet all manufacturer's specifications, and all antennas and screens shall be fire-resistive and of corrosive resistant material, and shall be erected in a secure, wind resistant manner. They shall also be maintained in good condition. 2) The installation of wireless facilities shall be located in such a way as to prevent obstruction of the antenna's 360 degree reception area from potential permitted development on adjoining parcels. 3) Accessory equipment shelters shall be generally limited to the housing of radio, electronic and related power plant equipment. 4) The wireless facility antenna shall be designed to withstand a wind force of 75 miles per hours if ground-mounted and 85 miles peer hour if roof-mounted. 5) Any metallic support structure for a wireless facility antenna must be bonded to a grounding rod to adequately protect against a direct strike of lightning.
Landscaping	<p>A landscape planter shall be provided for screening around the base of the wireless facility and equipment enclosure to minimize the visual and aesthetic impacts on surrounding uses. Plant material shall include vines, groundcover, and trees with a minimum twenty-four inch (24") box size at the time of planting. In addition, the following shall apply:</p> <ul style="list-style-type: none"> a) Local native vegetation shall be used which is drought-tolerant and fire resistant or fire retardant. b) A landscape and rehabilitation plan shall be submitted for review and approval by the Community Development Director prior to the issuance of a building permit. c) The landscape plan shall include only suitable plants indigenous to the immediate area, and a qualified botanist should be consulted. d) The area around all structures, poles, and guy supports shall be free of combustible materials. Clearing of the site shall only be allowed to the degree necessary to prevent fire hazard.
Lighting	<ul style="list-style-type: none"> 1. Outside lighting shall be hooded and directed so as not to shine directly upon adjoining property or public right-of-ways. 2. Lights should be terminated on tower structures that no longer are the highest in the immediate vicinity due to the construction of newer, taller adjacent facilities. 3. Antenna structures shall conform to Federal Aviation Administration (FAA) regulation AC70/7460 latest edition (Obstruction Marking and Lighting). This may include beacons, sidelights, and or strobes.
Location	All proposed Wireless Communication Facilities shall be located so as to minimize their visual impact to the maximum extent feasible, considering technological requirements, by means of placement, screening and camouflage, to be compatible with existing architectural elements, building materials, and other site characteristics.

Maximum Height of Roof-Mounted Antenna	Maximum height may exceed the height of the existing roofline by no more than 10 feet if the facility is properly screened from view.	
Maximum Height Support Equipment	<p><u>Ground Mounted</u> - No higher than 6 feet above grade with proper screening as required above.</p> <p><u>Roof Mounted</u> - No higher than 10 feet above the existing roof line provided the facility is properly screened from view.</p>	
Maximum Height of Wireless Communication Facility	<p><u>Micro WCF</u> - 35 feet maximum height (stand alone only). If attached to an existing utility structure, the maximum height may extend five (5) above the height of the existing utility structure.</p> <p><u>All other Types</u> - Maximum height allowed shall be limited to the structural height allowed by the underlying zone district. An additional height of up to 20 feet <u>may</u> be allowed with the approval of a Major Wireless Facility Permit by the Planning Commission subject to the following findings:</p> <ol style="list-style-type: none"> No feasible alternative location or design exists. The increase in height is for public safety or community benefit, and There are exceptional circumstances (which would be listed for the record) that do not allow the wireless facility to meet the height standards for the zone within where it is located. 	
Multiple Use	All new freestanding Wireless communication Facilities shall be designed to accommodate more than one service provider.	
Screening	<p><u>General Guidelines:</u></p> <p>In determining the acceptability of screening, the following elements shall be taken into account:</p> <ol style="list-style-type: none"> All existing or proposed improvements on and adjacent to the site, including fences, walls, parapets, hedges, berms, or other architectural or landscape elements. The grade of the site on which the antenna is proposed as related to grades of abutting properties and public street rights-of-way. The height of the building(s) on and adjacent to the site above or on which an antenna is proposed to be mounted. The configuration of roofline(s) of the building(s) on, and adjacent to, the site. The existing aesthetics and character of the surrounding neighborhood. Any additional facts or circumstances which the City deems relevant. <p><u>Freestanding Antenna Structure:</u></p> <p>Such devices shall be located and designed to reduce visual impact from surrounding properties and from public streets and shall be screened in a manner compatible with existing architecture and/or landscaping. However, no screening shall be required which blocks the ability of any such device to receive signals. Based on a determination by the Community Development Director or his/her designee; screening of a type and construction compatible with the architecture of the building in question may be required.</p> <p><u>Roof-mounted Antenna Structure:</u></p> <p>Antenna and transmitter equipment on rooftops and projecting from walls shall be screened from view unless made an integral part of the design of the building. All antenna and architectural screening shall, to the extent possible, be compatible and integrated with the existing structure.</p>	

Separation Distance from a residentially zone property zoned or a residentially used structure/home.	Micro WCF, building-mounted/utility-mounted antenna - 0 feet. All other Types - 150 feet minimum (exception - if completely concealed and not visible, then 100 feet minimum is allowed).
Setback Requirements	<u>Utility-Mounted and Micro WCF</u> - No setback required. <u>All other wireless facility types and equipment cabinets</u> - Same as underlying zone district setback requirement.
Spacing of Facilities	<ol style="list-style-type: none"> (1) Maximum number of wireless communication facilities and spacing between facilities shall be determined by the Planning Division as part of the development review process. (2) Wireless communication facilities shall be grouped (clustered) and located to minimize visual impacts wherever possible.
Surface Treatment of Facilities	<ol style="list-style-type: none"> 1. <u>Surface Materials</u>: <ol style="list-style-type: none"> a) Antenna Structure - The antenna structure shall be comprised of wood, metal or concrete as most appropriate to the antenna size and site requirements. Decorative surface materials shall be applied as necessary to blend in with the immediate surroundings. 2. <u>Finishes</u>: <ol style="list-style-type: none"> a) The proposed antenna shall be finished in a neutral color to blend in with the immediate surroundings. b) Highly reflective surfaces conducive to glare shall not be permitted. c) No form of advertising or identification shall be permitted on the antenna structure other than a manufacturer's identification tag.
Support Structures	All equipment buildings, cabinets, cables, air conditioning units, shall be painted and textured to match the surrounding physical area in order to minimize visual impacts.

17.41.060 Operational Standards

A. Maintenance Requirements

1. Property Maintenance - All Wireless Communication Facilities including landscaping and surface areas shall be continuously maintained free of weeds, debris, litter or temporary signage.
2. Graffiti - All graffiti shall be removed from the premises by the permittee within 24 hours of discovery.

B. Business License Required

1. Wireless Communication Facility Permit applicants shall demonstrate to the Planning Division that they have a Business License for operating a Wireless Communication Facility site prior to the approval of a Wireless Communication Facility permit.

2. All property owners shall demonstrate to the Planning Division that they have a Business License for property prior to the approval of a Wireless Communication Facility permit.

C. Business License Renewal and Certification

1. Each Wireless Facility Operator is required to submit to the Planning Division on an annual basis a "Certification Letter of Continued Use" prior to renewal of a City Business License. The Certification Letter shall indicate that the wireless facility is still operating in compliance with the approved conditions of approval and that the wireless facility complies with the current Federal Communication Commission (FCC) safety standards. Wireless Facilities which are no longer in operation shall be removed within 90 days after the date of discontinuation.

17.41.070 Wireless Communication Facility Review Process

A. Required Findings for Approval - Approval of Wireless Communication Facilities permitted in this Chapter shall be based on the following findings:

1. The Wireless Communication Facility Permittee has located on an approved co-location facility or has demonstrated to the City a good faith effort to locate on an approved facility or has demonstrated that co-location is not technically feasible due to coverage needs, potential interference, or other technical issues.

2. That there is adequate space on the subject property site for the Wireless Communication Facility and support equipment without conflicting with existing buildings or other structures on the subject property site, or reducing required parking, landscaping setbacks or other applicable development standards.

3. The design and placement of all Wireless Communication Facilities and support equipment will not adversely impact the use of the property, other buildings and structures located on the subject property site, the surrounding neighborhood or general vicinity.

4. The Wireless Communication Facility and support equipment as proposed is consistent with the intent of this Chapter and comply with the operational standards and any applicable special standards as noted in this Chapter.

5. The applicant has demonstrated that the Wireless Communication Facility will have the least possible visual impact on the environment taking into account technical, engineering, economic and other relevant factors.

B. Types of Permits and Review Process - Table 17.41.070.A below outlines the types of Wireless Communication Facility permits and the application review process for each type of permit:

Table 17.41.070.A
Wireless Communication Facility Permits & Review Process

	Minor WCF Permit	Major WCF Permit
Noticing Requirements	(1) Property Owner & Occupants w/in a 300-foot radius of the site; (2) Planning Commission; and (3) City Council	(1) Property Owner & Occupants w/in a 300-foot radius of the site.
Type of Hearing	Administrative Hearing before the Community Development Director	Public Hearing before the Planning Commission
Approval Authority	Community Development Director	Planning Commission
Appeal	(1) Planning Commission (2) City Council	City Council

C. Conditions of Approval - Conditions of approval shall be imposed on any Wireless Communication Facility permit approved pursuant to this Chapter to ensure compliance with the intent of this chapter, the required development standards, operational standards and findings of this chapter and the protection of the public health, safety, general welfare, and visual aesthetics. The Wireless Communication Facility permit shall not become effective until all applicable conditions of approval have been satisfied. All conditions of approval shall be observed throughout the duration of the permit.

D. Appeal Process - The appeal of an approved Wireless Communication Facility permit shall follow the requirements in Table 17.41.070.A and be subject to the procedures and requirements set forth in Chapter 17.68 of the City of Banning Zoning Ordinance.

17.41.080 Environmental Review Process

All Wireless Communication Facility permits issued under this Chapter are subject to the requirements of the California Environmental Quality Act (CEQA), as applicable.

17.41.090 Removal of Abandoned Wireless Communication Facilities

A. Abandonment Prohibited - WCF's shall not be abandoned. A Permittee who discontinues use of its WCF shall promptly remove the WCF from the property. Failure to remove an abandoned WCF shall be a violation of this Code, and the City may take steps to remedy this violation, including, but not limited to, the commencement of nuisance abatement proceedings pursuant to Chapter 8.48 of the Banning Municipal Code.

17.41.100 Health and Safety

A. Non-Ionizing Electromagnetic Radiation (NIER) - Any new wireless facilities and/or antennas, when combined with existing sources of NIER emissions on or adjacent to the site and when operating as designed and licensed, should not expose the general public to ambient radiation emissions which exceed American National Standards Institute (ANSI) C95.1-1992 standard. If the Federal Communications Commission (FCC) rulemaking committee adopts a revised standard, said standard shall apply. Within six (6) months after the issuance of its occupancy permit, the applicant shall submit a project implementation report which provides cumulative field measurements of radio frequency (EMF) power densities of all antennas installed at subject site. The report should quantify the EMF emissions and compare the results with currently accepted ANSI standards. If on review, the City finds that the Project does not meet ANSI standards, the City may revoke or modify the Wireless Facility Permit.

B. Interference - The operation of the vertical antenna shall not cause interference with any electrical equipment in the surrounding neighborhoods (e.g., television, radio, telephone, computer, etc.). The antenna shall not also create harmful interference between any other telecommunications facilities.

C. Aircraft Safety - The communications facility shall comply with Federal Aviation Administration (FAA) Regulation AC70/7460, latest edition "Obstruction Marking and Lighting". The FAA requires flashing warning lights to be mounted on towers over 200 feet tall. Unless within FAA jurisdiction, i.e. airport flight paths, monopoles are uncharted and could pose hazards to low-altitude aircraft. The provision of a continuous red light on the top of the structure may be a solution to towers in areas where medivac helicopter services, crop-dusting, and other low-altitude aerial activities occur.

D. Radio Frequency Emissions¹ - Applicants for Wireless Communication Facility permits shall provide evidence showing the proposed Wireless Telecommunications Facility complies with Federal Communications Commission (FCC) rules, regulations and standards governing environmental effects of radio frequency emissions.

¹ Section 704 of Title 7 of the Federal Telecommunications Act of 1996 (effective February 8, 1996), contains the following language: "(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emission to the extent that such facilities comply with the Commission's regulations concerning such emissions."

SECTION 4. 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 5. Effective Date. This Ordinance shall take effect thirty (30) days after its 2nd reading in accordance with California law.

PASSED, APPROVED, AND ADOPTED this 27th day of January, 2009.

Robert E. Botts, 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. 1396 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 27th day of January, 2009, and was duly adopted at a regular meeting of said City Council on the 10th day of February, 2009, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT 2

1996/2000 WIRELESS GUIDELINES
(for information only)



DEPARTMENT OF
PLANNING
FAX# 909.922.3128

CITY OF BANNING

99 E. Ramsey Street P.O. Box 998
Banning, California 92220
(909) 922-3125

POLICY GUIDELINES FOR THE ESTABLISHMENT OF WIRELESS ANTENNAS

PURPOSE

The Planning Commission finds that wireless antennas and antenna structures, related to wireless telephone communications, may be aesthetically unsightly and/or visually obtrusive. The Planning Commission finds that the policies/guidelines set forth allows wireless antennas, to be established in appropriate areas of the City, and are necessary to protect the public health, safety, welfare, and aesthetic interests. Further, the Planning Commission finds that these policies/guidelines promote, and are not in conflict with, the State interest in having a reliable and widespread telecommunications service.

I. DEVELOPMENT STANDARDS

A. OBJECTIVES

1. To require demonstrable proof that new sites and/or facilities are necessary.
2. To encourage maximum utilization and efficient use of the limited communication sites.
3. To employ disguising techniques of design so as to diminish the negative impacts of such uses.
4. To support developments that maximize energy conservation measures.
5. To preserve to the greatest extent the existing natural, scientific and cultural resources.

B. STANDARDS:

SPACING

1. The maximum number of towers and the spacing between them shall be determined after review by the Planning Department.
2. Facilities shall be grouped (clustered) and located at each site to minimize visual impact.

C. ALLOWABLE ZONE DISTRICTS

The placement of wireless transmitter/antenna facilities shall be restricted to the City's commercial and manufacturing zone districts and shall be prohibited from being established in any of the City's residential zone districts excepting in instances where such facilities are to be located on City owned properties having water storage tanks that are located in the R-1 (Single-Family Residential Zone District); in such instances it is possible to establish such facilities subject to the processing of an Unclassified Use Permit (amended by the PC on November 7, 2000).

D. AREA

The site shall be of a size and shape sufficient to provide an adequate setback from the base of the antenna support structure to any property line abutting a residential use.

E. SETBACKS

1. Commercial/Industrial Setback

Antennas or towers located in commercial or industrial districts shall not be located in any front street yard.

2. Residential Separation

Wireless telephone antennas shall be located a minimum of one hundred fifty feet (150') from any property zoned or used for residential purposes.

F. CO-LOCATION

The applicant shall cooperate with other communications companies in co-locating additional antenna on pole structures and/or on the tops of buildings and/or clustering of facilities provided said co-applicants have received an *unclassified use permit* or modified *unclassified use permit* for such use at said site from the City. Permittee should exercise good faith in co-locating and/or clustering with other communications companies and sharing the permitted site, provided such shared use does not give rise to a substantial technical level- or quality of service impairment of the permitted use (as opposed to a competitive conflict or financial burden). In the event a dispute arises as to whether permittee has exercised good faith in accommodating other users, the City may require a third party technical study at the expense of either or both the applicant and complaining user. This condition in no way obligates the City to approve any co-location proposal if it is determined by the City not to be desirable in a specific case.

To the extent possible, the City will provide incentives to the owners of existing structures or towers to encourage the co-location of transmission devices on their

structures. Existing and new towers shall allow the placement of governmental transmitters for emergency services or other uses as a public service.

G. HEIGHT

1. The heights and mass of communication facilities shall be the least necessary for the applicant's activity, commensurate with technical, safety, and visual considerations.
2. The heights of towers shall not exceed a height on which Federal Aviation Administration (FAA) regulations on lighting and painting must come into use, unless there is overriding need and necessity.
3. Facilities shall, wherever possible, be located below the skyline.
4. Maximum height shall be limited to the structural height codified in the City's Code for the zone district in which the facility is to be located, excepting that additional height may be authorized with the processing and approval of a Unclassified Use Permit. Additional height may be granted providing the Planning Commission makes the following findings:
 - a. No feasible alternative location or design would not require such a waiver, or,
 - b. The increase in height is for public safety or community benefit, or
 - c. There are exceptional circumstances (which would be listed for the record) that do not allow the Antenna to meet the height standards for the zone within where it is located.

II. AESTHETICS

A. AESTHETICS

Consideration shall be given to the preservation of significant visual features, visual amenities, view corridors and other aesthetic values. The transmitter station or shelter shall, to the extent possible, be designed to be unobtrusive. This may include locating the transmitter station within an existing building or mounted on the rooftop. In all cases, the wireless transmitter station needs to be in context with the immediate surrounding area and be architecturally compatible with the existing structures on the site with respect to design, color and materials.

B. SURFACE TREATMENT

1. Surface Materials

a. Antenna Structure

The antenna structure shall be comprised of wood, metal or concrete as most appropriate to the antenna size and site requirements. Decorative surface materials shall be applied as necessary to blend in with the immediate surroundings.

2. Finishes

- a. The proposed antenna shall be finished in a neutral color to blend in with the immediate surroundings.
- b. Highly reflective surfaces conducive to glare shall not be permitted.
- c. No form of advertising or identification shall be permitted on the antenna structure other than a manufacturer's identification tag.

3. Signage

The display of any sign or any other graphics on an antenna is prohibited except for public safety warnings, which warnings must be placed no higher than eight feet (8') above the base of the antenna.

C. SCREENING

1. General Guidelines

In determining the acceptability of screening, the following elements shall be taken into account:

- a. All existing or proposed improvements on and adjacent to the site, including fences, walls, parapets, hedges, berms, or other architectural or landscape elements.
- b. The grade of the site on which the antenna is proposed as related to grades of abutting properties and public street rights-of-way.
- c. The height of the building(s) on and adjacent to the site above or on which an antenna is proposed to be mounted.

- d. The configuration of roofline(s) of the building(s) on, and adjacent to, the site.
- e. The existing aesthetics and character of the surrounding neighborhood.
- f. Any additional facts or circumstances which the City deems relevant.

2. Freestanding Antenna Structure

Such devices shall be located and designed to reduce visual impact from surrounding properties and from public streets and shall be screened in a manner compatible with existing architecture and/or landscaping. However, no screening shall be required which blocks the ability of any such device to receive signals. Based on a determination by the Community Development Director or his/her designee; screening of a type and construction compatible with the architecture of the building in question may be required.

3. Roof-mounted Antenna Structure

Antenna and transmitter equipment on rooftops and projecting from walls shall be screened from view unless made an integral part of the design of the building. All antenna and architectural screening shall, to the extent possible, be compatible and integrated with the existing structure.

4. Fencing

- a. Fencing associated with a wireless facility shall be wrought iron or similar decorative material when the location of the wireless facility is visible from a street. The use of chain link is not permitted unless approved by the *Planning Director*. Such approval shall be possible only in instances where the location of wireless facility is not visible from a street.

D. LANDSCAPING

1. Urban Areas

A landscape planter shall be provided for screening around the base of the transmitter station and ground mounted antenna to minimize the visual and aesthetic impacts on surrounding uses. Plant material shall include vines, groundcover, and trees with a minimum twenty-four inch (24") box size at the time of planting.

2. Non-Urban Areas

- a. Local native vegetation shall be used which is drought-tolerant and fire resistant or fire retardant.

- b. A landscape and rehabilitation plan shall be submitted for review and approval by the Planning *Director* prior to the issuance of a building permit.
- c. The landscape plan shall include only suitable plants indigenous to the immediate area, and a qualified botanist should be consulted.
- d. The area around all structures, poles, and guy supports shall be free of combustible materials. Clearing of the site shall only be allowed to the degree necessary to prevent fire hazard.

E. CONCEALMENT

Building mounted antennas shall be concealed to the greatest extent possible if the antennas are visible to adjacent properties and adjacent to public rights-of-way-way. Omni directional antennas may not be required to be concealed if this would create a greater visual impact than the unscreened antennas. The concealment may include parapets, walls, or similar architectural elements provided that it is painted and textured to integrate with the architecture of the building. As an alternative method, landscaping positioned on the premises to screen antennas from adjacent properties may be proposed in lieu of architectural concealment.

Concealment shall include consideration of the following:

1. Incorporation with other structures such as lighting poles, signage artificial trees, clock towers, steeples, flagpoles, silos, water towers, etc.
2. Facade disguises such as parapets, decorative walls, etc.

F. LIGHTING

1. Outside lighting shall be hooded and directed so as not to shine directly upon adjoining property or public right-of-ways.
2. Lights should be terminated on tower structures that no longer are the highest in the immediate vicinity due to the construction of newer, taller adjacent facilities.
3. Antenna structures shall conform to Federal Aviation Administration (FAA) regulation AC70/7460 latest edition (Obstruction Marking and Lighting). This may include beacons, sidelights, and or strobes.

