

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

February 10, 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 4
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 – 01/27/09.	1
2.	Award of piggyback purchase to Godwin Pumps for a 6" Emergency Water Pump in the amount not to exceed \$37,916.42 for the City of Banning Water Department	15
3.	Approve Emergency repair to Water Well M-10 Site in the Amount of \$87,250.70 and direct the City Clerk to record the Notice of Completion when the project is completed	16
4.	Ordinance No. 1400 – 2 nd Reading: 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 ..	18

- Open for Public Comments
- Make Motion

IV. RESOLUTION/ORDINANCE

1.	Amendment to CalPERS Contract –Two Years Additional Service Credit	21
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Recommendations:

- A) That the City Council Adopt Resolution No. 2009-13, Resolution of Intention to Approve an Amendment to the Contract between the Board of Administration California Public Employees' Retirement System and the City of Banning.
- B) That the City Council adopt Urgency Ordinance No. 1403, Amending the City's Contract with the California Public Employees' Retirement System (CalPERS) to provide for Two Years Additional Service Credit for Local Miscellaneous and Local Safety Members.

Mayor asks the City Clerk to read the title of Ordinance No. 1403:

"An Urgency Ordinance of the City Council of the City of Banning, California, Authorizing An Amendment to the Contract Between the City Council of the City of Banning and the Board of Administration to the California Public Employees' Retirement System."

Motion: I move to waive further reading of Ordinance No. 1403.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1403 be adopted.

C. Authorize the Mayor to Execute the Certification of Compliance with Government Code Section 20903 for local miscellaneous and local safety members.

V. 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. Resolution No. 2009-09, Establishing Fees for Vacant and Distressed Buildings in the City of Banning 37
Recommendation: **That the City Council open the public hearing and continue this item to the February 24, 2009 City Council Meeting.**

2. Update on the City's Neighborhood Stabilization Program. 38
Recommendation: **That the City Council open the Public Hearing and take Public comment on the proposed participation in the Neighborhood Stabilization Program by the City of Banning.**

VI. REPORTS OF OFFICERS

1. David Aleshire, City Attorney/Matthew Bassi, Interim Community Develop. Dir.
A. Urgency Ordinance No. 1402 – Freeway Oriented Freestanding Signage – City Council adoption of Urgency Ordinance No. 1402 for the Approval of Interim Sign Regulations for the Development and Placement of Freeway-Oriented Freestanding Signage in the Downtown Commercial (DC), Highway Serving Commercial (HSC) and General Along the Interstate (I-10) Freeway in the City of Banning 45
Recommendation: Staff recommends adoption of Urgency Ordinance No. 1402 (Attachment 1) approving interim sign regulations for the development and Placement of freeway-oriented freestanding signage in the Downtown Commercial (DC), Highway Serving Commercial (HSC) and General Commercial (GC) zones located along the Interstate (I-10) freeway in the City of Banning.

Mayor asks the City Clerk to read the title of Ordinance No. 1403:

“An Interim Urgency Ordinance of the City Council of the City of Banning, California, Adopting Interim Development Regulations for the Placement of Freeway Oriented Freestanding Signs.”

Motion: I move to waive further reading of Ordinance No. 1403.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1403 be adopted.

VII. FUTURE MEETINGS

- February 9, 2009 - Interview of Planning Commission Candidates at 6:00 p.m.

VIII. CLOSED SESSION

1. Pursuant to Government Code Section 54957.6 Conference with Labor Negotiators Employee organization: IBEW - Utility Unit and IBEW General Unit, CBAM and BPOA. Agency Designated Representatives: Brian Nakamura, David Aleshire, Bonnie Johnson and Hoyl Belt

- A. Opportunity for Public to Address Closed Session Items.**
- B. Convene Closed Session**

IX. 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
BANNING, CALIFORNIA

1/27/09
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Botts on January 27, 2009 at 6:48 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
Jeff Stowells, Battalion Chief
Kim Clinton, Senior Planner
Marie A. Calderon, City Clerk

Mayor Botts invited the audience to join him in the Pledge of Allegiance to the Flag. There was a moment of silence for the family of Ted Yarbrough our Fire Marshal who passed away on January 18, 2009.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS
ANNOUNCEMENTS/APPOINTMENTS

Report by City Attorney

City Attorney said in regards to the CRA closed session they met to discuss real property negotiations on the properties at: 1) 2736 W. Ramsey Street, 2736A W. Ramsey Street and 2736B W. Ramsey Street and also had added the Fox Theatre for closed session and a report was given and they have not completed the discussion on Ramsey Street property and will go back into Agency closed session at the end of the meeting to finish that item.