III. HEALTH & SAFETY

A. NON-IONIZING ELECTROMAGNETIC RADIATION (NIER)

Any new transmitters and/or antennas, when combined with existing sources of NIER emissions on or adjacent to the site and when operating as designed and licensed, should not expose the general public to ambient radiation emissions which exceed American National Standards Institute (ANSI) C95.1-1992 standard. If the Federal Communications Commission (FCC) rulemaking committee adopts a revised standard, said standard shall apply.

Comply with ANSI standards for electromagnetic field (EMF) emissions. Within six (6) months after the issuance of its occupancy permit, Applicant should submit a project implementation report which provides cumulative field measurements of radio frequency (EMF) power densities of all antennas installed at subject site. The report should quantify the EMF emissions and compare the results with currently accepted ANSI standards. If on review, the City finds that the Project does not meet ANSI standards, the City may revoke or modify the *unclassified use permit*

Note: Most of the concern about the public health impacts of electromagnetic fields (EMF) has been regarding electric power transmission lines and devices operating at 60 Hz, a frequency which is orders of magnitude below the radio frequencies. From 1992-97, the US Department of Energy has embarked on a \$65 million study to examine the health effects of EMF. With regards to the public health effects specifically of radio frequency emissions, little epidemiological study has been completed to date. Based on data available at this time, a public policy of prudent avoidance of chronic exposure to such transmissions is in order.

B. INTERFERENCE

The operation of the vertical antenna shall not cause interference with any electrical equipment in the surrounding neighborhoods (e.g., television, radio, telephone, computer, etc.). The antenna shall not also create harmful interference between any other telecommunications facilities.

C. AIRCRAFT SAFETY

The communications facility shall comply with Federal Aviation Administration (FAA) Regulation AC70/7460, latest edition "Obstruction Marking and Lighting". The FAA requires flashing warning lights to be mounted on towers over 200 feet tall. Unless within FAA jurisdiction, i.e. airport flight paths, monopoles are uncharted and could pose hazards to low-altitude aircraft. The provision of a continuous red light on the top

of the structure may be a solution to towers in areas where medevac helicopter services, cropdusting, and other low-altitude aerial activities occur.

IV. GUIDELINES

A. GENERAL GUIDELINES

The proposed transmitter and antenna shall not create any additional nonconformances to the site such as a reduction of required parking, landscaping, trash enclosure, loading zones, etc.

Any requirement imposed upon the installation of an antenna area transmitter station shall not impose unreasonable limitations on or prevent reception or operate to impose costs on the user of such antennas that are excessive in light of the purchase and installation of such antennas.

B. CRITERIA

1. Comply with any property-specific restrictions.
2. Meet any applicable specific plan or development guidelines.
3. Meet UBC, electrical code, fire code, etc.
4. Meet General Plan and Ordinance Code Noise Element standards.
5. Comply with any applicable ALUC regulations and/or FAA requirements.
6. Meet all regulations of any applicable district or plan.
7. Each permit shall specify the maximum allowable gross crossectional area, or silhouette, of the permitted facility.

C. SPECIFICATIONS

Such devices shall meet all manufacturer's specifications, and all antennas and screens shall be fire-resistive and of corrosive resistant material, and shall be erected in a secure, wind resistant manner. They shall also be maintained in good condition.

D. POTENTIAL DEVELOPMENT

The installation shall be located in such a way as to prevent obstruction of the antenna's 360 degree reception area from potential permitted development on adjoining parcels.

E. ACCESSORY EQUIPMENT SHELTERS

Accessory equipment shelters shall be generally limited to the housing of radio, electronic and related power plant equipment. Such housings should be placed off skyline unless there are overriding reasons not to do so.

F. WIND

The antenna shall be designed to withstand a wind force of seventy-five miles per hour (75 mph) [1 20 km/h] if ground-mounted and eighty-five miles per hour (85 mph) [135 km/h] if roof-mounted.

G. LIGHTNING

Any metallic support structure for an antenna must be bonded to a grounding rod. Every such device shall be adequately grounded for protection against a direct strike of lightning.

H. UNDERGROUNDING

All wires or cables necessary for the operation of the antenna or reception of the signal shall be placed underground, except those wires or cables attached flush with the surface of a building or structure of the antenna. Lines shall follow the corridor of least damage.

I. BANKRUPTCY/FINANCIAL SECURITY

All wireless communication operators shall post with the City a bond in an amount deemed acceptable by the City's Attorney to remove all equipment from the approved site(s) in the event the Cellular provider fails in being able to sustain the approved activity.

ATTACHMENT 3
PLANNING COMMISSION RESOLUTION NO. 2008-20

RESOLUTION NO. 2008-20

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF BANNING, CALIFORNIA RECOMMENDING CITY
COUNCIL ADOPTION OF ORDINANCE NO. 1396 FOR ZONE
TEXT AMENDMENT NO. 08-97509 ADOPTING DEVELOPMENT
REGULATIONS AND OPERATIONAL STANDARDS FOR
WIRELESS COMMUNICATION FACILITIES IN THE CITY OF
BANNING**

WHEREAS, the proposed Zone Text Amendment 08-97509 has been duly initiated by the City of Banning; and

WHEREAS, it is recognized that the Federal Communications Act of 1996 limits the regulatory authority of local governments prohibiting them from considering radio frequency emissions or environmental health risks in their decision making process; and

WHEREAS, on December 2, 1996, and as amended on November 7, 2000, the Planning Commission adopted "Policy Guidelines for the Establishment of Wireless Antennas" pertaining to aesthetics, and location; and

WHEREAS, the City's current policy guidelines for the establishment of wireless antennas does not comprehensively address wireless communication facilities to consider the rapid changes in technology over the past eight (8) years, and which does not effectively encourage camouflaged facilities (i.e., "stealth") or co-location on existing structures; and

WHEREAS, on October 24, 2008, the City published a public hearing notice for Zone Text Amendment No. 08-97509 in the Record Gazette newspaper in compliance with state law and Section 17.68 of the Banning Zoning Ordinance; and

WHEREAS, on November 5, 2008, the Planning Commission held a noticed public hearing at which time interested persons had an opportunity to testify in support of, or opposition to Zone Text Amendment No. 08-97509 and at which time the Planning Commission considered the proposed Zone Text Amendment and recommended City Council approval; and

WHEREAS, the Planning Commission has analyzed Zone Text Amendment No. 08-97509, which is considered a project under the California Environmental Quality Act (CEQA) guidelines, has determined that Zone Text Amendment No. 08-97509 is Exempt from CEQA under Section 15061(b)(3) of the CEQA Guidelines, and is recommending that the City Council adopt the aforementioned Exemption; and

WHEREAS, at said public hearing on November 5, 2008, the Planning Commission considered and heard public testimony and comments regarding Zone Text Amendment No. 08-97509; and

WHEREAS, the Planning Commission has carefully considered all pertinent documents and the staff report offered in this case as presented at the public hearing held on November 5, 2008.

NOW THEREFORE, the Planning Commission of the City of Banning does hereby find, determine, and resolve as follows:

SECTION 1. ENVIRONMENTAL FINDINGS

The Planning Commission, 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 November 5, 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 Planning Commission has analyzed Zone Text Amendment No. 08-97509 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 Planning Commission's independent judgment that in approving the proposed zone text amendment 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 Zoning Ordinance does not relate to any one physical project and will not result in any physical change to the environment. Therefore, the Planning Commission hereby recommends City Council adoption of this Exemption from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 2 ZONE TEXT AMENDMENT NO. 08-97509 REQUIRED FINDINGS

Finding No. 1:

The proposed amendment is consistent with the goals and policies of the General Plan.

Facts:

Zone Text Amendment No. 08-97509 is consistent with the goals and policies of the General Plan. First, the proposed ordinance regulating wireless communications facilities will not result in any changes to the General Plan text or land use map which will maintain internal consistency. Second, the regulations and development standards proposed in Zone Text Amendment No. 08-97509 will help to: 1) preserve and enhance the City's residential neighborhoods by minimizing potential impacts (Goal 1 – Residential); 2) provide complimentary commercial opportunities to meet the needs of the City's residents and increase revenues (Goal 1 – Commercial); and 3) provide for and appropriately locate public facilities to serve the needs of the City's residents (Goal 1 – Public Facilities).

Finding No. 2:

The proposed Amendment is internally consistent with the Zoning Ordinance.

Facts:

Zone Text Amendment No. 08-97509 is consistent with the provisions of the Zoning Ordinance in that the proposed amendment will establish specific development and operational standards, and land use regulations for reviewing and processing wireless communication facilities in the City. It is the intent of the Zoning Ordinance to provide specific development standards for a variety of land use types in the City of Banning, and wireless communication facilities fall into this category.

Finding 3:

That the Planning Commission has independently reviewed and considered the requirements of the California Environmental Quality Act.

Facts:

The Planning Commission has analyzed Zone Text Amendment No. 08-97509 and determined that the project 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 Planning Commission’s independent judgment that in approving Zone Text Amendment No. 08-97509 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, and recommends that the City Council adopt a CEQA exemption for this project.

SECTION 3. PLANNING COMMISSION ACTIONS

The Planning Commission hereby takes the following actions:

1. Recommend City Council adoption of an Exemption from the California Environmental Quality Act (“CEQA”) under Section 15061(b)(3) of the CEQA Guidelines; and
2. Adopt Resolution No. 2008-20 recommending City Council adoption of Ordinance No. 1396 approving Zone Text Amendment No. 08-97509 to read as provided for in Exhibit 1 attached hereto:

PASSED, APPROVED AND ADOPTED this 5th day of November, 2008.

William Dickson
William Dickson, Chairman
Banning Planning Commission

APPROVED AS TO FORM AND
LEGAL CONTENT:

David J. Aleshire

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

CERTIFICATION:

I, Virginia Sorenson, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2008-20, was duly adopted by the Planning Commission of the City of Banning, California, at a special meeting thereof held on the 5th day of November, 2008, by the following vote, to wit:

AYES: *Barsh, Dickson, Escandel, Hawkins, Liva*

NOES: - 0 -

ABSENT: - 0 -

ABSTAIN: - 0 -

Virginia Sorenson

Virginia Sorenson, Recording Secretary
City of Banning, California

ATTACHMENT 4

**SIGN-IN SHEET FOR WIRELESS CARRIER MEETING
(OCTOBER 14, 2008)**

CITY OF BANNING WIRELESS CARRIER MEETING SIGN-IN SHEET

Name of Representative	Name & Address of Company	Telephone Number
1) <u>Leslie Danle</u>	repr <u>Venizon Wireless</u>	(49) 233 4869
2) <u>Lukuk Phu</u>	T-Mobile RE & Toniney Mag	(49) 233 3095
3)		
4)		
5)		
6)		
7)		
8)		
9)		
10)		
11)		
12)		
13)		
14)		
15)		
16)		

ATTACHMENT 5
CORRESPONDENCE LETTERS

October 14, 2008

The Honorable Brenda Salas
Mayor
City of Banning
99 E. Ramsey
Banning, California 92220

Subject: Comments on proposed Wireless Telecommunications Ordinance

Dear Mayor Salas:

Thank you for providing the opportunity to comment on anticipated changes to the City's wireless telecommunications ordinance. These comments are submitted on behalf of Verizon Wireless. We would like to work with the city to develop an ordinance that preserves the aesthetic character of Banning while providing reliable wireless telephone coverage that helps keep neighborhoods safe.

In reviewing the General Plan, a principal policy of the Plan is to "preserve and enhance the character of the City's residential neighborhoods". By being held to the city's own expressed aesthetic standard of "in all cases, the wireless facility needs to be in context with the immediate surrounding area and be architecturally compatible with existing structures" we believe that we can achieve both compliance with the aesthetic standard while enhancing safety for residents.

Cell Phone Service in Residential Areas:

Cell phones are a lifeline during natural disasters including incidents of earthquakes and fires. Citizens depend on cell phones for their private emergencies and daily functioning of their lives including household management and maintaining social relationships. Cell phones are a necessity in both the private and public sector. Verizon's principal issue with the ordinance is the ban on facilities in residential areas.

One of the major trends in cell phone service is that folks are exclusively relying on cell phones as their telephone. Many citizens no longer have a landline telephone. The need and demand for cell phones to work at home is driving innovation in facility design.

Microcells are smaller cell phone facilities designed to be placed in residential areas or in areas where a lower height profile is appropriate. The antenna is attached to an existing vertical element, usually a streetlight, or attached to a new vertical element. These facilities may be located in the public rights of way, private property or public land such as parks, churches or in utility easements.

The placement of utilities in residential areas has been going on for a long time. Basic infrastructure such as wastewater, sewer, gas, and electricity, which may consist of above ground equipment, is present in neighborhoods. These facilities, which can be more visually obtrusive than a microcell facility, are placed with minimal public review.

Verizon Wireless has a state franchise right under California Public Utilities Code (CPUC) section 7901 to place facilities along the public right-of-way within California.

There may be additional opportunities in residential areas beyond the rights of way that would meet the city's aesthetic standard while enhancing public and private safety.

Enclosed for your review are photographs of facilities, which are suited for the build environment of residential areas.

A core function of cities is to provide services to the public including public safety, trash pickup and street sweeping. During the past decade, there's been increasing demand for wireless telephone service. Verizon Wireless appreciates our partnership with the city to provide cell phone service to businesses, residents, and visitors.

Madame Mayor, thank you for consideration of our comments. Verizon Wireless looks forward to continuing to work with the City of Banning in partnership to provide reliable and dependable service that blends with the aesthetic character of your community. I may be reached at (949) 233-4869.

Sincerely,

Leslie Daigle
Verizon Wireless Representative

cc: Leslie Vartanian, Network Manager, Verizon Wireless
Mathew Bassi, Planning Consultant, City of Banning/Civic Solutions

Enclosures: Photographs of stealth facilities

Matthew Bassi

From: Sean Scully [permittech@verizon.net]
Sent: Tuesday, January 13, 2009 2:21 PM
To: CityCouncil; barbarafrhanna@yahoo.com
Cc: Daniele Savard; Matthew Bassi; myergovich@fmhc.com; 'Dohm, Jon'; jqlaw@earthlink.net; 'Patti Ringo'
Subject: CALWA Comment Letter on Draft Ordinance No. 1396 - Development Regulations and Operational Standards for Wireless Communication Facilities in the City of Banning
Attachments: CALWA_Comment Letter_Banning Wireless Ord.pdf; PCIAModelOrdinance2006.pdf

Dear Mayor, Mayor Pro-Tem, and Councilmembers;

My name is Sean Scully and I am a member of the CALWA (California Wireless Association) Regulatory Committee. We have recently met with your Interim Community Development Director, Mr. Matthew Bassi, and reviewed your City's proposed Wireless Communication Facilities Ordinance that will soon be before your body. Attached to this correspondence are 2 documents:

1. "Comment Letter" on Draft Ordinance No. 1396 – Zone Text Amendment No. 08-97509 – Development Regulations and Operational Standards for Wireless Communication Facilities in the City of Banning; and
2. Model Wireless Telecommunications Ordinance from the PCIA, The Wireless Infrastructure Association (National Association).

The "Comment Letter" includes background information about CALWA, as well as our recommended changes, with justifications. In our meetings with Mr. Bassi, we reached consensus and agreement on most of the standards and regulations. CALWA certainly supports the "Spirit and Intent/Purpose" of the proposed regulations that offer a more streamlined process provided all reasonable development regulations are met.

The nature of the proposed amendments offered by CALWA are to clarify some ambiguities, reduce some of the discretion, and articulate specific processing timelines. As the Wireless Industry moves to keep pace with the changing technologies for this quasi-public utility, we are looking for partners at the local level to assist in the rapid deployment of the required infrastructure.

Please consider our proposed recommendations carefully. Again CALWA would like to thank your staff and the City of Banning and we look forward to working with your City in the successful development of these necessary facilities.

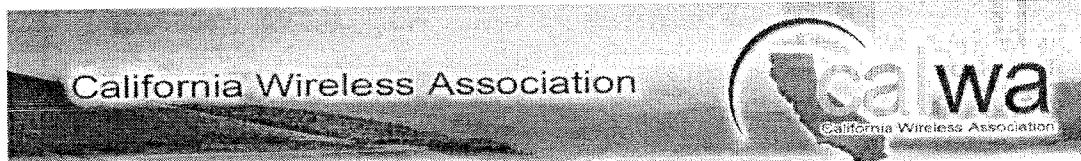
As an FYI we have also provided a copy of the PCIA's "Model Ordinance" that is being considered at the Federal Level. CALWA uses the Model Ordinance when working with local jurisdictions and we have integrated some of the elements of this "Model Ordinance" into a review of your proposed ordinance.

Finally, we will have a member of CALWA at the public hearing to further discuss these proposed amendments and how we can best achieve our mutual goals with this codification.

Sincerely,



Sean Scully, Principal
CalWA, Regulatory Committee Member
1874 S. Pacific Coast Hwy #394 Redondo Beach, CA 90277
Phone: 310.378.8706 Cell: 818.426.6028 Fax: 310.373.0011
E-Mail: permittech@verizon.net; planningtech@verizon.net



January 13, 2009

Mayor Bob Botts
Mayor Pro Tem Barbara Hanna
Councilmember John Machisic
Councilmember Debbie Franklin
Councilmember Don Robinson

City of Banning, Stagecoach Town, U.S.A.
99 E. Ramsey St., Banning, CA 92220

VIA ELECTRONIC MAIL ONLY

Re: Draft Ordinance No. 1396 – Zone Text Amendment No. 08-97509 – Development Regulations and Operational Standards for Wireless Communication Facilities in the City of Banning

Dear Mayor, Mayor Pro Tem, and Councilmembers;

Thank you in advance for your careful consideration of CALWA's (California Wireless Association) reviews, comments, and proposed amendments to your proposed "Development Regulations and Operational Standards for Wireless Communication Facilities in the City of Banning" now before your body.

The purpose of this correspondence is to provide input on this important body of proposed legislation from the Wireless Association, which is directly impacted. A brief introduction of CALWA is also provided for an understanding of our purpose.

About the California Wireless Association

Our primary mission is to raise awareness of the benefits of, and to promote, the wireless industry, to educate the public and our political leaders on issues of importance to the wireless industry, to support the industry in the rapid deployment of wireless technology and services, to voice a unified industry message on wireless issues and emerging technology, and to cultivate and nurture working relationships within the industry and between the industry and the public and our political leaders.

Background

CALWA learned of this proposal only days before this item was acted on by the City's Planning Commission. As a result CALWA was only able to conduct a preliminary review and raise only general comments to the Planning Commission. At that meeting CALWA made a brief statement in general support of the intent of the ordinance but raised two general issues of concern:

1. No timelines for permit processes are stipulated; and

2. There is considerable "Discretion" in some of the development regulations, which can result in significant changes with "interpretations" over time and with different "Staff Members".

Since the Planning Commission Meeting, CALWA has had more time to review this proposal in detail and has met with your "Interim Community Development Director" (Mr. Matthew C. Bassi). As a result of CALWA's more detailed review and our meeting with Mr. Bassi many of the concerns with respect to Item 2 above (concerns with too much "discretion"), have been clarified and addressed. The "Analysis" section to follow summarizes the proposed clarifications. Attached are some detailed clarifications that resulted from that meeting that are attached herein and proposed as specific amendments.

CALWA would like to sincerely thank Mr. Bassi for his time and support in working with our Association as the primary stakeholder in this effort. Mr. Bassi made it very clear in our meeting that one of the primary intentions of this ordinance is to provide an "improved streamlined process". In the spirit of this stated goal CALWA is proposing specific timelines for permit plan checks and approvals. The "Analysis" below provides the support for the proposed "timelines".

Analysis/Proposed Amendments

Summary of proposed "clarifications":

- Page 5 of 16: Section 17.41.020 Definitions: "Concealed Antenna, Building Mounted – Delete the word "from".
- Page 6 of 16: Section 17.41.020 Definitions: "Utility Mounted" – Add "and water storage tanks."
- Page 6 of 16: Section 17.41.030 Wireless Communication Facility Permit Required: To read as follows: "A Wireless Communication Facility (WCF) permit is required for all **new/proposed** WCF's in the City of Banning and must be obtained prior to operation of the facility."
- Page 7 of 16: Table 17.41.040.A. WCF as a Permitted Use & Required Processing:
 - Change from "Prohibited" to "Minor WCF Permit" for Co-Location options for Non-Conforming Facilities in Commercial Zones, Professional Office Zones, Industrial Zones, and to "Major WCF Permit" for Open Space Zones. This is proposed to provide "Co-Location" options for all existing facilities in the City to reduce additional impacts of new facilities.
- Page 8 of 16: Table 17.41.050.A. General Development Standards:
 - Co-Location: "To the extent possible, the City will provide incentives to the owners of existing wireless communication facilities to encourage the co-location of transmission devices on their structures Section 17.41.020 Definitions with reduced processing timelines and priority processing. In addition no additional development standards will be added."
 - Fencing Material: "Fencing associated with a wireless communication facility shall be decorative block material **or** Rod Iron with landscaping when the location of the wireless facility is visible from a street. **When the wireless facility is not visible from a street a combination of chain link fence with landscaping is permitted.**"
- Page 9 of 16: Table 17.41.050.A. General Development Standards:

- Delete Item 8. Each permit shall specify the maximum allowable gross cross-sectional area, or silhouette, of the permitted facility.
- Page 10 of 16: Table 17.41.050.A. General Development Standards:
 - Maximum Height of Roof-Mounted Antenna: "Maximum height may exceed the height of the existing roofline by no more than the structural height allowed by the underlying zone district or by no more than 10 feet, whichever is a greater overall height as long as the facility is properly screened from view."
 - Maximum Height of Wireless Communication Facility: "All other Types – Maximum height allowed shall be limited to the structural height allowed by the underlying zone district. An additional height of up to 10 feet may be allowed with the approval of a Minor Wireless Facility Permit by the Planning Director, or his/her assigned, and an additional height of up to 20 feet may be allowed with the approval of a Major Wireless Facility Permit by the Planning Commission subject to the following findings. If a new WCF is proposed as a "Co-Location" WCF then an additional height of up to 20 feet may be allowed with the approval of a Minor Wireless Facility Permit by the Planning Director, or his/her assigned subject to the following findings:"
 - Multiple Use: All new freestanding Wireless Communication Facilities shall be designed to accommodate more than one service provider. **Note of concern: This requirement will require additional height and therefore result in the requirement for a "Major WF Permit" in many cases. CALWA's proposed solution for encouraging Co-Location facilities is to amend as identified above.**
 - Screening: Item C. "The height of the building(s) on and adjacent to the subject site.
- Page 12 of 16: Section 17.41.070 Wireless Communication Facility Review Process:
 - A. 1. Clarification of the term "good faith effort": **Good faith effort would be demonstrated by a "Letter" from the existing carrier.**
- Page 13 of 16: Section 17.41.070 Wireless Communication Facility Review Process:
 - B. Types of Permits and Review Process – Table 17.41.070. Following the Table, insert the following :
 - 1. Procedure for Review Process of Minor WCF Permit:
 - (a) Within ten (10) business days of the receipt of an application for Minor WCF, the [Planning Director, or his/her assigns] shall either:
 - (1) Inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or
 - (2) Schedule an Administrative Review meeting with the Applicant within thirty (30) days of the receipt of a complete application.
 - This meeting is not a public hearing;
 - (b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
 - (c) The Administrative Review meeting will be conducted to confirm that the proposed application is consistent with this Ordinance. The [Planning Director or his/her assigns] must issue a written decision granting or denying the request within fifteen (15) days of the meeting unless an extension of time is agreed to

partnership with public agencies responsible and reasonable regulations with an emphasis on predictable and timely review processes. CALWA also feels these proposed amendments are also consistent with the stated "Purpose and Intent" of this proposal:

"17.41.010 Purpose and Intent

.....These regulations are intended to protect property values and enhance the aesthetics of the community by minimizing the visibility and the number of wireless communication facilities in the City, and providing expedited processing for well-designed proposals in appropriate locations,

CALWA is in complete agreement with your efforts to streamline the process and codify these regulations. Our desire is to further clarify some of the proposed regulations and articulate specific timelines.

We wish to again thank your planning staff for their input, collaboration, and time in this effort and we appreciate your support to further our mutual goal of implementing and deploying a responsible and timely wireless infrastructure to serve the needs of the Banning Community and Emergency Services.

Sincerely,



Sean Scully, Principal Planning & Permit Technologies, Inc.
CALWA Regulatory Committee Member
1874 S. Pacific Coast Hwy # 394
Redondo Beach, CA 90277
Office: 310-378-8706
Mobile: 818-426-6028

Cc: Matthew C. Bassi, Interim Community Development Director;
Brian Nakamura, City Manager
Jon Dohm, President, California Wireless Association
Matthew S. Yergovich, Esq., Regulatory Committee Co-Chair, California Wireless Association
Julian K. Quattlebaum, III, Esq., Regulatory Committee Co-Chair, California Wireless Association
Patti Ringo, Regulatory Committee Co-Chair, California Wireless Association

Attachments: "Model Wireless Telecommunications Ordinance" PCIA, The Wireless Infrastructure Association, December 2006



MODEL WIRELESS TELECOMMUNICATIONS ORDINANCE

PCIA, THE WIRELESS INFRASTRUCTURE ASSOCIATION

December, 2006

About PCIA

PCIA is an association of companies that seek the advancement of the wireless communications industry through advocacy, technical and marketplace initiatives. PCIA supports programs and policies that expand the growth of the wireless network infrastructure and deployment industry. PCIA's goal is to create a better financial and business environment in which its members can grow and succeed. For more information, please go to www.pcia.com.

MODEL WIRELESS TELECOMMUNICATIONS ORDINANCE

I. Purpose and Legislative Intent.

The purpose of this Wireless Telecommunications Ordinance is to ensure that residents and businesses in [the Municipality] have reliable access to wireless telecommunications networks and state of the art communications services while also ensuring that this objective is achieved in a fashion that preserves the intrinsic aesthetic character of the community and is accomplished according to [the Municipality's] zoning, planning, and design standards. The Telecommunications Act of 1996 preserved, with certain limitations, local government land use and zoning authority concerning the placement, construction, and modification of wireless telecommunications facilities. [The Municipality] recognizes that facilitating the development of wireless service technology can be an economic development asset to [the Municipality] and a significant benefit to its residents. To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless telecommunications facilities complies with all applicable Federal laws, and is consistent with [the Municipality's] land use policies, [the Municipality] is adopting a single, comprehensive, wireless telecommunications ordinance.

This Ordinance establishes parameters for the siting of Wireless Telecommunications Facilities. By enacting this Ordinance it is [the Municipality's] intent to:

- (1) Ensure access to reliable wireless communications services throughout all areas of [the Municipality];
- (2) Encourage the use of existing Monopoles, Towers, Utility Poles and other structures for the collocation of Telecommunications Facilities;
- (3) Encourage the location of new Monopoles and Towers in non-residential areas;
- (4) Minimize the number of new Monopoles and Towers that would otherwise need to be constructed by providing incentives for the use of existing structures;
- (5) Encourage the location of Monopoles and Towers, to the extent possible, in areas where the adverse impact on the community will be minimal;
- (6) Minimize the potential adverse effects associated with the construction of Monopoles and Towers through the implementation of reasonable design, landscaping and construction practices;
- (7) Ensure public health, safety, welfare, and convenience; and
- (8) Conform to Federal and State laws that allow certain antennas to be exempt from local regulations.

II. Definitions.

For the purposes of this Ordinance, the following terms shall be defined as:

Accessory Equipment -- Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Administrative Approval -- Zoning approval that the [Zoning Administrator] or designee is authorized to grant after Administrative Review.

Administrative Review -- The procedures established in Section IV E of this Ordinance.

Antenna -- Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips.

Collocation -- The act of siting Telecommunications Facilities in the same location on the same Support Structure as other Telecommunications Facilities. Collocation also means locating Telecommunications Facilities on an existing structure (for example: buildings, water tanks, towers, utility poles, etc.) without the need to construct a new support structure.

“Carrier on Wheels” or “Cell on Wheels” (“COW”) -- A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

Ordinary Maintenance -- Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a Support Structure’s foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas and Accessory Equipment on a like-for-like basis within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Monopole or Tower upon which they are currently located. Ordinary Maintenance does not include Minor and Major Modifications.

Major Modifications -- Improvements to existing Telecommunications Facilities or Support Structures that result in a substantial change to the Facility or Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification. Major Modifications include, but are not limited to, extending the height of the Support Structure by more than twenty (20) feet or ten percent (10%) of its current height whichever is greater, and the Replacement of the structure.

Minor Modifications -- Improvements to existing Telecommunications Facilities and Support Structures, that result in some material change to the Facility or Support Structure but of a level,

quality or intensity that is less than a "substantial" change. Such Minor Modifications include, but are not limited to, extending the height of the Support Structure by less than twenty (20) feet or ten percent (10%) of its current height, whichever is greater, and the expansion of the compound area for additional Accessory Equipment.

Monopole --A single, freestanding pole-type structure supporting one or more Antenna. For purposes of this Ordinance, a Monopole is not a Tower.

Replacement -- Constructing a new Support Structure of proportions and of equal height or such other height as would be allowed under the definition of Minor Modification to a pre-existing Support Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the pre-existing Support Structure.

Stealth Telecommunications Facility -- Any Telecommunications Facility that is integrated as an architectural feature of a structure so that the purpose of the Facility for providing wireless services is not readily apparent to a casual observer.

Support Structure(s) – A structure designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers, Utility Poles and other freestanding self- supporting structures.

Telecommunications Facility(ies) -- Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Telecommunication Facility can consists of one or more Antennas and Accessory Equipment or one base station.

Tower -- A lattice-type structure, guyed or freestanding, that supports one or more Antennas.

III. Approvals Required for Telecommunications Facilities and Support Structures.

(A) **Administrative Review.** Telecommunications Facilities located on any existing support structure shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. New Support Structures that are less than sixty (60) feet in height shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in any Industrial District after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. Monopoles or replacement poles located in utility easements or rights-of-way shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. Stealth Telecommunications Facilities shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

- (B) Special Permit. Telecommunications Facilities and Support Structures not permitted by Administrative Approval shall be permitted in any district upon the granting of a Special Permit from the [Zoning Board] in accordance with the standards set forth in this Ordinance.
- (C) Exempt. Ordinary Maintenance of existing Telecommunications Facilities and Support Structures, as defined herein, shall be exempt from zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this Ordinance: (1) antennas used by residential households solely for broadcast radio and television reception ; (2) satellite antennas used solely for residential or household purposes; (3) COWs placed for a period of not more than one hundred twenty (120) days at any location within [The Municipality] after a declaration of an emergency or a disaster by the Governor or by the responsible official of [The Municipality]; and (4) television and AM/FM radio broadcast towers and associated facilities.

IV. Telecommunications Facilities and Support Structures Permitted by Administrative Approval.

A. Telecommunications Facilities Located on Existing Structures

- (1) Antennas and Accessory Equipment are permitted in all zoning districts when located on any existing structure, including, but not limited to, buildings, water tanks, utility poles, broadcast towers or any existing Support Structure in accordance with the requirements of this Part.
- (2) Antennas and Accessory Equipment may exceed the maximum building height limitations, provided the Antenna and Accessory Equipment are in compliance with the requirements and standards of this Part.
- (3) Each Antenna mounted on existing structures and any Accessory Equipment shall meet the following standards:
 - (a) Omnidirectional or whip Antennas shall not exceed twenty (20) feet in length and not exceed seven (7) inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
 - (b) Directional or panel Antennas shall not exceed ten (10) feet in length and two (2) feet in width and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.

- (c) Cylinder-type Antennas shall not exceed ten (10) feet in length and not exceed twelve (12) inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
- (d) Satellite and microwave dishes shall not exceed ten (10) feet in diameter. Dish antennas greater than three (3) feet in diameter shall be screened with an appropriate architectural treatment that is compatible with or integral to the architecture of the building to which they are attached. This screening requirement shall not apply to dishes located upon Towers or Monopoles.
- (e) Other Antenna types not specifically mentioned above shall be permitted if they are not significantly greater in size and will have a visual impact no greater than the Antennas listed above. This provision is specifically included in this Ordinance to allow for future technological advancements in the development of Antennas.
- (f) Accessory Equipment must comply with Section VI (E).

B. New Support Structures

- (1) New Support Structure less than fifty (60) feet in height shall be permitted in all zoning districts in accordance with the requirements of this Part.
- (2) New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in all Industrial Districts in accordance with the requirements of this Part. The height of any proposed support structure shall not exceed the minimum height necessary to meet the coverage objectives of the Facility. The setback of the structure shall be governed by the setback requirements of the underlying zone.
- (3) In the case of a monopoles or replacement poles that will support utility lines as well as a Telecommunications Facility shall be permitted within utility easements or rights-of-way, in accordance with requirements of this Part.
 - (a) The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.
 - (b) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.

- (c) The height of the Monopole or replacement pole may not exceed by more than thirty (30) feet the height of existing utility support structures.
- (d) Monopoles and the Accessory Equipment associated therewith shall be set back a minimum of fifteen (15)feet from all boundaries of the easement or right-of-way.
- (e) Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (c) above.
- (f) Poles that use the structure of a utility tower for support are permitted under this Section. Such poles may extend up to twenty (20) feet above the height of the utility tower.

(4) Monopoles or replacement poles located on public property or within public rights-of-way that will support public facilities or equipment in addition to Telecommunications Facilities shall be permitted in accordance with requirements of this Part. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, street lights, and other types of utility poles in the public right-of-way.

C. Stealth Telecommunications Facilities

- (1) Stealth Telecommunications Facilities shall be permitted in all zoning districts after Administrative Review and Administrative Approval in accordance with the requirements below:
 - (a) Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a causal observer.
 - (b) The structure utilized to support the Antennas must be allowed within the underlying zone district. Such structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples.
 - (c) Setbacks for the supporting structure shall be governed by the setback requirements of the underlying zoning district.

D. General Standards, Design Requirements, and Miscellaneous Provisions

- (1) Unless otherwise specified herein, all Telecommunications Facilities and Support Structures permitted by Administrative Approval are subject to

the applicable general standards and design requirements of Section VI and the provisions of Section VII.

E. Administrative Review Process

- (1) All Administrative Review applications must contain the following:
 - (a) Administrative Review application form signed by applicant.
 - (b) Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue zoning application
 - (c) Zoning Drawings detailing proposed improvements. Drawings must depict improvements related to the requirements listed in this Part, including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.
 - (d) In the case of a new Support Structure:
 - (i) Statement documenting why collocation cannot meet the applicant's requirements. Such statement may include such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and
 - (ii) The applicant shall provide a list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing tower or monopole is listed among the alternatives, applicant must specifically address why the modification of such structure is not a viable option.
 - (iii) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered together as one application requiring only a single application fee.
 - (e) Administrative Review application fee.
- (2) Procedure.
 - (a) Within ten (10) business days of the receipt of an application for Administrative Review, the [Zoning Administrator] shall either:
 - (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or
 - (2) schedule an Administrative Review meeting

with the Applicant within thirty (30) days of the receipt of a complete application. This meeting is not a public hearing.

- (b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
- (c) The Administrative Review meeting will be conducted to confirm that the proposed application is consistent with this Ordinance. The [Zoning Administrator] must issue a written decision granting or denying the request within fifteen (15) days of the meeting unless an extension of time is agreed to by the Applicant. Failure to issue a written decision within (15) days shall constitute a denial of the application. The applicant may appeal such a denial as provided in this Ordinance or applicable State or Federal Law.
- (d) Should the [Zoning Administrator] deny the application, the [Zoning Administrator] shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this Ordinance.
- (f) Applicant may appeal any decision of the [Zoning Administrator] approving, approving with conditions, or denying an application or deeming an application incomplete, within thirty (30) days to [the Local Appeals Board] in accordance with this Ordinance.

V. Telecommunications Facilities and Support Structures Permitted by Special Permit.

A. Any Telecommunications Facility or Support Structures Not Meeting the Requirements of Section IV Shall Be Permitted by Special Permit in all Zoning Districts Subject to:

- (1) The submission requirements of Section V (B) below; and
- (2) The applicable standards of Sections VI and VII below; and
- (3) The requirements of the special permit general conditions at Code Section _____. [Insert cross reference to Municipality code section that establishes general conditions applicable to Special Permits.]

B. Submission Requirements for Special Permit Applications

(1) All Special Permit applications for Telecommunications Facility and Support Structures must contain the following:

- (a) Special Permit application form signed by applicant.
- (b) Copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue zoning application.
- (b) Written description and scaled drawings of the proposed Support Structure, including structure height, ground and structure design, and proposed materials.
- (c) Number and type of proposed Antennas and their height above ground level, including the proposed placement of Antennas on the Support Structure.
- (d) When locating within a residential area, a written technical and operational analysis of why a Monopole or similar structure at a height of less than one hundred (100) feet cannot be used.
- (e) Line-of-sight diagram or photo simulation, showing the proposed Support Structure set against the skyline and viewed from at least four (4) directions within the surrounding areas.
- (f) A statement justifying why Collocation is not feasible. Such statement shall include:
 - (i) Such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and
 - (ii) The applicant shall provide a list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing tower was listed among the alternatives, applicant must specifically address why the modification of such tower is not a viable option.
- (g) A statement that the proposed Support Structure will be made available for Collocation to other service providers at commercially reasonable rates.
- (h) If required of other Special Permit applications, a property owner list that includes the name, address, and tax parcel information for each parcel entitled to notification of the application.

(j) Special Permit application fee.

(C) Procedure.

- (1) Within ten (10) business days of the receipt of an Application for a Special Permit, the [Zoning Administrator or the Zoning Board's designee] shall meet with the applicant to confirm that the application is complete or to inform the applicant in writing the specific reasons why the application is incomplete. This review meeting with staff is not a public hearing and is not subject to any public notification requirements.
- (2) If an application is deemed incomplete, an Applicant may submit additional materials to complete the application. An applicant's failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
- (3) Once an application is deemed complete, a review meeting shall be held within ten (10) days.
- (4) At this review meeting, staff shall provide applicant, in writing, a list of additional potential alternative structures, including readily-available identifying information (e.g., address, tax map identification, latitude and longitude) or such other information as will allow the applicant to identify the potential alternative structures. If, after investigation, the applicant concludes that the potential alternative structures identified by municipal staff are not acceptable or feasible, the applicant shall provide an explanation for its decision using technical, physical, or financial information at the hearing on the Special Permit.
- (5) A complete application for a Special Permit shall be scheduled for a hearing date at this review meeting in accordance with the requirements of this Ordinance.
- (6) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered as one application requiring only a single application fee.
- (7) The posting of the property and public notification of the application shall be accomplished in the same manner required for any Special Permit application under this Ordinance.

VI. General Standards and Design Requirements.

(A) Design.

- (1) Monopoles shall be subject to the following:
 - (a) Monopoles shall be designed to accommodate at least three (3) telecommunications providers.
 - (b) The compound area surrounding the Monopole must be of sufficient size to accommodate Accessory Equipment for at least three (3) telecommunications providers.
 - (c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration, or [the Municipality], Monopoles shall have a galvanized silver or gray finish.
- (2) Towers shall be subject to the following:
 - (a) Towers shall be designed to accommodate at least four (4) telecommunications providers.
 - (b) A compound area surrounding the Tower must be of sufficient size to accommodate Accessory Equipment for at least four (4) telecommunications providers.
 - (c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration, or [the Municipality], Towers shall have a galvanized silver or gray finish.
- (3) Stealth Telecommunications Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible or aesthetically appropriate, as determined by the [Zoning Board] or [Zoning Administrator].
- (4) Upon request of the Applicant, the [Zoning Board or Zoning Administrator] may waive the requirement that new Support Structures accommodate the collocation of other service providers if it finds that collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.

(B) Setbacks.

- (1) Property Lines. Unless otherwise stated herein, Monopoles and Towers shall be setback from all property lines a distance equal to their height measured from the base of the structure to its highest point. Other Support

Structures shall be governed by the setbacks required by the underlying zoning district.

- (2) Residential Dwellings. Unless otherwise stated herein, Monopoles, Towers and other Support Structures shall be setback from all off-site residential dwellings a distance equal to the height of the structure. There shall be no setback requirement from dwellings located on the same parcel as the proposed structure. Existing or Replacement utility poles shall not be subject to a set back requirement.
- (3) Unless otherwise stated herein, all Accessory Equipment shall be setback from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory Equipment associated with an existing or Replacement utility pole shall not be subject to a set back requirement.
- (4) The [Zoning Board or Zoning Administrator] shall have the authority to reduce or waive any required setback upon the request of the applicant if the Telecommunications Facility or Support Structure will be less visible as a result of the diminished setback. The [Zoning Board or Zoning Administrator] must also find that the reduction or waiver of the setback is consistent with the purposes and intent of this Ordinance. The structure must still meet the underlying setback requirements of the zone.

(C) Height

- (1) In non-residential districts, Support Structures shall not exceed a height of one hundred ninety-nine (199) feet from the base of the structure to the top of the highest point. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.
- (2) In residential districts, Support Structures shall not exceed a height equal of one hundred fifty (150) feet from the base of the structure to the top of the highest point. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.
- (3) In all districts, the [Zoning Board] shall have the authority to reduce or waive the height restrictions listed in this section upon the request of the applicant and a satisfactory showing of need for a greater height. With its waiver request the Applicant shall submit such technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the [Zoning Board].