Report by City Manager

City Manager said in the Council boxes they should have received a copy of his responses to the citizens inquires at the previous meeting. He gave a brief update and also reported on the Request Partner Program. **Councilmember Hanna would like a report on that possibly quarterly.** He

also will have a report at the next meeting giving an update on the building at the corner of San Gorgonio and Ramsey.

City Manager requested that the Public Hearing Item regarding the Zone Text Amendment regarding Wireless Communication be pulled from the agenda.

PUBLIC COMMENTS – On Items Not on the Agenda

There were none.

Chief Purvis said that he wanted to update the Council and the members of the community with some highlights of the Police Department in 2008. He said he is very proud of the men and women of the Banning Police Department and their accomplishments. In regards to crime reduction in Banning they are as follows: Homicides were down 100%; rapes were down 62%; robberies were down 44%; aggravated assaults were down 16%; vehicle thefts were down 33%; larcenies were down 6% and traffic collisions (non-injury) were down 14%. He attributes the traffic collision reduction mostly by the Traffic Team because they have really gone out and made it a point to get dangerous drivers off the street or cite them if they are driving recklessly or dangerously. At the same time the officers have been able to do that while still responding to an increased amount of calls and they actually responded to 4% more calls than they did last year. Other highlights included the groundbreaking for the new police station on August 8, 2008 with completion date slated for December, 2009; they applied for and were awarded \$297,662 in local, state and federal grants; they updated the department's web site; stationed the mobile command post throughout the city to reach out to citizens; the Detective bureau solved Mark Allen Owsley homicide that took place on New Year's Eve 2007 with one suspect being arrested; also solved the slashing case where victim, Shancie Wilson was viciously attacked and four female suspects were arrested; and the Emergency Tactical Unit (ETU) completed their second year. In regards to the Banning Police Activities League (B.P.A.L) completed their second year; held the 2nd Annual "Ready 2 Ride" Youth Safety Expo that was held on June 28, 2008; the 2nd Annual "Shop with a Hero" Program treated 22 youth to breakfast and a \$100 shopping spree; new program "Clubb Mudd" ceramics class started at Nicolet Middle School; Soccer Club started at Nicolet Middle School; and Mexican "Ballet Folklorico de Banning" dance club is held at Mountain View Mobile Home Park. They have applied for and received a G.R.E.A.T. (Gang Resistance Education and Training) grant for the third year in a role; successfully completed second year of teach the G.R.E.A.T. Elementary and Middle School programs and successfully completed second year of teaching the G.R.E.A.T Summer Program to 52 students at Nicolet Middle School. He said he appreciates the Council being at a lot of their events and giving them support. He said again, he is very proud of the men and women of the Banning Police Department and we are here to serve you and continue to serve you and look for innovative ways to police this city and make this city the safest and prosperous city we can make it. People can log on to the Banning Police Department at www.banningpolice.org to get information or to voice their concerns.

CORRESPONDENCE: There was none.

ANNOUNCEMENTS/COUNCIL REPORTS:

Councilmember Franklin –

- Stated that the Good Samaritan Bill hearing will be held in Sacramento having to do with the changes that were made to the Good Samaritan Act. What has happened is that for people who

respond any kind of an emergency or disaster, if they are not responding in a medical or profession sense, then they are no longer protected by the Good Samaritan Act. We want to let the public know that and that people should be writing to their Assembly Member to let him know what you think about that because it does affect how people will or will not respond because they are going to be concerned about liability and our Assemblyman is Paul Cook.

- Our Transit Department has been doing a good job and as of this month there are bus passes available now so people can actually buy those in advance and then can get them daily, 10 days or monthly. Instead of paying the daily fair you would get a discounted rate on passes.