(D) Aesthetics.

- (1) Lighting and Marking. Telecommunications Facilities or Support Structures shall not be lighted or marked unless required by the Federal Communications Commission or the Federal Aviation Administration (FAA).
- (2) Signage. Signs located at the Telecommunications Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.
- (3) Landscaping. In all districts, the [Zoning Board or Zoning Administrator] shall have the authority to impose reasonable landscaping requirements surrounding the Accessory Equipment. Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner. The [Zoning Board or Zoning Administrator] may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the [Zoning Board or Zoning Administrator], landscaping is not appropriate or necessary.

(E) Accessory Equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the Telecommunication Facility or Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.

- (1) An equipment building, shelter or cabinet must not exceed five hundred sixty (560) square feet and twelve (12) feet in height, including the support structure for the equipment building.
 - (i) Exception to size restriction. A single equipment building or shelter may exceed five hundred sixty (560) square feet, if it: is located at ground level; is used by more than one telecommunication provider; and does not exceed one thousand five hundred (1500) square feet.
 - (ii) Exception to height restriction. Upon the Applicant's request, the [Zoning Board or Zoning Administrator] may waive the height restriction to allow for the stacking of equipment on top of each other. The [Zoning Board or Zoning Administrator] must find that there is a practical necessity for the stacking of the equipment and that any resulting impact on adjoining properties is minimal or may be minimized by the requiring of appropriate screening. [The Zoning Board or Zoning Administrator] may also waive the height restriction where a higher support structure is needed to raise the Equipment above a slope or flood plains.

(2) If the Accessory Equipment is at ground level in a residential zone, the [Zoning Board or Zoning Administrator] may require that the building or shelter be faced with brick or other suitable material on all sides and that the compound area be surrounded by landscaping providing a screen of at least three (3) feet in height at installation. The Accessory Equipment must conform to the setback standards of the applicable zone. In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the [Zoning Board or Zoning Administrator].

VII. Miscellaneous Provisions.

(A) Safety.

(1) Ground mounted Accessory Equipment and Support Structures shall be secured and enclosed with fence not less than six (6) feet in height as deemed appropriate by the [Zoning Board] or [Zoning Administrator].

(2) The [Zoning Board or Zoning Administrator] may waive the requirement of Subsection (1) above if it is deemed that a fence is not appropriate or needed at the proposed location..

(B) Abandonment and Removal.

(1) Abandonment. Any Telecommunications Facility or Support Structure that is not operated for a period of twelve (12) consecutive months shall be considered abandoned.

(2) Removal. The owner of the Telecommunications Facility or Support Structure shall remove the Facility within six (6) months of its abandonment. The [Municipal Authority] shall ensure and enforce removal by means of its existing regulatory authority.

(C) Multiple Uses on a Single Parcel or Lot: Telecommunications Facilities and Support Structures may be located on a parcel containing another principal use on the same site.

VIII. Telecommunications Facilities and Support Structures in Existence on the Date of Adoption of this Ordinance.

(A) Telecommunications Facilities and Support Structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.

(B) Non-Conforming Telecommunications Facility.

- (1) Non-conforming Antennas or Accessory Equipment: Ordinary Maintenance may be performed on Non-conforming Antennas and Accessory Equipment.
- (2) Minor Modifications to non-conforming Telecommunications Facilities may be permitted upon the granting of Administrative Approval by the [Zoning Administrator].
- (3) Major Modifications to non-conforming Telecommunications Facilities may be permitted only upon the granting of Special Permit approval by the [Zoning Board].

(C) Non-Conforming Support Structures.

- (1) Non-conforming Support Structure: Ordinary Maintenance may be performed on a Non-conforming Support Structure.
- (2) Collocation of Telecommunications Facilities on an existing non-conforming Support Structure is permitted upon the granting of Administrative Approval by the Zoning Administrator.
- (3) Minor Modifications may be made to non-conforming Support Structures to allow for Collocation of Telecommunications Facilities. Such Minor Modifications shall be permitted by Administrative Approval granted by the [Zoning Administrator].
- (3) Major Modifications may be made to non-conforming Support Structures only upon the granting of Special Permit approval by the [Zoning Board].

For Further Questions Please Contact:

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**CITY COUNCIL
REPORT OF OFFICERS**

DATE: January 27, 2009

TO: Honorable Mayor and Members of the City Council

FROM: Kim Clinton, Senior Planner

SUBJECT: **City of Banning Draft 2008 – 2014 Housing Element:**

City Council Review of the Draft 2008 – 2014 Housing Element and Adoption of Resolution No. 2009-08 Authorizing Staff to Submit the Draft Housing Element to the State Department of Housing and Community Development (HCD).

RECOMMENDATION:

Staff recommends that the City Council receive public testimony and adopt Resolution No. 2009-08 authorizing staff to forward the Draft 2008 – 2014 Housing Element to the State Department of Housing and Community Development (HCD) to begin the 60-day HCD review period.

JUSTIFICATION:

The Housing Element is a required component of a City's General Plan. The state mandate for regular 5-year Housing Element updates has been in place since 1969. The Draft 2008 – 2014 Housing Element addresses existing and future housing needs of all types for persons for all economic groups in the City, and is a tool for use by citizens and public officials in understanding and meeting the housing needs in the City of Banning.

BACKGROUND:

The current City of Banning Housing Element was adopted April 24, 2001. In order to comply with current State General Plan law (Government Code Section 65580) pertaining to Housing Elements, and also for the City to maintain eligibility for State and Federal funds, a certified Housing Element Update is required every five years. Housing Elements are required to be certified by the State Department of Housing and Community Development (HCD).

According to the State, the government and the private sector need to strive to provide for the regional housing needs, providing a density and diversity of housing opportunities while maintaining a responsibility to other identified goals within the General Plan. The assessment of housing needs is required to include the following:

- 1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs. These existing and projected needs shall include the locality's share of the regional housing need;
- 2) An analysis and documentation of household characteristics;
- 3) An inventory of suitable land for residential development;
- 4) An analysis of potential and actual governmental and non-governmental constraints on the improvement, maintenance and development of housing for all income levels;
- 5) An analysis of special housing needs;
- 6) An analysis of opportunities for energy conservation; and
- 7) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years.

The Regional Housing Needs Assessment (RHNA) is mandated by State Housing Law as part of the periodic process of updating local Housing Elements of the General Plan. The RHNA quantifies the need for housing within each jurisdiction during specified planning periods. The current planning period is January 1, 2006 to June 30, 2014. RHNA numbers, as determined by the Western Riverside Council of Governments (WRCOG) for the City of Banning, consider existing and future housing needs. A Housing Element must include an assessment of existing and future housing needs and allocate a fair share for all income groups (extremely low, very low, low, moderate, and above moderate).

The City of Banning contracted with Laurin Associates to write the 2008 – 2014 Housing Element for submittal to HCD. The Scope of Work for the project included a review of the existing Housing Element, preparation of environmental documents per California Environmental Quality Act (CEQA) guidelines, and Housing Element Update 2008-2014. The Housing Element contains the City's overall goals, objectives, policies, and action programs intended to facilitate the provision of housing for all economic segments of the population, now and in the future. In addition, the Housing Element analyzes the current Housing Element, existing housing characteristics and conditions, inventory of vacant land, State quantified Regional Housing Needs, and housing constraints.

The Housing Element update was discussed in a public workshop attended by the City Council, Planning Commission and the consultant on May 30, 2008. The consultant explained some of the new legislation passed by the state regarding housing element requirements and facilitated discussion of housing element issues. The comments received from the Council, the Commission and by residents that attended the workshop were recorded and written comments were collected on forms provided at the workshop. In addition, at the direction of the Council, a housing element questionnaire was sent to residents in the utility bills during the months of July

and August. The consultant has incorporated the comments generated by the workshop and the questionnaire into the draft Housing Element. They are reflected in the programs listed in the element.

ANALYSIS:

The draft element begins by introducing the element and outlining its purpose in chapter one and by describing the existing housing conditions, constraints, efforts and opportunities in chapter two. The needs, issues and trends are discussed in chapter three. These first three chapters provide the background and support documentation for the programs contained in chapter four, where the action programs are listed in accordance with the needs and requirements identified for the City.

Although there are ongoing action programs that have been carried over and updated from the 2006 Housing Element, in response to new state requirements and also in response to the input received from the workshop and the questionnaires, new programs have been initiated. Three of the major programs are listed below:

Neighborhood Stabilization Grant for Foreclosed Homes-The City will pursue this HUD-sponsored grant which enables cities to purchase foreclosed homes at a discount to make homes available to lower-income families. Abandoned and foreclosed homes are multiplying rapidly within the city as they are in other jurisdictions. The Community Development Department is inventorying abandoned homes in the City and we are contacting the lenders who own these homes in an effort to protect them from vandalism and neglect. It is anticipated that a number of these homes will be purchased by the City through this grant and through other funding sources.

Homeless shelters- Pursuant to state law, it is required that homeless shelter(s) be provided in or in close proximity to the City of Banning. Currently, through our participation in the 211 program, homeless people are referred to shelters located in Riverside. In 2009 the City will pursue a joint agreement with a maximum of two adjacent cities to provide at least one year-round joint use shelter by the year 2010. At the same time we will coordinate with homeless service providers and law enforcement agencies to determine the number of persons in need of shelter and facilitate finding them homes through a public relations campaign that includes flyers and web-site postings.

The Housing Exterior Rehabilitation Assistance Program (ERA)-This program will be expanded to include substantial rehabilitation work including roof and foundation repair, electrical upgrades and major appliances. This effort will help to maintain and upgrade the existing affordable housing stock in the City, prevent displacement of families and help provide housing for low to extremely low income households.

These represent a few of the many action programs proposed in the element. The State of California Department of Housing and Community Development recognize that many communities will not be able to meet the projected housing needs (RHNA) due to circumstances

beyond their control. They will, however, recognize the efforts made to identify the challenges and to provide solutions and will deem a housing element in compliance with State mandates if it contains sufficient documentation and action programs. Staff is of the opinion that the consultants have made the effort to craft an element that contains the types of documentation and programs that will gain acceptance from HCD.

Upon submittal of the Public Review Draft Housing Element to HCD, a 60-day public review period will commence. After the comment period, public and HCD comments will be incorporated into a revised Draft. The City Council adopts the Final Housing Element, certifying the CEQA environmental document at the same time.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission reviewed the Draft Housing Element, and in a public hearing held on December 2, 2008, recommended approval.

COMMUNITY OUTREACH EFFORTS:

As required by law, a workshop was held to discuss the project and to provide an opportunity for public input. Although not required by the State, the Planning Commission held two noticed public meetings in which the public had an opportunity to comment. The draft element was also made available to the public at the Banning Library and the Senior Center. The questionnaire that was included in the utility bills provided also an opportunity for the public to comment on issues pertaining to the housing element. In addition to receiving written comments from the public, the questionnaire generated many calls to staff and staff was able to discuss the draft with members of the public. A synopsis of the written responses is in the appendix of the draft.

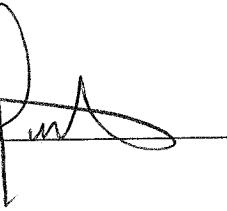
CEQA ENVIRONMENTAL REVIEW

A thirty (30) day review period for the environmental documents began on December 26, 2008 and ends on January 26, 2009. A negative declaration is proposed for this project. The environmental information was posted with the county clerk and circulated to public agencies by the State Office of Planning and Research (OPR). To date, no comments have been received. It is appropriate for the negative declaration to be adopted along with the approval of the final housing element.

FISCAL DATA:

The budget cost to hire Laurin Associates to prepare the Draft 2008 – 2014 Housing Element was \$66,790.00 and was approved by the City Council on January 8, 2008.

PREPARED BY:


Kim Clinton
Senior Planner

REVIEWED BY:


Matthew C. Bassi
Interim Community Development Director

REVIEWED BY:


Bonnie Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

CC Attachments:

1. CC Resolution No. 2009-08
2. Draft 2008 – 2014 Housing Element (forwarded to Council on December 29, 2008)
3. Draft Initial Study/Negative Declaration (forwarded to Council on December 29, 2008)

DRAFT 2008 – 2014
HOUSING ELEMENT

RESOLUTION
NO. 2009-08

ATTACHMENT “1”

RESOLUTION NO. 2009-08

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BANNING, CALIFORNIA AUTHORIZING STAFF TO SUBMIT
THE DRAFT 2008 – 2014 HOUSING ELEMENT TO THE
CALIFORNIA STATE DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT (HCD)**

WHEREAS, the City of Banning undertook a comprehensive General Plan Housing Element Update for the state required 2008 – 2014 planning period; and

WHEREAS, the California State Department of Housing and Community Development requires the Housing Element be updated and certified every five years; and

WHEREAS, California State Department of Housing and Community Development requires the Draft Housing Element be reviewed and approved by the City Council prior to submission to HCD for the state mandated 60-day public review period; and

WHEREAS, On May 30, 2008, a Joint City Council and Planning Commission Public Workshop on the Housing Element was conducted; and

WHEREAS, on November 21, 2008 and January 16, 2009, the City gave public notice as required under Government Code Section 66451.3 by advertising in the Record Gazette, a local newspaper of general circulation regarding the holding of a public meeting to receive public testimony on the Draft 2008 – 2014 Housing Element prior to submission to the HCD; and

WHEREAS, on December 2, 2008, the Planning Commission held the noticed public meeting hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Draft Housing Element and at which time the Planning Commission recommended approval to the City Council of the Draft Housing Element; and

WHEREAS, on December 26, 2008, the CEQA Review period began and ended on January 26, 2009; and

WHEREAS, on January 27, 2009, the City Council held a duly noticed public meeting at which interested persons had an opportunity to testify in support of, or opposition to, the Draft 2008 – 2014 Housing Element and at which time the City Council considered the Draft Housing Element; and

WHEREAS, the City Council on January 27, 2009 authorized staff to submit the Draft 2008 – 2014 Housing Element to the State Department of Housing and Community Development to initiate the state mandated 60-day review period;

NOW THEREFORE, the City Council of the City of Banning does hereby resolve, determine and order as follows:

SECTION 1. The City Council of the City of Banning hereby authorizes the Community Development Department staff to submit the Draft 2008 – 2014 Housing Element to the State Department of Housing and Community Development to initiate the required 60-day state review period.

PASSED, APPROVED, AND ADOPTED this 27th day of January, 2009.

Robert E. Botts, 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 the foregoing Resolution No. 2009-08 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 27th day of January, 2009 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL
REPORT OF OFFICERS**

DATE: January 27, 2009

TO: Honorable Mayor and Members of the City Council

FROM: Matthew C. Bassi, Interim Community Development Director

SUBJECT: One Stop Shop Update:

A Presentation by the Community Development Department on the One Stop Shop Program (Power Point Presentation).

RECOMMENDATION:

That the City Council receive and file this report.

BACKGROUND/ANALYSIS:

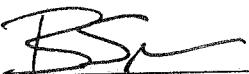
The City Council has asked staff to provide an update on the efforts/progress being made with the "One Stop Shop" program. Staff is intending to provide a power point presentation at the January 27, 2009 Council meeting and provide an oral report for Council consideration. Staff is providing for Council review prior to the meeting a copy of the power point presentation (Attachment 1), a copy of the LTDF meetings summary (Attachment 2), and a copy of Council Policy A-23 establishing the Land Development Task Force (LTDF) program (Attachment 3).

PREPARED BY:



Matthew C. Bassi
Interim Community Development Director

APPROVED BY:



Brian Nakamura
City Manager

CC Attachments:

1. Power Point Presentation
2. LDTF Meetings Summary Chart
3. Council Policy A-23 (from 1990)

ATTACHMENT 1

Staff's Power Point Presentation Slides

City of Banning “One Stop Shop” Presentation

Steps In Implementing the “One Stop Shop”

- On January 5, 1990, the City Council adopted Administrative Policy No. A-23 which lead to the formation of the Land Development Task Force (LDTF) committee (commonly referred to by planners as a “Pre-Application Review”).
- The LDTF committee currently consists of a representative from the following City divisions and outside agencies:
 - Planning, Building & Safety, Redevelopment/Economic Development, Engineering, Electric, Water/Waste Water, Community Services, Police, Cal Fire, Banning School District and Morongo Indian Planning.
- The LDTF meetings are “free of charge” and not mandatory; however, staff really encourages potential applicants to utilize this public service.
- The LDTF committee has been very successful in achieving a one stop shop process in terms of customer service, coordinated project review comments for the applicant, expedited application reviews and streamlined public hearing processes.

City of Banning “One Stop Shop” Presentation

Purpose of the LDTF is Fourfold:

1. To provide the developer (i.e., any applicant) with specific direction on major development issues and technical/zoning requirements during the conceptual stage of the development project;
2. To allow the developer the opportunity to avoid the expense of detailed plan preparation and financial commitment on a design/concept that may not be in full compliance with City regulations;
3. To assist the developer to comply with City regulations and to minimize the developer's processing time through a coordinated effort of all City departments involved in development projects; and
4. To coordinate staff effort and promote effective use of staff time in the review and processing of development projects.

City of Banning “One Stop Shop” Presentation

LDTF Meetings and Applications

- The LDTF committee was set up to meet weekly on a regular basis; however, actual meetings are typically set up when an application is received by the Planning Division. With the current economic slowdown, staff has seen a significant drop in LDTF submittals so meetings have also dropped off.
- The types of development projects that are reviewed by the LDTF committee include:
 - commercial and industrial projects;
 - single and multi-family residential projects;
 - Tentative Parcel Maps (4 or more) & Tentative Tract Maps;
 - Specific Plans; and
 - Conditional Use Permits & Design Review applications
- Since its creation in 1993, there has been over 430 LDTF applications that have been reviewed by City staff.

City of Banning “One Stop Shop” Presentation

Other Steps in Implementing the “One Stop Shop”

- The City Council has budgeted \$650,000 for physical improvements to the interior of city hall.
- The purpose of allocating the funds was to modify the interior floor plan & rearrange cubicle locations to achieve a more efficient layout.
- The modifications would directly benefit the daily visitors / applicants to city hall by physically establishing a “One Stop Shop” appearance.
- A preliminary floor plan was drafted by the Public Works department several months ago but no physical improvements have been made to date.

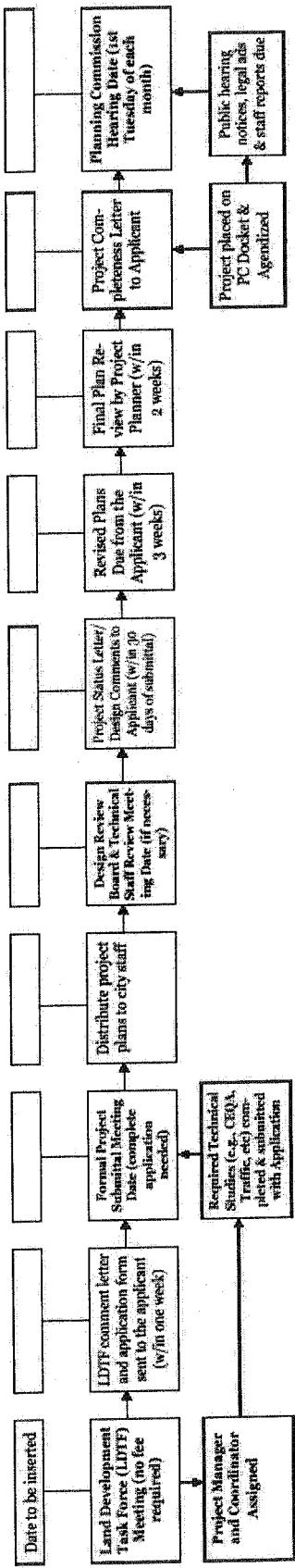
City of Banning “One Stop Shop” Presentation

The “One Stop Shop” – Development Review Process

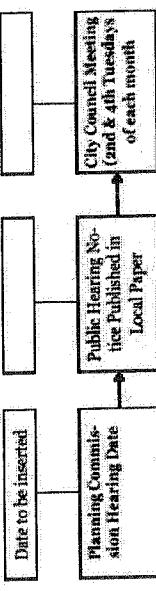
- The Community Development department has created and is currently using a project processing and building plan check schedule and flow chart to help streamline the development review and plan check process.
- The flow chart details all the steps/tasks applicable to the current planning and plan check process and is provided to the applicant at the LDDTF meeting.
- The flow chart has proven to be a great tool for applicants & developers in understanding the steps/tasks required through the current planning and plan check process.
- The schedule has also made our planners keep organized and on task so projects are processed in a timely & streamlined manner.

CITY OF BANNING - YOUR PROJECT ENTITLEMENT PROCESS SCHEDULE

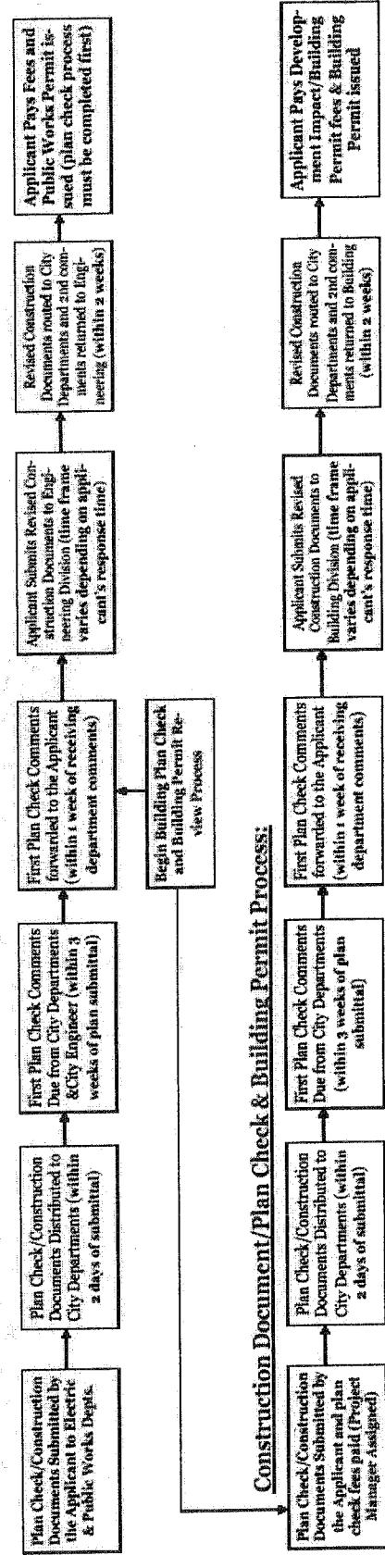
Planning Commission Action:



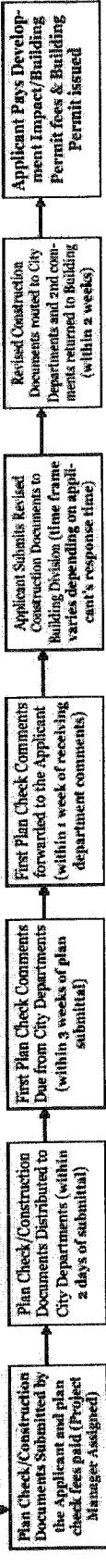
City Council/RDA Action (when required):



Electric/Utilities/Public Works Departments Engineering Plan Check Permit Process:



Construction Document/Plan Check & Building Permit Process:



City of Banning “One Stop Shop”

Positive Benefits from the “One Stop Shop”

- The One Stop Shop results in good customer service & consistent communication between the development community, business owners, citizens and City staff – most effective through the LDTF committee process.
- The One Stop Shop has lead to the assignment by the CD Director of “project managers” for each development project, as well as, each plan check application:
- The project managers become the main contact point for each applicant and it is their responsibility to coordinate questions and issues between the applicant and city departments – this results in effective coordination and consistent communication for our applicants.
- The One Stop shop has also lead to the development of an organized project entitlement and plan check process by establishing specific review times and deadlines as reflected in the previous flow chart.

ATTACHMENT 2

LDTF Yearly Meeting Calculations

CITY OF BANNING

MEMORANDUM



DATE: JANUARY 5, 2009

TO: Matt Bassi, Interim Community Development Director

FROM: Gini Sorenson, Development Project Coordinator

RE: LDTF YEARLY MEETINGS

1993	12
1994	22
1995	17
1996	5
1997	10
1998	12
1999	8
2000	22
2001	21
2002	29
2003	43
2004	52
2005	56
2006	42
2007	32
2008	16
2009	<u>3</u>
Grand total	391

Our Mission as a City is to provide citizens 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.

ATTACHMENT 3

City Council Policy A-23 (from 1990)

CITY OF BANNING

ADMINISTRATIVE POLICY

Subject:	Policy No.	
LAND DEVELOPMENT TASK FORCE		A-23
Reference:	Effective	Page
	1/5/90	1 of 3

PURPOSE

1. To provide the developer with direction on major issues and technical requirements during the conceptual stage of the development project.
2. To allow the developer the opportunity to avoid expense of detailed plan preparation and financial commitment on a design/concept that may not be in full compliance with city regulations.
3. To assist the developer to comply with city regulations and to minimize the developer's processing time through a coordinated effort of all city departments involved in development projects.
4. To coordinate staff effort and promote effective use of staff time in review and processing of development projects.

LAND DEVELOPMENT TASK FORCE

The Land Development Task Force will consist of a representative from each of the following departments and outside agencies:

Planning	Fire
Engineering	Police
Electric	Banning Unified School District
Community Services	

The department heads of the above listed departments and outside agencies shall designate a permanent representative and an alternate to participate in the Task Force. Planning Department will keep on file the names of all department representatives and alternates.

MEETING SCHEDULE

The Land Development Task Force shall meet weekly; each Wednesday from 2:00 p.m. to 5:00 p.m. in the City Hall Conference Room regardless of whether or not a development proposal has been submitted for consideration. In the event no such proposal is in process at any particular time, said meeting shall provide various City departments an opportunity to discuss/coordinate other pertinent City development issues.

CITY OF BANNING
ADMINISTRATIVE POLICY

Subject:

Policy No.

A-23

LAND DEVELOPMENT TASK FORCE

Reference:

Effective

Page

1/5/90

2 of 3

PROCEDURES

1. A developer wishing to do business in Banning will first contact the Planning and Engineering counter staff to discuss his project. The counter staff will provide the developer with printed handouts of general Planning and Engineering information, and any general requirements for a typical project.
2. With this general information, the developer shall prepare a conceptual site plan of his project and request a task force meeting. The developer will complete a meeting request form at the Planning Department and provide the counter staff with 10 copies of the conceptual site plan. A staff Planner will be assigned as staff contact and will coordinate with other task force members.
3. The Planning Department shall transmit the conceptual site plan. Task Force members will be provided approximately five (5) working days to formulate a response. The developer and task force members shall be notified by the Planning Department of the scheduled meeting date for review of the development proposal.
4. At the scheduled meeting the developer will be asked to present his proposed project to the task force members. The Task Force will advise the developer of city regulations affecting the project, possible conditions of approval to be imposed on the project, types of city fees, filing dates and procedures etc., and respond to any issue of concern to the developer. To the greatest extent possible, said advice shall be provided to the developer in written format within ten (10) working days following the meeting.

CITY OF BANNING
ADMINISTRATIVE POLICY

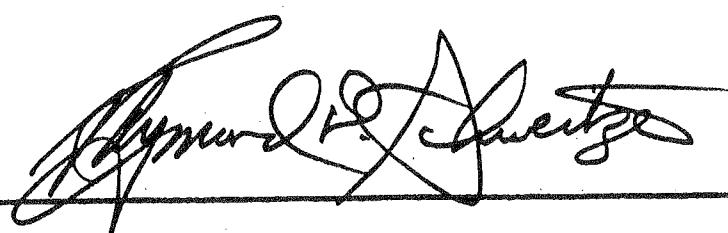
Subject:	Policy No.	
LAND DEVELOPMENT TASK FORCE		A-23
Reference:	Effective	Page
	1/5/90	3 of 3

5. The Land Development Task Force meeting is provided to the serious developer as a courtesy free of charge. Following the meeting and prior to formal submittal of the project, the staff will not normally retain any plans or conduct any further analysis of the project (with the exception of responding to unanswered queries).
6. Following the Task Force meeting and prior to formal submittal of the project, any further request for staff assistance in discussion/review of the conceptual site plan may result in a fee due to impact on staff availability. The staff contact will coordinate with the developer to determine items to be discussed and amount of fees for further staff assistance. The intent is to preclude excessive staff time spent on one project at the expense of other developers attempting to schedule meetings with staff.

TYPES OF PROJECTS TO BE REVIEWED

The Land development Task Force will generally review the following type of projects:

1. Commercial and Industrial developments
2. Multiple residential units
3. Tentative maps
4. Parcel maps of more than four parcels
5. Specific Plans
6. Conditional Use Permits



EW/djs 1/3/90

**CITY COUNCIL
REPORT OF OFFICERS**

Date: **January 27, 2009**

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

FROM: **Matthew C. Bassi, Interim Community Development Director**

SUBJECT: **Adoption of Ordinance No. 1400 - Smoking in Public Parks:**

Adoption of Ordinance No. 1400 to Amend Section 8.56.030 of the Banning Municipal Code to Regulate Smoking in Public Parks in the City of Banning.

RECOMMENDATION:

The Community Development Department recommends that the City Council adopt Ordinance No. 1400 amending Section 8.56.030 of the Banning Municipal Code to regulate smoking in public parks.

BACKGROUND:

Ordinance No. 1400 (Attachment 1) was originally presented to the City Council at the October 28, 2008 meeting. Staff recommended approval of the Ordinance that would prohibit smoking in city public parks in the same manner as smoking is prohibited in city public facilities. There was a good deal of discussion/comments on the proposed Ordinance from Councilmembers and the general public. As a result, the Council voted to table the item so staff could research the issues and bring back the ordinance for adoption.

As there were a number of comments raised at the October 28 meeting, staff is providing a copy of the minutes from the Council meeting (Attachment 2). The following is a general summary of the issues/comments raised by Councilmembers (for the six (6) public comments, refer to the attached minutes).

Councilmember Franklin:

- Commented that there should be designated smoking areas within the parks (e.g., away from playground areas and group events/concerts) rather than prohibiting it park-wide.
- Commented how implementation of the ordinance would take police personnel away from other priorities, and expressed concern about the difficulty for city staff to enforce the ordinance.
- Commented that her research on-line revealed that there is a lot of information about this issue and what other cities have done, but also noted that other cities are finding it hard to enforce.

Councilmember Hanna:

- Commented that many cities in Riverside County have already adopted ordinances prohibiting smoking in public parks.
- Commented that the city's top priority should be our children and that parks are intended for children so smoking in city parks should be prohibited.
- Commented that the ordinance allows smoking on public streets and/or alleys so there is opportunity for smoking adjacent to the park.
- Commented that enforcement is a serious issue and that education is needed on second hand smoke affects.

Councilmember Machisic:

- Commented that enforcement of the ordinance is a concern.
- Commented that smoking is a problem for health but at the same time it will be difficult for officers to patrol through the park unless it is spot-checking.
- Commented that the people will have to get acclimated to the ordinance because they have always smoked in public parks.

Former Mayor Salas:

- Commented that smoking in the park when children are around is not a healthy thing and that we should take a good look at how we can enforce the ordinance.
- Commented that Riverside County is not allowing smoking within a certain distance from building entrances and exits but that the County has established designated smoking areas.

ANALYSIS:

In an effort to address Council concerns, staff met with two (2) representatives from the Riverside County Department of Public Health; Mr. James Jo, DrPH and Ms. Consuela Edmond. Mr. Jo and Ms. Edmond provided staff with information about what other city agencies are doing to address smoking in public parks, some facts and data sheets on smoking and health, as well as a small, non-scientific public opinion poll taken at several city parks. The information that was provided to staff is included in the staff report (refer to Attachment 3). The following is a summary of the information provided by Mr. Jo and Ms. Edmond.

- According to the American Nonsmokers' Rights Foundation (ANRF), there are 391 municipalities in the United States that have adopted "Smoke-Free Park Laws" as of

October 2008. Of these municipalities, approximately 89 are California municipalities (the nearest agencies to Banning are Colton, Corona and Yucaipa).

- In general, there have been over 2,600 communities nation-wide that have adopted smoke-free initiatives since 1964 when the U.S. Surgeon General's report on Smoking and Health was released (Source: American Cancer Society). It is not known how many of these 2,600 smoke-free initiatives specifically addressed smoking in public parks, but this is a significant number of communities that have addressed concerns about smoking in their communities.
- While not specific to smoke-free parks, according to "California's Clean Air Project", approximately 157 California communities as of November 2007 have prohibited smoking/tobacco use in outdoor dining areas, public parks/beaches, and sporting venues.
- In a small "non-scientific" survey of 43 Banning residents in October 2008, Mr. Jo (Riverside County Health representative) notes that over 74% stated that outdoor public recreation areas should be smokefree. Over 62% of the surveyed residents believe that tobacco litter is a problem in public parks. Over 65% believe that a smokefree policy will reduce litter. He further notes that of the residents surveyed 23% were tobacco users. As noted this survey is non-scientific and a small sampling. A copy of the survey questions is provided as part of Attachment 3.

While enforcement was an issue with the Council, Chief Purvis noted that there would be a time period where public education would be needed after adoption of the Ordinance, and that enforcement would at first be more "complaint-driven" (i.e., calling the police department to dispatch an officer). Chief Purvis noted that it would be good to have a period of 90 – 120 days after adoption of the Ordinance for people to get acclimated before fully enforcing citations. Staff has also received confirmation and support from Mr. Jo and Ms. Edmonds that the County Health Department would be willing to undergo an education campaign on smoking in public parks to assist the City in "getting the word out".

In terms of having designated smoking areas within the parks, staff believes that the Ordinance meets this concern and is flexible in that people are allowed to smoke on public streets and alleys adjacent to the park. In addition, staff revised the Ordinance from the last meeting to include public sidewalks adjacent to public parks where people could smoke. While it is not an "official designated smoking area," it does provide some concession so that a person does not have to completely leave the area. Mr. Jo has indicated that the County's preference would be to prohibit smoking park-wide and not have designated smoking areas due to the "second-hand" smoke concerns.

CONCLUSION:

While the issue of smoking remains a concern by most, it is important to note that the original Ordinance to regulate smoking in public parks was requested by the City Council. While City

January 27, 2009

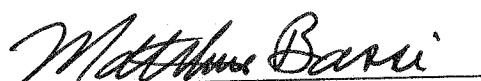
Page 4 of 4

staff is certainly not an expert in the field of public health, we believe the proposed Ordinance does address Council concerns, and provides for some flexibility to people who do smoke. Currently, Chapter 8.56 of the Municipal Code precludes smoking in all City-owned facilities (refer to Attachment 4), so including smoking in public parks appears to be a logical extension of this regulation.

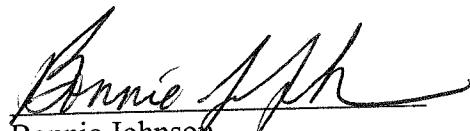
FISCAL IMPACT:

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

PREPARED BY:


Matthew C. Bassi
Interim Community Development Director

REVIEWED BY:


Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

CC Attachments:

1. Draft Ordinance No. 1400
2. Meeting Minutes from the October 28, 2008 Council meeting
3. Materials/Packet Information from Riverside County Department of Public Health
4. Copy of Chapter 8.56 of the Banning Municipal Code

ATTACHMENT 1
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, on January 27, 2009, the City Council held a second 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, the City Council has carefully considered all pertinent documents and the staff report offered in this case as presented at the public meetings held on October 28, 2008 and January 27, 2009.

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 January 27, 2009, 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, sidewalks or alleys adjacent to a city facility or public park, but shall prohibit such acts in off-street parking areas within city public parks.

B. Smoking in any enclosed city facility and within the boundaries of any city public park 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(A) & (B).

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 27th day of January, 2009

Robert E. Botts, 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 27th day of January, 2009, and was duly adopted at a regular meeting of said City Council on the 10th day of February, 2009, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT 2

**CITY COUNCIL MINUTES FROM
THE OCTOBER 28, 2008 MEETING**

Subs Owners, Mr. and Mrs. Benhar, and the City of Banning for Public Parking Use.

Recommendation: That Resolution No. 2008-113 be adopted.

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”).

Recommendation: That Resolution No. 2008-117 be adopted.

5. 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.

Motion Machisic/Franklin to approve Consent Items 1 through 5. Mayor Salas opened the item for public comments. There were none. Motion carried, all in favor.

ORDINANCES - INTRODUCTION

* 1. Ordinance No. 1400 – Regulations for Smoking in Public Parks
(Staff Report – Matt Bassi, Consultant)

Mr. Bassi gave the staff report as contained in the agenda packet.

Mayor Pro Tem Franklin said she knows that we are talking about adding no smoking to our parks but she knows that a lot of families do participate in family events at parks where they are there all day and have we considered the possibility of doing restricted areas as opposed to saying the whole parks are non-smoking.

Mr. Bassi said he believes the direction from Council was to include the entire public park and he doesn't remember any direction that would set off sites for smoking but if that is the Council's desire they can amend the ordinance to include that.

Mayor Pro Tem Franklin said she has some concerns because she does go to some of the parks and she does see family affairs and there are people who do smoke. She knows that there is a concern about our children but if we were to say certain areas were not allowable for smoking such as around the playground areas or anytime there is a group event like the concerts in the park and there are only certain areas where people could smoke. She said that parks are one of the few places where people can go free and they can enjoy family events and community events there and she would hate to say you cannot smoke there especially because a lot of the events are for a long time. Also she asked how do you police or monitor such a thing.

Mr. Bassi said there is an enforcement section and penalty section that currently exists for everything within that chapter about smoking and so that would still be the case. There is a subsection that talks about an employee or City Manager or designee could do enforcement. He would imagine that the police department would be involved in enforcement if they see it or even the code enforcement team may see something as they are driving by and make a call to address that.

Mayor Pro Tem Franklin said she would hate to think that we are having our police worried about people smoking as opposed to some of the other things we need them to focus on.

Councilmember Hanna said it is not listed in this report but many cities in Riverside County and certainly many, many cities in Southern California have a similar kind of concern and have an ordinance to this effect. She thinks that our top priority should be our children and that parks are places for children and smoking shall not be allowed in the parks. She would point out however, on page 55 of the Council packet under Section 2. Chapter 8.56..030 A, second sentence says "This prohibition shall not ban smoking or tobacco produce 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 the City public parks." It seems to her that once people understand there are some possibilities to smoke but not in the parks themselves. In terms of enforcement that is always a serious issue. All of this is education and we are saying to people that this is not what we should be allowing our children do have to suffer through. Of course second had smoke affects everyone and not just children but she thinks that our priority should be for children.

Councilmember Machisic said is only concern was enforcement because have some very serious things to enforce and smoking certainly is a problem for health but at the same time it is going to be hard for them to patrol through the park unless it is spot checking.

Mayor Pro Tem Franklin said she also looked on-line to see what was happening in other cities and there is a lot of information out there about what a lot of different cities are doing and they are doing different things but one of the things that most of them refer to is how hard it is to enforce. She would hate to see us put an ordinance out there that we are not really going to enforce.

Councilmember Hanna said actually there are a lot of ordinances that are not enforced on a stringent basis. Again, this is kind of an education of our community that smoking is bad and we don't want our children to be affected by it. For example, if you were allergic to smoking and somebody is smoking in the park, you can say excuse me it is against the law to smoke in the park. You have some means to say something; right now you just have to leave.

Councilmember Machisic said he believes that this is an ordinance that is going to mature over a number of years and it is not going to happen immediately. People have to become acclimated to this because they have always smoked in the park, the picnic table and family gatherings.

Mayor Salas said while we shouldn't adopt any ordinance or continue to allow ordinances that are on the books that we are not enforcing we need to take a good look at how we can do that. Having smoking in the park when children are around is definitely not a healthy means and she knows that the County of Riverside is not allowing within a particular amount of feet smoking near the

building entrances and exits. But at the same time these employees or people visiting the County facilities have designated areas where they can smoke. She asked Chief Purvis his thoughts on this ordinance in terms of enforcement.

Chief Purvis said as far as the enforcement aspect he thinks that there would be a time of public education period where we inform anybody that is in violation of that new ordinance and he thinks primarily it would be complaint driven at first if we do have some folks in the park who are offended by the smoke, they could call the police department and they could have an officer dispatched to that location. They could either inform them of the new ordinance or actually take enforcement action immediately. But what they would want to do is to at least give the public a time period to get acclimated to the new ordinance and then start enforcement after maybe a 90 to 120 day period. It is also a great tool that they can deal with people in a park setting. Say they are doing other things such as loitering or whatever else the case may be and they are smoking as well that gives the police officer an extra way to deal with something or a problem in a park. They can enforce it if they have to but he believes it would probably be more complaint driven where they actually receive complaints from citizens.

Mayor Salas asked Chief Purvis about designated areas in the park. He said that it would probably muddy the water a little bit. And if there are designated areas smoke can still dissipate pretty easily into other areas where people are going to be offended by it.

Mayor Salas opened the item for public comments.

Bill Dickson, 5700 W. Wilson said being a reformed smoker for over thirty years and being married to a smoker he thinks the Council ought to sit back and really think long and hard before we drive another wedge into the community. There are enough things going on that is dividing the community and you need to be extremely careful before you drive another wedge in there. Our parks are there for everybody and if you are going to put something together you ought to put something together maybe where we do have designated areas. He hates second hand smoke but you need to be careful.