Councilmember Machisic –

- He said that he and Councilmember Robinson attended a League of California Cities Seminar in Sacramento this past week and there are a number of interesting things that you learn from other cities. Sometimes you think your problems are unique and you find out that there are at least a hundred other cities that have the same problem. One session that he did attend that was of prime importance covered the League of California Cities Representatives which represent various geographical areas. One of the things happening right now is that the Governor and Legislature are in big trouble financially and they are looking for any place and every place they can find a dollar or two or \$40 billion and one of the things that happen is that the cities and counties get tapped for any extra money. The important lesson they said is that all the cities in California should work together. If there is something that is coming up in legislation that is not popular, we need to write to the legislators, the governor, etc. and encourage our residents to do the same because the only way they are going to be able to stop some of these things or improve some of these things is by contacting them and letting them know that we care. He thinks it is important because if we try to work separately, we are not going to get anything done.
- Two weeks ago he passed out to the Council Members a report called the “Red Team” and as you know we are facing some serious economic situations here with the housing, etc. and under John Husing, the economist who does a lot of work in Riverside County, got together with a group and they offered some suggestions and there are a number of issues there but the important thing is that they wrote a further letter from WRCOG that they would like to see if we could put it on our agenda to discuss the issues that they propose. If you look at some of the issues, they obviously will require some money and we are in sort supply of money right now. They also have a DVD that is 45 minutes long and they wanted to show it in a public session and he is not sure that is the best use of time but we can share it with the Council Members and review it and then with the Mayor’s and Council’s concurrence, if you want, we can have this put on the agenda at some time for discussion of these things and see how much Banning will participate or maybe if we can’t, it needs to be considered in the future.

Mayor Pro Tem Hanna –

- The San Gorgonio Memorial Hospital Foundation is having a fundraiser on February 11th so if you would like to support our local hospital which is really important to our community and to the city consider calling the San Gorgonio Memorial Hospital Foundation for information.
- At the Redevelopment Meeting there were two public events mentioned and one is on Valentine Day’s, February 14th called “Go Red for Women”. It’s for heart healthy ideas for women. Men are also invited to come to the luncheon at the Banning Cultural Alliance (Banning Women’s Club) at 11:30 a.m. and the cost is \$10.00.
- Right after that at 1:30 p.m. the Friends of the Library will be having a Tea. They want to have people join the Friends of the Library organization.

Councilmember Robinson –

- He said in that opportunity to go to Sacramento he met with our State Lobbyist, Paul Gonsalves and his brother Jason. This is a three generation lobbying group and their grandfather was an Assemblyman for California and passed it on down through the generations. He took with him a book that he created for Banning which includes all the great stuff that Chief Purvis was talking about including his G.R.E.A.T. news information and all that and shared it with the lobbyist and what they were hoping to see when this infrastructure money starts coming loose at the state and federal level for railroad, transportation, airport; all the things we would like to see come into Banning and what we are already doing to prepare for that. He shared that with a lot of Assemblymen and the lobbyist and their response was that there is good hope that we'll see some money coming to Banning through that. He knows that our City Manager met with them also and he hopes that he had that same feeling from them. We are definitely in a good position for money coming forward when the economy breaks loose. That was a piece of good news from our lobbyist.

Mayor Botts –

- He said that he represents the Council on the Riverside County Transportation Commission who's responsibility is to manage Prop A, Measure A money that we all pay and build roads and freeways and the good news is that we finally finished the interchange 60/91/215. It is a great improvement on what we used to have. On the downside counter to what Councilmember Robinson said he does hope there is money however, the Legislature in trying to balance their \$40 billion dollar deficit and is asking to borrow Measure A money or take away transportation funds in order to balance the State budget and you need to know that. The Transportation Commission is made up of Mayors and Council Members and all of us are unanimously saying no, you can't take it. We need roads and freeways and we need to improve our transportation here. So we are fighting on behalf of our own cities and all the taxpayers to try to keep that money here to build roads and freeways.

CONSENT ITEMS

Councilmember Robinson pulled Consent Items 5 and 6 for discussion and said that he would be abstaining on Item No. 1 because he was not on the Council at that time.

1. Approval of Minutes – Special Joint Meeting – 12/01/08

Recommendation: That the minutes of the Special Joint Meeting of December 1, 2008 be approved.

2. Approval of Minutes – Special Joint Meeting – 01/10/09

Recommendation: That the minutes of the Special Joint Meeting of January 10, 2009 be approved.

3. Approval of Minutes – Regular Meeting – 01/13/09

Recommendation: That the minutes of the Regular Meeting of January 13, 2009 be approved.

4. 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.

Motion Hanna/Machisic to approved Consent Items 1, 2, 3, and 4. Motion carried, with Councilmember Robinson abstaining on Item No. 1.

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

Councilmember Robinson asked if this was for future investigations or do we owe money for investigations that this firm has already done over and above what we approved prior to this.

Chief Purvis said this is for future investigations and this is actually for one that was just started last Sunday and he cannot get started on it until he gets this approval and it is a pretty significant personnel investigation.

There was some Council discussion in regards to the budget crisis, the cost of doing business, this being a vital service, and exposure to liability.