Charlene Sakurai, 43000 Dillon Road said her background is oncology nursing so she has spent 40 years dealing with lung cancer among other things and smoking, etc. and education. She thinks it is laudable to think about a no smoking ordinance for parks. But she thinks the Council also ought to consider some type of no smoking programs offered within the city that we can do something to remedy the problem because it is not a city problem, it becomes a personal health problem. So if you cannot smoke here, you are going to go smoke there. She worked in a cancer facility where it became a conflict of interest to smoke on the property but everybody who did smoke and patients included were going out onto the sidewalk on the street to smoke and they still are. She thinks it is incumbent upon us as a City if we decide to have an ordinance to prevent them from smoking where they can smoke now, to also help them to overcome this habit if they choose to do that. She has never seen anything in the paper about no smoking programs. There is a wonderful opportunity to partner with the hospital with the American Cancer Society, the American Lung Association and numerous other organizations who would jump at the chance to come and offer programs if we would help to publicize that

and support it. She would encourage the Council to think in terms of something like that and not just to take away but also to provide.

Dorothy McLean, 916 Linda Vista Dr. addressed the Council stating that it has been her good fortune to be able to sub at Nicolet Middle School two weeks in an American History class and she learned that she is not smarter than a 8th grader when it comes to history classes which she had many moons ago but she came across the following and she thinks it applies. She said that Alexander Hamilton wrote, "Government implies the power of making laws. It is essential to the idea of a law that it be intended with a penalty or punishment for disobedience. If there be no penalty, the resolutions or commands that pretend to be law will in fact amount to nothing more than advice." She said we have an ordinance on the books that states that campaign signs are not to be up before 30 days before the election. Many candidates put their signs up when they felt like it and nothing was done. Obviously nobody wanted to uphold the ordinance and in doing so made the Council look weak; she doesn't want a weak Council. Also signs have been put up on private property and on public land without permission and nothing has been done. It is disturbing when candidates do not follow the law. Now you are thinking about prohibiting smoking in public places. Who will be the ones to enforce the law? The police have enough to do responding to real crimes. It seems unnecessary to put such an ordinance in their hands. In an ideal situation we would hope that if children are playing at the playground and somebody is smoking, that they could be asked to move away so the children don't have to breathe the second hand smoke or what you usually do is pick up your kids and move somewhere else. She doesn't believe that this ordinance is necessary or it will be properly enforced and if that is the case, it will again be the sign of a weak Council of which she does not want.

Helen Barnes, 2102 W. Lincoln Street addressed the Council stating that she is a smoker and smokers on the most part are very considerate of those who choose not to smoke. In her home no one smokes. What will this ordinance provide the citizens of the community; laws that cannot be enforced. Being a City employee herself previously she knows that when police officers or City employees are seen hanging around the park we get labeled as lazy, nothing to do, and why are we sitting around at the park. Do we have the man power in the police force or the code enforcement departments to enforce this ordinance; she doesn't think so. Smokers are already discriminated against because they cannot smoke in restaurants, bars or any public buildings. The taxes on cigarettes are unbelievable. And the reason for that is because someone stepped up to the plate and complained about second hand smoke. We are talking about a City park. We are not talking about inside of a building. The smoke is not going to hang around anybody. She feels that this ordinance is unnecessary and she would hope that this Council has far more important issues to discuss than whether or not someone is smoking a cigarette in the park.

Dr. James Jo, County Public Health Department, Tobacco Control Project addressed the Council stating that going back to the issue about enforcement it is a very tough issue. As a local lead agency he is working with many other governmental agencies on this issue of smoke free parks and they told him that the way they are enforcing it is to use self enforcement. What that means is having the proper signage at the parks. Make sure that people are seeing the signage that "this park is smoke free" and as people read those and are educated about that they

will tell their friends and relatives and whoever visits the parks. If anyone lights up a cigarette, then they will just kindly remind them that this park is indeed smoke free and the word will get out and hopefully this will be self-enforcement. And hopefully no help will be needed by the police department. This is what he has heard from the other lead agencies who are working on this issue in terms of enforcement. He also mentioned that there are more than 120 communities here in California as of November 2007 that adopted smoke free outdoor places such as parks. He wanted to let the Council know that this was not something new but definitely there are many other communities that have adopted the ordinance and he believes they are doing very well. One of the reasons they are so adamant about supporting this ordinance is because when people come to places such as parks which is considered a very family place and when young kids see adults who light up in places like that he believes it is giving a negative message to these young kids. They are getting the message that it is okay to smoke. There have been numerous studies done that show that kids who grow up seeing adults smoking are more prone to smoke and become a smoker when they grow up as a teenager. One statistic showed that everyday in California there is 6,000 high school kids who start up smoking or at least try smoking. He said that they have done a couple of park clean-ups in the city of Banning back in August and they had many high school kids and youth help them and they visited a couple of the parks and they found a lot of cigarette butts even on the areas around the tot lots which should be smoke free. Obviously people are not adhering to the ordinance. He showed the cigarette butts that they collected and it is very unsightly and he knows that cleaning up is not an easy task so they believe with the passage of the ordinance it will definitely solve that issue. They also did a public opinion poll here in the city of Banning and visited the parks and according to the survey it was found that more than 70% of the people who were polled agreed that public places such as parks should be smoke free. A total of 43 people were polled at two different parks in Banning and at a community health center.

A young lady name Sherry, Cal State San Bernardino student, addressed the Council stating that she had a relative who died of a smoking related illness. She knows personally that smoking kills innocent people and it makes her very sad to know that her uncle passed away when he didn't have to. When a smoker lights up at a park it sends the wrong message to young children that it is okay to smoke when in fact smoking is never a positive thing. Children who are exposed to second hand smoke are two times likely to die of sudden infant death syndrome known as SIDS. Children exposed to second hand smoke are also likely to suffer from increase asthma attacks. She is asking the Council members to please consider the negative affects of smoking and adopt an ordinance to prohibit smoking in our community parks. We believe that smoke free parks will help protect our families, young children and the environment.

Mayor Salas seeing no one else come forward closed the item for public comments.

There was some further Council discussion in regards to this issue in regards to encouraging a healthy Banning, weighing in honestly on future agenda items, self-education on smoking, willingness to listen to information before making a decision, taking away people's rights, coming back with pros and cons on an issue to the Council before going forward with a formal ordinance for adoption, review reports from other cities on this issue, possibly trying this program at one or two parks in the city and educating the community.

Councilmember Machisic recommended that this item be tabled and that the Council get more information and additional options regarding this program. There was Council consensus to this recommendation.

REPORTS OF OFFICERS

1. Status Report on the One Stop Shop

City Manager said that this will be deferred to November 14th so that staff can give the Council something in writing prior to the meeting so that the Council can have some thoughts to be able to come to the meeting with after the Council sees it in writing.

ITEMS FOR FUTURE AGENDAS

New Items –

Councilmember Machisic said he spoke about this donation thing to various groups and he would like to see something organized based on some of the comments he made in regards to total amount of money, announcement in advance, budget development, and maximum amount. He said that also Councilmember Franklin at one time talked about the groups being composed of citizens of Banning as opposed to other groups outside the city.

Mayor Pro Tem Franklin would like something back regarding our visioning and mission for the City. She would like this to come back on the agenda for Council to review.

Mayor Salas said she wanted to clarify for the public and for the viewers at home that the discussion item that we just had in regards to smoking in the parks the Council tabled it because the Council wants to hear the feedback from the community. It is important that the Council listen and hear the concerns and what the people feel out in the community so they are not going to try to push anything. But that doesn't mean that they are not hearing the concerns or definitely not concerned about the public's health and safety because that is important.

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

ATTACHMENT 3
RIVERSIDE COUNTY INFORMATION ON SMOKING

Municipalities with Smokefree Park Laws
enacted as of October 2, 2008

This list includes those municipalities that specified that all city parks and/or specifically named city parks are smokefree. The list does not include those municipalities that have designated smoking areas in city parks, those that provide coverage only a certain number of feet from playgrounds or youth areas, and those that provide coverage only during youth events.

Municipality	State
1. Bay Minette	AL
2. Bayou La Batre	AL
3. Center Point	AL
4. Center Point	AL
5. Daphne	AL
6. Decatur	AL
7. Fayette	AL
8. Fultondale	AL
9. Gardendale	AL
10. Gulf Shores	AL
11. Headland	AL
12. Homewood	AL
13. Hueytown	AL
14. Huntsville	AL
15. Irondale	AL
16. Jasper	AL
17. Montevallo	AL
18. Orange Beach	AL
19. Troy	AL
20. Trussville	AL
21. Vestavia Hills	AL
22. Atkins	AR
23. Batesville	AR
24. Benton	AR
25. Bentonville	AR
26. Russellville	AR
27. Albany	CA
28. Amador County	CA
29. Baldwin Park	CA
30. Belmont	CA
31. Berkeley	CA
32. Beverly Hills	CA
33. Blue Lake	CA
34. Calabasas	CA
35. Calexico	CA
36. Carpinteria	CA
37. Carson	CA
38. Ceres	CA
39. Cerritos	CA
40. Chula Vista	CA

Municipality	State
41. Clayton	CA
42. Clovis	CA
43. Colton	CA
44. Contra Costa County	CA
45. Corona	CA
46. Culver City	CA
47. Del Mar	CA
48. El Cajon	CA
49. El Monte	CA
50. Emeryville	CA
51. Encinitas	CA
52. Fairfax	CA
53. Firebaugh	CA
54. Fowler	CA
55. Fresno	CA
56. Gardena	CA
57. Glendale	CA
58. Glendora	CA
59. Grand Terrace	CA
60. Hawthorne	CA
61. Hayward	CA
62. Huntington Park	CA
63. Imperial Beach	CA
64. Ione	CA
65. Jackson	CA
66. La Mesa	CA
67. Laguna Hills	CA
68. Laguna Niguel	CA
69. Laguna Woods	CA
70. Lodi	CA
71. Loma Linda	CA
72. Los Alamitos	CA
73. Los Angeles	CA
74. Mammoth Lakes	CA
75. Marin County	CA
76. Monterey County	CA
77. Monterey Park	CA
78. National City	CA
79. Novato	CA
80. Oak Park	CA

Municipality	State
81. Oakland	CA
82. Oceanside	CA
83. Palmdale	CA
84. Palo Alto	CA
85. Palos Verdes Estates	CA
86. Pasadena	CA
87. Reedley	CA
88. Rosemead	CA
89. Rosemead	CA
90. Roseville	CA
91. Ross	CA
92. Salinas	CA
93. San Anselmo	CA
94. San Diego	CA
95. San Diego County	CA
96. San Dimas	CA
97. San Fernando	CA
98. San Francisco	CA
99. San Jose	CA
100. San Mateo County	CA
101. San Ramon	CA
102. Santa Clarita	CA
103. Santa Cruz County	CA
104. Santa Monica	CA
105. Santa Rosa	CA
106. Seal Beach	CA
107. Simi Valley	CA
108. Temecula	CA
109. Thousand Oaks	CA
110. Ukiah	CA
111. Watsonville	CA
112. Winters	CA
113. Woodland	CA
114. Yuba City	CA
115. Yucaipa	CA
116. Arvada	CO
117. Avon	CO
118. Carbondale	CO
119. Eagle County	CO
120. Snowmass Village	CO
121. Steamboat Springs	CO
122. Timnath	CO
123. Colchester	CT
124. WALLINGFORD	CT
125. Wallingford	CT
126. Bethany Beach	DE
127. Chipley	FL
128. Coral Springs	FL
129. Largo	FL

Municipality	State
130. Port Orange	FL
131. Sarasota County	FL
132. Wellington	FL
133. Weston	FL
134. Athens/Clarke County	GA
135. Coweta County	GA
136. Douglasville	GA
137. Effingham County	GA
138. Harris County	GA
139. Henry County	GA
140. Hawaii County	HI
141. Honolulu	HI
142. Clarinda	IA
143. Des Moines	IA
144. Indianola	IA
145. Iowa City	IA
146. Johnson County	IA
147. Johnston	IA
148. Muscatine	IA
149. Scott County	IA
150. Tipton	IA
151. Urbandale	IA
152. Armon	ID
153. Rexburg	ID
154. Buffalo Grove	IL
155. Chicago Heights	IL
156. Cook County	IL
157. Deerfield	IL
158. Hawthorn Woods	IL
159. Highland Park	IL
160. Hoffman Estates	IL
161. Lake Forest	IL
162. Libertyville	IL
163. Lindenhurst	IL
164. Northbrook	IL
165. Orland Park	IL
166. Palatine	IL
167. Tinley Park	IL
168. Westchester	IL
169. Wheaton	IL
170. Wheaton	IL
171. Wilmette	IL
172. Wilmette	IL
173. Cumberland	IN
174. Elkhart	IN
175. Evansville	IN
176. Fishers	IN
177. Goshen	IN
178. Logansport	IN

Municipality	State
179. St Joseph County	IN
180. Baton Rouge/East Baton Rouge Parish	LA
181. Shreveport	LA
182. Abington	MA
183. Braintree	MA
184. Cambridge	MA
185. Holliston	MA
186. Malden	MA
187. Mashpee	MA
188. Somerville	MA
189. Swampscott	MA
190. Tyngsborough	MA
191. Westford	MA
192. Whately	MA
193. Charles County	MD
194. Augusta	ME
195. Bucksport	ME
196. Portland	ME
197. Westbrook	ME
198. Winthrop	ME
199. Fremont	MI
200. Huntington Woods	MI
201. Kimball Township	MI
202. Muskegon	MI
203. Saint Ignace	MI
204. Adrian	MN
205. Aitkin	MN
206. Albert Lea	MN
207. Alexandria	MN
208. Andover	MN
209. Anoka	MN
210. Arden Hills	MN
211. Ashby	MN
212. Battle Lake	MN
213. Baudette	MN
214. Bloomington	MN
215. Callaway	MN
216. Champlin	MN
217. Cohasset	MN
218. Coon Rapids	MN
219. Crystal	MN
220. Dakota County	MN
221. Dassel	MN
222. Dayton	MN
223. Eden Prairie	MN
224. Edina	MN
225. Elbow Lake	MN
226. Ellsworth	MN
227. Ham Lake	MN

Municipality	State
228. Hardwick	MN
229. Hastings	MN
230. Herman	MN
231. Hoffman	MN
232. International Falls	MN
233. Luverne	MN
234. Maple Grove	MN
235. Maplewood	MN
236. Marshall	MN
237. Mendota Heights	MN
238. Mounds View	MN
239. New Brighton	MN
240. New York Mills	MN
241. North St Paul	MN
242. Olmsted County	MN
243. Parkers Prairie	MN
244. Plymouth	MN
245. Ramsey	MN
246. Robbinsdale	MN
247. Round Lake	MN
248. Shoreview	MN
249. Spring Lake Park	MN
250. St. Francis	MN
251. Zimmerman	MN
252. Kirksville	MO
253. Aberdeen	MS
254. Ecru	MS
255. Greenwood	MS
256. Gulfport	MS
257. Hattiesburg	MS
258. Hernando	MS
259. Kosciusko	MS
260. McComb	MS
261. Pascagoula	MS
262. Petal	MS
263. Pontotoc	MS
264. Senatobia	MS
265. Shuqualak	MS
266. Tupelo	MS
267. Walls	MS
268. Havre	MT
269. Grand Island	NE
270. Concord	NH
271. Dover	NH
272. Berlin Township	NJ
273. Beverly	NJ
274. Carlstadt Borough	NJ
275. Delran Township	NJ
276. Dover Township	NJ

Municipality	State
277. East Greenwich	NJ
278. East Rutherford Borough	NJ
279. Eatontown Borough	NJ
280. Franklin Lakes	NJ
281. Hightstown Borough	NJ
282. Holmdel Township	NJ
283. Jackson Township	NJ
284. Lavallette Borough	NJ
285. Linwood City	NJ
286. Livingston Township	NJ
287. Logan Township	NJ
288. Long Hill Township	NJ
289. Manalapan Township	NJ
290. Manville Borough	NJ
291. Millstone Township	NJ
292. Moonachie Borough	NJ
293. Mount Arlington Borough	NJ
294. Newton	NJ
295. Raritan Township	NJ
296. Ridgefield Borough	NJ
297. Ringwood	NJ
298. River Vale Township	NJ
299. Seaside Park	NJ
300. Secaucus	NJ
301. Shrewsbury Borough	NJ
302. Stafford Township	NJ
303. Teaneck Township	NJ
304. Union City	NJ
305. Vernon Township	NJ
306. Vineland City	NJ
307. Washington Township	NJ
308. West Milford Township	NJ
309. West Orange township	NJ
310. Woodbury Heights Borough	NJ
311. Woolwich Township	NJ
312. Albuquerque	NM
313. Mesilla	NM
314. Silver City	NM
315. DeWitt	NY
316. Hudson Falls	NY
317. Niskayuna	NY
318. North Syracuse	NY
319. Oneida	NY
320. Sylvania	OH
321. Ashland	OR
322. Bend	OR
323. Corvallis	OR
324. Grants Pass	OR
325. Newport	OR

Municipality	State
326. Sherwood	OR
327. Brentwood	PA
328. East Donegal Township	PA
329. Edwardsville	PA
330. Erie County	PA
331. Kingston	PA
332. Lemoyne	PA
333. New Hope	PA
334. Quakertown	PA
335. Richland Township	PA
336. Trafford	PA
337. Upper Southampton Township	PA
338. West Pittston	PA
339. York	PA
340. West Warwick	RI
341. Lexington	SC
342. Surfside Beach	SC
343. Johnson City	TN
344. Abilene	TX
345. Bellaire	TX
346. Burleson	TX
347. Coppell	TX
348. Farmers Branch	TX
349. Greenville	TX
350. Haltom City	TX
351. Kaufman	TX
352. Kerrville	TX
353. Laredo	TX
354. Lindale	TX
355. McAllen	TX
356. McKinney	TX
357. North Richland Hills	TX
358. Pearland	TX
359. Portland	TX
360. Prosper	TX
361. Richardson	TX
362. Richland Hills	TX
363. Sugar Land	TX
364. Tyler	TX
365. Beaver	UT
366. Cedar City	UT
367. Davis County	UT
368. Holladay	UT
369. Hooper	UT
370. Logan	UT
371. Orem	UT
372. Salt Lake City	UT
373. Salt Lake County	UT
374. Santa Clara	UT

Municipality	State
375. Smithfield	UT
376. St. George	UT
377. Virgin	UT
378. West Valley City	UT
379. Rutland	VT
380. Bainbridge Island	WA
381. Lake Stevens	WA
382. Mason County	WA
383. Poulsbo	WA

Municipality	State
384. Appleton	WI
385. Columbia County	WI
386. Madison	WI
387. Shorewood	WI
388. Burlington	WY
389. Evanston	WY
390. Pine Haven	WY
391. Rock Springs	WY

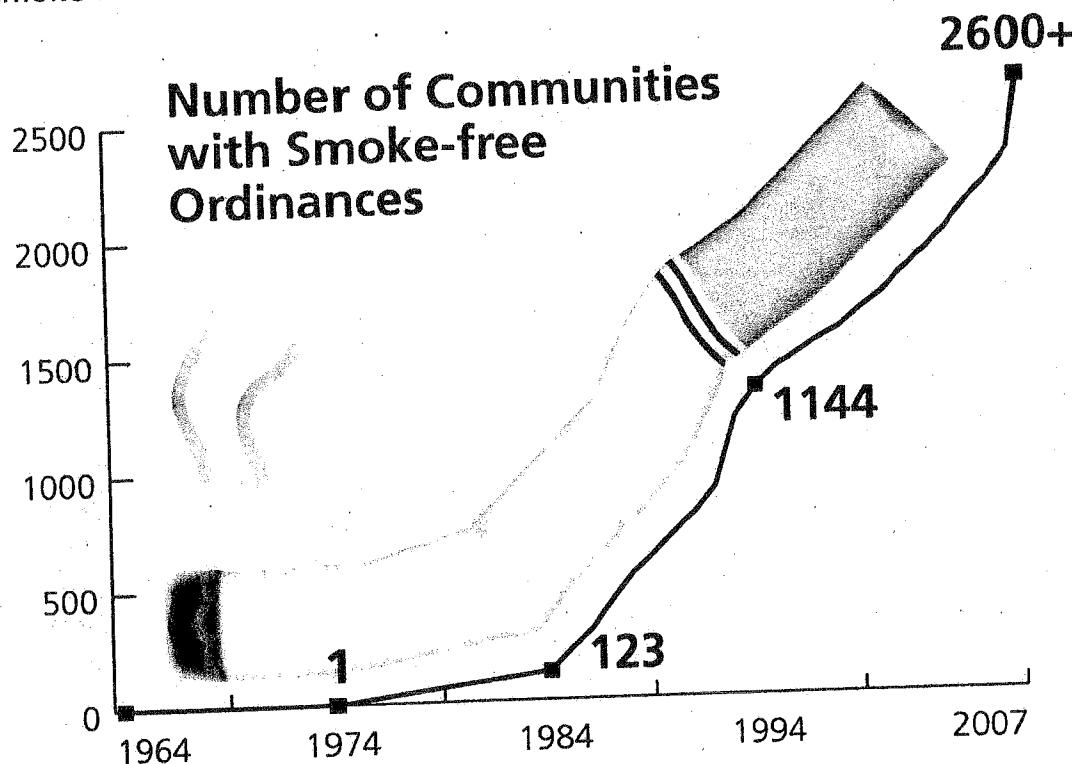
While ANRF has been tracking smokefree laws since the mid-1980s, we didn't start tracking smokefree park laws specifically until recently, when these laws became more common. We will continue to review older laws that may have contained these specific provisions and to update this list to reflect our findings. If you know of a smokefree park law that is not currently listed here, please contact ANRF at (510) 841-3032 or anr@no-smoke.org.

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Clearing the Air

In January 1964, the first U.S. Surgeon General's Report on Smoking and Health was released, officially recognizing the harmful effects of cigarette smoking. The landmark report started a major trend in smoke-free initiatives.



Source: American Cancer Society; Americans Nonsmokers' Rights Foundation

California Communities Prohibiting Smoking / Tobacco Use in Outdoor Dining, Parks, Beaches, And Sporting Venues

Revised 11/07

This is a selection of California communities that, as of November 2007, have adopted policies restricting or eliminating tobacco use in public places. It is not exhaustive and is subject to change. For more information on specific Cities and/or Counties, please refer to the Secondhand Smoke Policy Database located at www.ccaph.org.

Anaheim: (Orange County): Smoke-Free Outdoor Sport Venues

Alameda County: Smoke-free Outdoor Dining

Albany: (Alameda County): Smoke-free Athletic Fields

Anaheim: (Orange County): Smoke-free Athletic Fields

Arcata: (Humboldt County): Smoke-free Outdoor Dining, Athletic Fields

Baldwin Park: (Los Angeles County): Smoke-free Parks, Outdoor Dining

Belmont: (San Mateo County): Smoke-free Outdoor Dining

Berkeley: (Alameda County): All Public Places Smoke-Free, Indoors and Outdoors, including Outdoor Dining, and athletic fields

Beverly Hills: (Los Angeles County): Smoke-free Outdoor Dining

Buellton: (Santa Barbara County): Smoke-free Outdoor Dining, Smoke-free Athletic Fields

Burbank: (Los Angeles County): Smoke-Free Parks, Smoke-Free Outdoor Dining, and athletic fields

Calabasas: (LA County): Smoke-free Outdoor Dining and Parks

Calexico: (Imperial County): Smoke-free Parks, and sporting venues

Capitola: (Santa Cruz County): Smoke-free Beaches

Carmel: (Monterey County): Smoke-free Beaches

Carpinteria: (Santa Barbara County): Smoke-Free Parks, Beaches and sport venues

Carson: (Los Angeles County): Smoke-Free Parks

Ceres: (Stanislaus County): Smoke-Free Parks

Cerritos: (Los Angeles County): Smoke-free Parks

Chula Vista: (San Diego County): Smoke-Free Outdoor Dining

Clayton: (Contra Costa County): Smoke-free sport venues

Clovis: (Fresno County): Smoke-free parks

Concord: (Contra Costa County): Smoke-free sport venues

Contra Costa County: Smoke-free Parks & Gardens, Smoke-free Outdoor Dining

Corona: (Riverside County): Smoke-free Parks

Coronado: (San Diego County): Smoke-free beaches & Piers, and Parks

Covina: (Los Angeles County): Smoke-Free Parks

Culver City: (Los Angeles County): Smoke-Free Parks

Davis: (Yolo County): Smoke-Free Outdoor Public Places, including Outdoor Dining, Public Gardens and sport venues

Del Mar: (San Diego County): Smoke-free Parks, Beaches, and outdoor dining

Dublin: (Alameda County): Smoke-free Outdoor Dining,

El Cajon: (San Diego County): Smoke-Free Parks and outdoor dining

El Centro: (Imperial County): Smoke-free sport venues

El Dorado Hills Community Services District: (El Dorado County): Smoke-Free skate park

El Monte: (Los Angeles County): Smoke-Free Parks

El Segundo: (Los Angeles County): Smoke-free Beaches

Emeryville: (Alameda County): Smoke-free Outdoor Dining, Parks & Gardens

Firebaugh: (Fresno County): Smoke-Free Parks

Fowler: (Fresno County): Smoke-Free Parks

Fremont: (Alameda County): Smoke-free outdoor areas within a "reasonable distance" of designated nonsmoking areas

Fresno: (Fresno County): Smoke-free Parks & Zoos

Fresno County: Smoke-free parks

Gardena: (Los Angeles County): Smoke-free Parks

Gilroy: (Santa Clara County): Smoke-Free outdoor dining

Glendale: (Los Angeles County): Smoke-Free Parks

Goleta: (Santa Barbara County): Smoke-free Outdoor Dining, smoke-free sport venues

Grand Terrace: (San Bernardino County): Smoke-free Parks

Hawthorne: (Los Angeles County): Smoke-Free Parks

Hayward: (Alameda) Smoke-free outdoor dining

Healdsburg: (Sonoma County): Smoke-free Parks

Hermosa: (Los Angeles County): Smoke-free Beaches

Huntington Beach: (Orange County): Smoke-free Beaches

Huntington Park: (LA County): Smoke-Free Parks

Imperial Beach: (San Diego County): Smoke-free Beaches & Parks

Imperial County: Smoke-Free Parks

Irvine: (Orange County): Smoke-Free Parks

La Mesa: (San Diego County): Smoke-free Parks

La Puente: (Los Angeles County): Smoke-Free Parks

Lafayette: (Contra Costa County): Smoke-free sport venues

Laguna Beach: (Orange County): Smoke-free Beaches

Laguna Hills: (Orange County): Smoke-free Outdoor Dining and Parks

Laguna Niguel: (Orange County): Smoke-Free Parks

Laguna Woods: (Orange County): Smoke-Free outdoor dining and sport venues

Lake Forest: (Orange County): Smoke-Free Parks

Lathrop: (San Joaquin County): Smoke-Free Parks

Lemon Grove: (San Diego County): Smoke-free sport venues

Livermore: (Alameda County): Smoke-free Athletic Fields

Lomita: (Los Angeles County): Smoke-Free Parks

Long Beach: (Los Angeles County): Smoke-free Beaches

Los Alamitos: (Los Angeles County): Smoke-Free Parks

Los Angeles: (LA County): Smoke-Free Beaches and Parks,

Los Angeles County: Smoke-free beaches

Los Gatos: (Santa Clara): Smoke-free Outdoor Dining

Malibu: (LA County): Smoke-Free Beaches and Piers

Mammoth Lakes: (Mono County): Smoke-free Parks

Manhattan Beach: (Los Angeles County): Smoke-free Beaches & Parks

Marin County: Smoke-free outdoor dining & sport venues

Marina Del Rey: (Los Angeles County): Smoke-free Beaches

Menlo Park: (San Mateo County): Smoke-Free outdoor dining

Milpitas: (Santa Clara County): Smoke-free sport venues

Modesto: (Stanislaus County): Smoke-free Parks

Monterey County: Smoke-Free Parks and sport venues

Monterey Park: (Monterey County): Smoke-free beaches.

Monterey Park: (Los Angeles County): Smoke-Free Parks

Moreno Valley: (Riverside County): Smoke-free parks

Morro Bay: (San Luis Obispo County): Smoke-Free Beaches

Newark: (Alameda): Smoke-free Athletic Fields, Outdoor Dining

Newport Beach: (Orange County): Tobacco-Free Parks, Smoke-free Beaches

Oakland: (Alameda County) Smoke-free parks

Oceanside: (San Diego County): Smoke-free Parks and Beaches

Ojai: (Ventura County): Smoke-free Athletic Fields

Orinda: (Contra Costa County): Smoke-Free Parks

Pacific Grove: (Monterey County): Smoke-free beaches

Pacifica: (San Mateo County): Smoke-Free Beaches

Palm Desert: (Riverside County): smoke-free parks, sport venues, and city property (except where specific signs are posted permitting such smoking).

Palmdale: (Los Angeles County): Smoke-Free Water Park.

Palo Alto: (Santa Clara County): Smoke-free outdoor dining

Pasadena: (LA County): Smoke-Free Parks.

Pine Grove: (Amador County): Smoke-free Parks

Pismo Beach: (San Luis Obispo County): Smoke-free Parks & Beaches

Pittsburg: (Contra Costa County): Smoke-free sport venues

Pleasant Hill: (Contra Costa County): Smoke-free sport venues

Pleasanton: (Alameda County): Smoke-free Athletic Fields, Outdoor Dining

Redlands: (San Bernardino County): Smoke-free Parks

Redondo Beach: (Los Angeles County): Smoke-Free Parks

Reedley: (Fresno County): Tobacco-Free Parks, Smoke-Free outdoor dining

Richmond: (Contra Costa County): Smoke-free sport venues

Riverbank: (Stanislaus County): Smoke-Free Parks

Riverside County: Smoking is prohibited on all County Property, whether enclosed or unenclosed, except in a Smoking Area. This applies to outdoor areas when there is a building on the property.

Rohnert Park: (Sonoma County): Smoke-Free Parks

Rosemead: (Los Angeles County): Smoke-Free Parks

Sacramento: (Sacramento County): Smoke-Free Outdoor Sport Venues, and Parks

Salinas: (Monterey County): Smoke-free Parks and Sport Venues

San Bernardino: (San Bernardino County): Smoke-free sport venues

San Bernardino County: Smoke-free sport venues

San Carlos: (San Mateo County): Smoke-Free outdoor dining

San Clemente: (Orange County): Smoke-Free Beaches

San Diego: (San Diego County): Smoke-Free Beaches, Parks & Athletic Fields

San Diego County: Smoke-Free Parks

San Dimas: (Los Angeles County): Smoke-Free Parks

San Fernando: (LA County): Smoke-Free Parks

San Francisco- City and County: (San Francisco County): Smoke-free Parks & Piers

San Jose: (Santa Clara County): Smoke-Free Outdoor Sport Venues

San Marcos: (San Diego County): Smoke-Free Parks & Trails

San Mateo City: (San Mateo County): Smoke-Free Outdoor Dining

San Mateo County: Smoke-free beaches, Smoke-Free Parks

San Ramon: (Contra Costa County): Smoke-Free Outdoor Dining Areas for all Restaurants, Smoke-Free Outdoor Areas within 50 feet of an Entrance to any Place where Smoking is prohibited, 50 Ft. Tobacco-Free Zone around Tot Lots, and Smoke-Free Parks

Sand City: (Monterey County): Smoke-free beaches

Santa Barbara: (Santa Barbara County): Smoke-free Outdoor Dining, sport venues

Santa Barbara County: Smoke-free sport venues, outdoor dining

Santa Clarita (Los Angeles County): Smoke-Free Parks

Santa Cruz: (Santa Cruz County): Smoke-free Beaches and Boardwalk

Santa Cruz County: Smoke-Free Parks

Santa Monica: (LA County): Smoke-Free Parks, Beaches and Boardwalk, Smoke-free Outdoor Dining

Santa Rosa: (Sonoma County): Smoke-Free Public Places

Scotts Valley: (Santa Cruz County): Smoke-Free Parks

Seal Beach: (Orange County): Smoke-free Beaches, Smoke-Free Parks

Solano Beach: (San Diego County): Tobacco-Free Parks and Beaches

Sonoma: (Sonoma County): Smoke-free sport venues

South Pasadena: (Los Angeles County): Smoke-Free parks, Smoke-free outdoor dining

South San Francisco: (San Mateo County): Smoke-free outdoor dining

Sunnyvale: (Santa Clara County): Smoke-Free Outdoor dining & Sport Venues

Thousand Oaks: (Ventura County): Smoke-free sport venues

Torrance: (Los Angeles County): Smoke-free beaches

Tulare County: Smoke-Free Parks

Tuolumne County: Smoke-free outdoor dining and sport venues

Union City: (Alameda County): Athletic Fields, Outdoor Dining

Vacaville: (Solano County): Tobacco-Free Parks

Ventura County: Smoke-Free Parks

Vista: (San Diego County): Smoke-Free Parks

Walnut: (Los Angeles County): Smoke-Free Parks

Watsonville: (Santa Cruz County): Smoke-Free Parks

Windsor: (Sonoma County): Smoke-Free Public Places

Winters: (Yolo County): Tobacco-Free Parks

Woodland: (Yolo County): Smoke-Free Parks & sport venues

Yolo County: Smoke-Free Parks

Yucaipa: (San Bernardino County): Smoke-free Parks.

California's Clean Air Project, a statewide project of ETR Associates

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Rev.11-07, CCAP

**Results of the Public Opinion Polls
Banning
October 2008**

Total surveys: 43

Areas: Banning

- 74.4% support for the statement that "outdoor PRAs should be smoke-free"
- 62.8% agree that "tobacco litter is a problem"
- 65.7% agree that a "smoke-free policy will reduce litter."
- For the sample of 43, 23.3% used tobacco, 38.1% were male, 54.8% were under 40, 40.5% were Hispanic and 35.1% were White. See printout for details.

Public Recreation Area

Public Opinion Poll



Please take a minute to complete this survey. Your opinions are important to us.

Check one box for each statement below or question below. Please do not put your name on this survey.

1. Outdoor public recreation areas such as city parks should be smoke-free.
 Yes No Unsure

2. Cigarette butts and other tobacco litter is a problem at parks and recreation areas in my community.
 Yes No Unsure

3. Introducing a smoke-free policy at parks and recreation areas will reduce tobacco litter.
 Yes No Unsure

4. In the past year, have you used tobacco products (cigarettes, cigars, chew, etc.) at all?
 Yes No, I have not used any tobacco products in past year

5. Gender: Male Female

6. Age: Under 18 18-29 30-39 40-49 50-65 Over 65
 Asian Black/African American Caucasian/White Hispanic/Latino Other _____ (please specify)

7. What city do you live in? _____
9. Please feel free to write in any other comments you may have about tobacco litter in public areas in the space below or on the other side of this survey.

Please take a minute to complete this survey. Your opinions are important to us.

Check one box for each statement below or question below. Please do not put your name on this survey.

1. Outdoor public recreation areas such as city parks should be smoke-free.
 Yes No Unsure

2. Cigarette butts and other tobacco litter is a problem at parks and recreation areas in my community.
 Yes No Unsure

3. Introducing a smoke-free policy at parks and recreation areas will reduce tobacco litter.
 Yes No Unsure

4. In the past year, have you used tobacco products (cigarettes, cigars, chew, etc.) at all?
 Yes No, I have not used any tobacco products in past year

5. Gender: Male Female

6. Age: Under 18 18-29 30-39 40-49 50-65 Over 65
 Asian Black/African American Caucasian/White Hispanic/Latino Other _____ (please specify)

7. What city do you live in? _____
9. Please feel free to write in any other comments you may have about tobacco litter in public areas in the space below or on the other side of this survey.

Thank you very much for completing this survey.

Thank you very much for completing this survey.



Fact Sheet

California Environmental Protection Agency

 Air Resources Board

Environmental Tobacco Smoke: A Toxic Air Contaminant

What is environmental tobacco smoke?

- Environmental Tobacco Smoke (ETS) is a complex mixture of over 4,000 gases and fine particles that are emitted by burning tobacco products (side stream smoke) and from the exhalations of smokers (mainstream smoke).
- Many of the substances in ETS have already been identified as toxic air pollutants and have known adverse health effects, these include: 1,3-butadiene, acetaldehyde, acrolein, arsenic, benzene, benzo[a]pyrene, cadmium, hexavalent chromium and formaldehyde.

How did ARB identify ETS as a TAC?

- In 2001, the ARB entered ETS into the TAC identification phase of the program.
- An exhaustive review of the potential health effects of exposure to ETS was conducted by Cal/EPA's Office of Environmental Health Hazard Assessment (OEHHA):
- The Air Resources Board (ARB) staff prepared a comprehensive report on ETS exposure in California.
- In March 2004, ARB held a public workshop to discuss the findings.
- From November 2004 through June 2005, the state's Scientific Review Panel (SRP) held meetings to discuss and approve the ETS reports.

How are Californians exposed to ETS?

- Four million Californians smoke despite an increasing number of smoking restrictions and a broad awareness of the health impacts.
- Exposure to ETS, especially among infants and children, continues to be a big public health concern.
- A smoker's home may have nicotine levels that are on average 30 times higher than a non-smokers' home. These exposures are especially dangerous for young children because they are likely to recur daily and impact the child's physical development.

- Vehicles with a smoker have very high average particulate concentrations. They can be up to 10 times higher than those found in the homes of smokers.
- According to an ARB study, nicotine concentrations in several different environments, such as outside office buildings, schools, businesses, airports and amusement parks are comparable to those found in some smokers' homes.

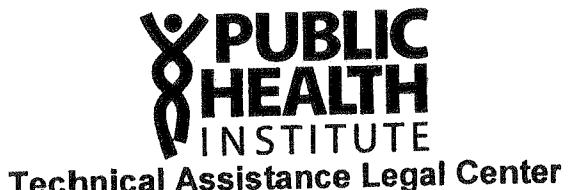
What are the health effects associated with ETS exposure?

- Developmental effects, including an annual estimated:
 - 21 cases of Sudden Infant Death Syndrome (SIDS)
 - 1,600 cases of low birth weight in newborns
 - 4,700 pre-term deliveries
- Respiratory effects including:
 - acute lower respiratory tract infections in children (e.g., bronchitis and pneumonia)
 - asthma induction in children
 - asthma exacerbation in children (31,000 episodes per year)
 - middle ear infections in children
- Carcinogenic effects: lung cancer, nasal sinus cancer and breast cancer in younger, primarily pre-menopausal, women, with:
 - 400 additional lung cancer deaths per year
- Cardiovascular effects: acute and chronic coronary heart disease morbidity and an annual estimated:
 - 3,600 premature cardiac deaths

What will happen as a result of identifying ETS as a TAC?

- ARB will develop a risk reduction report on the potential actions to reduce ETS exposures in California.
- The risk reduction report will review state and local anti-smoking programs, public education efforts regarding the effects of exposure and identify additional opportunities to reduce risk.

Please contact Kate MacGregor, MPH at (916) 327-5974 for more information on ETS TAC identification and risk reduction. Please contact the ARB toll-free at (800) END-SMOG/(800) 363-7664 (California only) or (800) 272-4572. You may obtain this document in an alternative format by contacting ARB's Americans with Disabilities Act Coordinator at (916) 322-4505 (voice); (916) 324-9531 (TDD, Sacramento only); or (800) 700-8326 (TDD, outside Sacramento).



There Is No Constitutional Right to Smoke¹

February 2004
Revised April 2005

I. INTRODUCTION

Laws that limit how and where people may smoke should survive a legal challenge claiming that smoking is protected by the state or federal constitution. Smoking is not mentioned anywhere in either constitution. Nevertheless, some people may claim that there is a fundamental "right to smoke."² These claims are usually made in one of two ways: (1) that the fundamental right to privacy in the state or federal constitution includes the right to smoke, or (2) that clauses in the state and federal constitutions granting "equal protection" provide special protection for smokers. Neither of these claims has any legal basis. Therefore, a state or local law limiting smoking usually will be judged only on whether the law is rational, or even plausibly justified, rather than the higher legal standard applied to laws that limit special constitutionally protected rights.

II. THERE IS NO FUNDAMENTAL RIGHT TO SMOKE

The argument that someone has a fundamental right to smoke fails because only certain rights are protected by the constitution as fundamental, and smoking is not one of them. The U.S. Supreme Court has held that "only personal rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty' are included in the guarantee of personal liberty."³ These rights are related to an individual's bodily privacy and autonomy within the home.

Proponents of smokers' rights often claim that smoking falls within the fundamental right to privacy, by arguing that the act of smoking is an individual and private act that government cannot invade. Courts consistently reject this argument. The privacy interest protected by the U.S. Constitution includes only marriage, contraception, family relationships, and the rearing and educating of children.⁴ Very few private acts by individuals qualify as fundamental privacy interests, and smoking is not one of them.⁵

¹ This material was made possible by funds received from the California Department of Health Services, under contract # 99-85069. This fact sheet was created to provide general information only and is not offered or intended as legal advice.

² Common usage of the term "rights" conflates two distinct legal meanings: those rights that are specially provided for or protected by law (e.g., free speech); and those rights that exist simply because no law has been passed restricting them (e.g., the right to use a cell phone while driving). The latter type of right is always subject to potential regulation. Therefore, this memo addresses only those rights provided for or protected by law. This memo also does not address whether an employer may refuse to employ someone who smokes. While prohibiting smoking at work is permissible, Cal. Labor Code §96(k) protects employees from discrimination based on off-work conduct, though one court held that this statute does not create new rights for employees but allows the state to assert an employee's independently recognized rights. *Barbee v. Household Auto. Finance Corp.*, 113 Cal. App. 4th 525 (2003).

³ *Roe v. Wade*, 410 U.S. 113, 152 (1973).

⁴ See, for example, *Griswold v. Connecticut*, 381 U.S. 479, 484 (1964) (recognizing the right of married couples to use contraceptives); *Meyers v. Nebraska*, 262 U.S. 390 (1923) (recognizing the right of parents to educate children as they see fit); and *Moore v. East Cleveland*, 431 U.S. 494 (1977) (protecting the sanctity of family relationships).

⁵ *City of North Miami v. Kurtz*, 653 So.2d 1025, 1028 (Fla. 1995) (city requirement that job applicants affirm that they had not

Example: A firefighter trainee challenged a city fire department requirement that trainees must refrain from cigarette smoking at all times, by arguing that “although there is no specific constitutional right to smoke, [there is an] implicit . . . right of liberty or privacy in the conduct of [] private life, a right to be let alone, which includes the right to smoke.”⁶ The court, however, disagreed and distinguished smoking from the recognized fundamental privacy rights.⁷ The court went on to find that the city regulation met the fairly low standard for regulating non-fundamental rights because there was a perfectly rational reason for the regulation, namely the need for a healthy firefighting force.

III. SMOKERS ARE NOT A PROTECTED GROUP OF PERSONS

The second common constitutional claim made by proponents of smokers’ rights is that laws regulating smoking discriminate against smokers as a particular group and thus violate the equal protection clause of the U.S. or the California constitutions. No court has been persuaded by these claims.

The equal protection clauses of the United States and California constitutions, similar in scope and effect,⁸ guarantee that the government will not treat similar groups of people differently without a good reason.⁹ Certain groups of people – such as groups based on race, national origin and gender – receive greater protection against discriminatory government acts under the U.S. and California constitutions than do other groups of people.¹⁰ Smokers have never been identified as one of these protected groups.¹¹ Generally, the Supreme Court requires a protected group to have “an immutable characteristic determined solely by the accident of birth.”¹² Smoking is not an “immutable characteristic” because people are not born as smokers and smoking is a behavior that people can stop. Because smokers are not a protected group, laws limiting smoking must only be rationally related to a legitimate government purpose.¹³

used tobacco in preceding year upheld because “the ‘right to smoke’ is not included within the penumbra of fundamental rights protected under [the federal constitution’s privacy provisions]”.

⁶ *Grusendorf v. City of Oklahoma City*, 816 F.2d 539, 541 (10th Cir. 1987).

⁷ *Id.* The court relied heavily on the U.S. Supreme Court decision *Kelley v. Johnson*, 425 U.S. 238 (1976). In *Kelley*, the Court held that a regulation governing hair grooming for male police officers did not violate rights guaranteed under the Due Process Clause even assuming there was a liberty interest in personal appearance.

⁸ U.S. Const. amend. XIV, Cal. Const. art.1 §7. See *Serrano v. Priest*, 5 Cal. 3d 584, 597 n.11 (1971) (plaintiff’s equal protection claims under Article 1 §11 and §21 of state constitution are “substantially equivalent” to claims under equal protection clause of Fourteenth Amendment of U.S. Constitution, and so the legal analysis of federal claim applies to state claim).

⁹ Equal protection provisions generally permit legislation that singles out a class for distinctive treatment “if such classification bears a rational relation to the purposes of the legislation.” *Brown v. Merlo*, 8 Cal. 3d 855, 861 (1973).

¹⁰ See, for example, *Brown v. Board of Education*, 347 U.S. 483 (1954) (race); *Sugarman v. Dougall*, 413 U.S. 634 (1973) (exclusion of aliens from a state’s competitive civil service violated equal protection clause); *Craig v. Boran*, 429 U.S. 190 (1976) (classifications by gender must serve important governmental objectives and must be substantially related to the achievement).

¹¹ Even some potentially damaging classifications, such as those based upon age, mental disability and wealth, do not receive any special protections. See, for example, *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985) (mentally disabled adults are not protected under Equal Protection Clause); *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973) (education and income classifications are not protected).

¹² *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

¹³ *Fagan v. Axelrod*, 550 N.Y.S. 2d 552, 560 (1990) (rejecting the argument that a state statute regulating tobacco smoking in public areas discriminated against members of a subordinate class of smokers on the basis of nicotine addiction by holding that “the equal protection clause does not prevent state legislatures from drawing lines that treat one class of individuals or entities differently from others, unless the difference in treatment is ‘palpably arbitrary’”). Note, too, that nonsmokers also are not recognized as a protected class, so equal protection claims brought by nonsmokers exposed to smoke in a place where smoking is permitted by law are unlikely to succeed.

Example: New York City and New York State enacted laws prohibiting smoking in most indoor places in order to protect citizens from the well-documented harmful effects of secondhand smoke. The challenger argued that the smoking bans violated the Equal Protection Clause because they cast smokers as "social lepers by, in effect, classifying smokers as second class citizens."¹⁴ The court responded that "the mere fact that the smoking bans single out and place burdens on smokers as a group does not, by itself, offend the Equal Protection Clause because there is no . . . basis upon which to grant smokers the status of a protected class."¹⁵ The court proceeded to uphold the smoking bans since they were rationally related to the legitimate government purpose of promoting the public health.

The equal protection clause not only protects certain groups of people, the clause also prohibits discrimination against certain fundamental "interests" that inherently require equal treatment. The fundamental interests protected by the equal protection clause include the right to vote, the right to be a political candidate, the right to have access to the courts for certain kinds of proceedings, and the right to migrate interstate.¹⁶ Smoking is not one of these recognized rights.

If a government classification affects an individual right that is not constitutionally protected, the classification will be upheld if there is any reasonably conceivable set of facts that could provide a rational basis for it.¹⁷ So long as secondhand smoke regulations are enacted to further the government goal of protecting the public's health from the dangers of tobacco smoke, the regulation should withstand judicial scrutiny if challenged.¹⁸

IV. CONCLUSION

There is no constitutional right to smoke. Claims to the contrary have no legal basis. The U.S. and California constitutions guarantee certain fundamental rights and protect certain classes of persons from all but the most compelling government regulation. However, no court has ever recognized smoking as a protected fundamental right nor has any court ever found smokers to be a protected class. To the contrary, every court that has considered the issue has declared that no fundamental "right to smoke" exists. So long as a smoking regulation is rationally related to a legitimate government objective such as protecting public health or the environment, the regulation will be upheld as constitutional.

¹⁴ *NYC C.L.A.S.H., Inc. v. New York*, 315 F. Supp. 2d 461, 480, 482 (S.D.N.Y. 2004).

¹⁵ *Id.* at 492.

¹⁶ See, for example, *Baker v. Carr*, 369 U.S. 186 (1962) (improper congressional redistricting violates voters' rights under equal protection); *Turner v. Fouche*, 396 U.S. 346 (1970) (all persons have a constitutional right to be considered for public service); *Shapiro v. Thompson*, 394 U.S. 618 (1969) (residency requirement for receipt of state benefits violates equal protection).

¹⁷ *People v. Leung*, 5 Cal. App. 4th 482, 494 (1992).

¹⁸ *Dutchess/Putnam Restaurant & Tavern Ass'n, Inc. v. Putnam County Dep't of Health*, 178 F. Supp. 2d 396, 405 (N.Y. 2001) (holding that County code regulating smoking in public places does not violate equal protection rights); *City of Tuscon v. Grezaffi*, 23 P.3d 675 (2001) (upholding ordinance prohibiting smoking in bars but not in bowling alleys because it is rationally related to legitimate government interest); *Operation Badlaw v. Licking County Gen. Health Dist. Bd. of Health*, 866 F.Supp. 1059, 1064-5 (Ohio 1992) (upholding ordinance prohibiting smoking except in bars and pool halls); *Rossie v. State*, 395 N.W.2d 801, 807 (Wis. 1986) (rejecting equal protection challenge to statute that banned smoking in government buildings but allowed it in certain restaurants).



SMOKE-FREE PARKS ENFORCEMENT BEST PRACTICES

California State law has protected tot lots and play areas in parks from secondhand smoke for the past five years (Health & Safety Code Section 104350-104495). Enforcement has been accomplished through well-placed signage at playgrounds throughout the state. Today, scores of California cities and counties are taking even greater steps to reduce or eliminate secondhand smoke from outdoor venues, including parks, gardens, outdoor dining and beaches.

- In the last four years, over 90 California cities and/or counties have adopted ordinances making local parks smoke-free. Thus far, California's Clean Air Project (CCAP) which keeps records of local tobacco control measures from around the state, has received no reports of noncompliance in regard to local smoke-free parks ordinances.
- Local officials do report that the key to successful smoke-free outdoor policy compliance is the posting of clear comprehensive signage in the parks. Signage is often used by members of the public to reinforce the ordinance. Strategic signage creates gentle reminders of the smoking ban. It is a simple matter for a member of the public to point to a sign if they see someone smoking.
- Notice, Notice, Notice!! A critical component in addressing smoking in parks is to create an environment that makes the law known to park users. It is important to publicize the law in as many forms of media as possible – especially through City Parks and Recreation Departments.
- Based upon reports California cities and counties, the 90 smoke-free park ordinances currently enacted have been, by and large, self-enforcing.
- Eighty six percent of Californians do not smoke. The vast majority of people do not wish to be subjected to secondhand smoke. The public is demanding that parks – a major place for family gatherings – be smoke-free. Public demand and expectation have made enforcement a non-issue.

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Dev. 04/07, CCAP



Secondhand Smoke Survey

California Voters' Attitudes About Secondhand Smoke Exposure

Public Opinion Research Survey: November 2008

Background

There is a growing body of scientific evidence that documents the harmful effects of secondhand smoke exposure, including the US Surgeon General's finding that there is no risk-free level of exposure to secondhand smoke, and the California Air Resources Board designation of secondhand smoke as a toxic air contaminant. Yet Californians are still exposed to secondhand smoke in outdoor areas, in multi-unit housing and in Indian casinos. Many cities and counties throughout the state have passed laws to restrict smoking in outdoor areas such as parks, beaches, farmer's markets and outdoor seating at bars and restaurants and some cities have passed laws to create nonsmoking sections of apartments in multi-unit housing. In addition, some California Indian tribes have voluntarily created nonsmoking sections in Indian casinos.

In November 2008, the Center for Tobacco Policy & Organizing commissioned a survey of 600 California voters to assess their views about secondhand smoke and to gauge their level of support for reducing exposure to secondhand smoke. Specifically, the survey explored general attitudes about restricting smoking in outdoors areas, in outdoor dining areas, in multi-unit housing, and in Indian casinos.

This document highlights the Summary of Key Findings for the entire secondhand smoke survey. Additionally, there are three distinct Summary of Key Findings that highlight the results for outdoor dining, the results for multi-unit housing and the results for Indian casinos. The survey was conducted by Goodwin Simon Victoria Research. Complete survey results and the other summary documents are available at www.Center4TobaccoPolicy.org/polling-shs.

Summary of Key Findings

Secondhand Smoke Restrictions in Outdoor Areas

California voters know that secondhand smoke is harmful and are bothered by secondhand smoke in outdoor areas:

- 97% believe that secondhand smoke is harmful to those who inhale it
- 88% believe that secondhand smoke is harmful to those who inhale it in outdoor areas
- 65% have been bothered by secondhand smoke exposure in outdoor areas in the past year

California voters strongly support a law that restricts smoking in all outdoor areas of a community and support restricting smoking in specific outdoor areas to varying degrees (see table on next page):

- 73% support a comprehensive ban on outdoor smoking in all areas accessible to the public except for designated smoking areas

The table below lists California voters' level of support for restricting smoking in various outdoor areas:

Outdoor Area	Percent who Support	Outdoor Area	Percent Who Support
In front of doors and windows into offices, restaurants and other buildings	77%	Bus Stops	56%
Outdoor areas of nursing homes, hospitals and long-term care facilities	70%	Outdoor areas of bars and restaurants, such as patios and outdoor eating areas	56%
Farmer's markets	69%	City and Regional Parks	55%
Nature areas, trails and campgrounds	65%	Fairs and Rodeos	55%
Outdoor concerts and sporting events	62%	Outdoor areas of downtown business zones	49%
Outdoor areas of shopping malls and shopping centers	60%	Outdoor worksites, such as construction zones	46%
Beaches	59%	Public sidewalks	44%
Outdoor areas of college campuses	57%	Parking lots	40%

California voters are receptive to statements in favor of restricting smoking in outdoor areas. The four statements rated as most important are listed below:

- 91% think an important reason to support smoking restrictions is that burning cigarettes tossed by careless smokers cause fires in parks and recreation areas and prohibiting smoking in these areas can protect the environment and save lives and money
- 89% think an important reason to support smoking restrictions is that scientific studies show that secondhand smoke can be harmful even in outdoor areas
- 87% think an important reason to support smoking restrictions is that cigarette butts are the number one cause of litter on beaches, parks and sidewalks and restricting smoking will greatly reduce litter
- 86% think an important reason to support smoking restrictions is that discarded cigarette butts are eaten by wildlife and can cause injury or death

Secondhand Smoke Restrictions in Outdoor Dining Areas

California voters were asked several questions specifically focused on restricting smoking in outdoor seating areas of bars and restaurants:

- 60% have been bothered by secondhand smoke exposure in outdoor dining areas in the past year
- 56% support restricting smoking at outdoor areas of bars and restaurants

California voters are receptive to the arguments in support of restricting smoking in outdoor dining. The top two statements are listed below:

- 74% were more likely to support smoking restrictions when they heard that it would protect workers at restaurants and bars from having to inhale dangerous secondhand smoke
- 72% were more likely to support smoking restrictions when they heard that it would protect diners from having to inhale dangerous secondhand smoke while dining

Opposition statements to restricting smoking at outdoor dining were less effective. In fact, opposition arguments were more likely to have no impact on voters or to make them more likely to support smoking restrictions. The top two opposition statements are listed below:

- 38% were more likely to oppose smoking restrictions when they heard that it would hurt bars and restaurants and drive away customers, while 61% said this argument had no effect or made them more likely to support smoking restrictions
- 36% were more likely to oppose smoking restrictions when they heard that it would be difficult to enforce and would place an unfair burden on bar and restaurant owners, while 63% said this argument had no effect or made them more likely to support smoking restrictions

Secondhand Smoke Restrictions in Multi-Unit Housing

California voters were also asked a series of questions about restricting smoking in multi-unit housing and are supportive of many types of policies to protect people from secondhand smoke exposure in multi-unit housing:

- 69% support a law to restrict smoking in outdoor common areas of apartments
- 78% support a law requiring apartment buildings to offer nonsmoking sections
- 74% support requiring 50 percent of apartments to be nonsmoking
- 58% support requiring 75 percent of apartments to be nonsmoking
- 42% support requiring 100 percent of apartments to be nonsmoking
- 56% feel that a law requiring apartment buildings to offer nonsmoking sections should apply to condominiums as well
- 70% think that a person moving into an apartment should be told if the tenant next door smokes

California voters are receptive to the arguments in support of restricting smoking in multi-unit housing.

The top two statements are listed below:

- 76% were more likely to support smoking restrictions when they heard that scientific studies prove that secondhand smoke is harmful in apartment buildings and nonsmokers are exposed to dangerous secondhand smoke in the one place where they spend the most time
- 76% were more likely to support smoking restrictions when they heard that restricting smoking in apartment buildings will reduce the risk of fire

Opposition statements to restricting smoking in multi-unit housing were less effective. In fact, opposition arguments were more likely to have no impact on voters or to make them more likely to support smoking restrictions. The top two opposition statements are listed below:

- 40% were more likely to oppose smoking restrictions when they heard that it would take away a person's right to smoke in their home if they wanted to, while 58% said the argument had no effect or made them more likely to support smoking restrictions
- 37% were more likely to oppose smoking restrictions when they heard that it would discriminate against smokers and make it difficult for them to find a place to rent, while 61% said this argument had no effect or made them more likely to support smoking restrictions

California voters were also asked about a problem faced by decision makers when considering whether to restrict smoking in public housing. 64% of California voters agree with those who argue that it is more important to protect low-income children and families who cannot move away from secondhand smoke exposure. Only 17% of voters agree with those who argue that it is more important to protect tenants who smoke and cannot afford to move and who might be evicted if they smoke in their apartment should it be designated as nonsmoking.

Secondhand Smoke Restrictions in Enclosed Areas (Indian Casinos, Foster Homes, Cars)

California voters were also asked about restricting smoking in certain enclosed areas including California Indian casinos, foster homes, and cars. Overall, voters are supportive of restricting smoking in these areas:

- 90% would either be more inclined to visit or would be unaffected if smoking were prohibited in California Indian casinos, while only 8% would be less inclined to visit the casinos
- 69% feel that employees in California Indian casinos should have the same protections from secondhand smoke as other employees in California
- 77% support having child protective agencies require foster homes to be nonsmoking in order to protect children in foster homes from being exposed to secondhand smoke
- 80% support the new state law that prohibits smoking in vehicles where minor children are present

Support Smoke-free Parks

- There is no safe level of exposure to secondhand smoke. Allowing smoking even in large outdoor areas does pose a health risk.
- Secondhand smoke created by smokers is harmful to both children and adults.
- Littered cigarette butts are hazardous to children. Young children may pick up the butts and put them in their mouths and ingest them (7,917 cases in 1995, Poison Control Center).
- Cigarette butts make our parks and beaches look dirty and uninviting and cause long-term damage to the environment.
- Cigarettes pose a risk of starting fires.
- Cal-Trans spends \$41 million each year for litter prevention, clean-up, and disposal (2004).
- Smoking sends a wrong message, that it is an acceptable activity.
- 88% of the Californians believe that secondhand smoke is harmful to those who inhale it in outdoor areas.

If you are interested in supporting this project or have questions, please call the Tobacco Control Project at (951) 358-7125.

For the Health of Our Children

ATTACHMENT 4

**COPY OF SECTION 8.56
(CURRENT ORDINANCE SECTION OF THE B.M.C.)**

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.

8.56.090

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.)

**CITY COUNCIL AGENDA
STAFF REPORT**

DATE: **Jan 27, 2009**

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

FROM: **Brian S. Nakamura, City Manager**

SUBJECT: **City Council Adoption of Resolution No. 2009-11, In Accordance with Banning Municipal Code Chapter 2.04, Section 2.04.010, Setting Its Regular, Holiday, and Vacation Meeting Schedule.**

RECOMMENDATION:

That the City Council adopt Resolution No. 2009-11, In Accordance with Banning Municipal Code Chapter 2.04 City Council, Section 2.04.010, setting its regular, holiday, and vacation meeting schedule.

Chapter 2.04

Section: 2.04.010

Regular meetings.

"The City Council shall hold its regular meetings on the second and fourth Tuesdays of each month at 6:30 p.m. Except for the months of July, August, November and December. During the months of July and August the City Council shall meet on the fourth Tuesday of each month at the approximate hour of 6:30 p.m. For the months of November and December the City Council shall meet on the second Tuesday of each month at the approximate hour of 6:30 p.m. If any regular Council meeting falls on a City holiday, such meeting shall be held on the first day thereafter, which is not a City holiday."

BACKGROUND:

The City Council has asked City staff to develop and present a proposed holiday and vacation schedule for consideration to prevent regularly scheduled meeting conflicts and address potential regular meeting scheduling conflicts.

The City Council may choose to modify staff recommended language regarding its meeting schedule.

FISCAL DATA:

There is no anticipated fiscal impact to the City.

RECOMMENDED AND APPROVED BY:



Brian Nakamura
City Manager

CITY COUNCIL RESOLUTION NO. 2009-11

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, ADDRESSING MUNICIPAL CODE CHAPTER 2.04, SECTION
2.04.010, SETTING ITS REGULAR, HOLIDAY, AND VACATION MEETING
SCHEDULE**

WHEREAS, the City Council wishes to formalize its regular, holiday, and vacation meeting schedule; and

WHEREAS, the City Council as per Banning Municipal Code Chapter 2.04, Section 2.04.010 is authorized to formalize its meeting schedule by resolution and adopts the following:

Regular Meetings.

“The City Council shall hold its regular meetings on the second and fourth Tuesdays of each month at the approximate hour of 6:30 p.m. Except for the months of July, August, November and December. During the months of July and August the City Council shall meet on the fourth Tuesday of each month at the approximate hour of 6:30 p.m. For the months of November and December the City Council shall meet on the second Tuesday of each month at the approximate hour of 6:30 p.m. If any regular Council meeting falls on a City holiday, such meeting shall be held on the first day thereafter, which is not a City holiday.”

NOW, THEREFORE, that the City Council of the City of Banning resolves that the meeting schedule herein shall take effect on February 10, 2009.

PASSED, APPROVED AND ADOPTED this _____ day of January, 2009.

Robert E. Botts, Mayor

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

David J. Aleshire, City Attorney
Aleshire and Wynder, LLP

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing City Council Resolution 2009-11 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 27th day of January, 2009, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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