Chief Purvis said that this service is used for the very significant cases where there is a potential for civil liability and potential litigation and they don't use this firm for the day to day personnel investigation. This firm is used to conduct the very detailed and lengthy investigations that require that expertise that this particular company can provide.

City Attorney said that this contract is not for a specific investigation. It is kind of an on-going contract for any number of investigations that could occur under here. We are all sensitive to the budget situation. If you wanted to approve the contract you could ask the Chief to make a good faith effort to see whether the vendor might be willing to reduce the rate to some degree and there is certainly nothing inappropriate with having this conversation in these times but you could still approve the contract so the investigation can proceed.

Motion Machisic/Franklin that 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 also attempt good faith negotiations to reduce the rate.

Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

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.

Councilmember Robinson said in regards to having our situation of having a budget meeting on the following day of our City Council meeting it seems that we are putting the cart before the horse and it would be easier to table this for at least one night and discuss these things further and see what the budget brings to us. We are striving for a balanced budget for this City and it doesn't seem like we should be approving large ticket items right now for this budget. We could table this and review it again tomorrow night at the budget meeting when we get more information from the Finance Director and the staff.

City Manager said he appreciates the concern for the budget but essentially the reason this is on the agenda for approval is that we do budget on an annual basis for the position and this money would be coming out of that fund essentially. His understanding is that this position was budgeted for and the Community Development Director is an essential position and we have a lot of projects moving forward that he thinks that we need to continue to move forward with through this process of recruiting for a permanent position. He believes that it is in the parameters of what our existing budget is for that position.

Finance Director said that the City Manager is correct. The funds for this amendment to the contract are within the existing budgeted funds. No new money is being requested. This position was budgeted in full for the fiscal year and it is those very dollars that are being reallocated to pay for the consultant that is filling that position. The amendment for consideration this evening is an \$80,000 amendment to the original contract and this position is partially funded by the General Fund and the Redevelopment Agency. The funds were budgeted that way at the beginning of the fiscal year and are available to pay for this contract.

Mayor Botts asked the Finance Director if it was fair to say that we are operating in the red in this City. We have more expenses going out than income coming in during this fiscal year and if we didn't spend this money, we would reduce the red ink without debating the merits of the position; just financially is his point.

Finance Director said yes to the first question in regards to the General Fund. She said a portion of this is applicable to the General Fund and a majority of this is applicable to the Redevelopment Agency. She stated further that there are some pending billings from Civic Solutions related to this. We have hit the cap where the original contract and the first amendment got us so even if we did not spend any more to just have the position filled with a consultant from here forward we would have to pay the pending bills and it is not the \$80,000. It is a small portion of the \$80,000 but we wouldn't be saving the entire \$80,000; we need to pay some pending bills.

There was further Council discussion in regards to the contract for this position, recruitment for the position of Community Development Director, economic development and redevelopment, pending bills and tabling this item until tomorrow night.

Motion Hanna/Machisic to table this item until tomorrow night's meeting. Motion carried, all in favor.

PUBLIC HEARINGS

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.

This item was pulled from the agenda.

REPORTS OF OFFICERS

1. 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).
(Staff Report – Kim Clinton, Senior Planner)

Ms. Clinton gave the staff report as contained in the agenda packet. She said that they will give a presentation on this document and it is ready to send to the Department of Housing and Community Development (HCD) for their review and hopefully for certification. Lauren and Associates were hired to prepare this plan and have provided strategies to meet our housing needs. The City Clerk has provided some inserts to the Council which supplement the Housing Element that was given to the Council for review. She introduced Eric Veerkamp, Housing Specialist who has worked extensively on the Housing Element.

Mr. Veerkamp addressed the Council stating that the primary intent this evening is to present the public review draft to the Council and public to review the RHNA (Regional Housing Need Assessment) numbers and obviously to seek any input that anyone may have and more importantly to request that the Council authorize forwarding the public review draft to HCD to begin the 60-day public review period. He started his presentation at this time stating that they have met some significant milestones with the public review draft and this is a statement that satisfies the City's responsibility to make adequate provision for all types of housing within the community. It has also been reviewed for consistency with all the other elements of the General Plan and it embodies the clearly stated policies and action programs that the City has identified to meet its housing goals and quite importantly it satisfies the 2006 to 2014 RHNA allocation. The objectives that all jurisdictions have to meet when it comes to RHNA are these four things: 1) to increase the housing supply and the mix of housing types, tenure, and the affordability in an equitable manner; 2) to promote the infill type development and social economic equity; 3) to promote an improved intra-regional relationship between jobs and housing; and 4) begin to allocate a lower proportion of housing need to an income category when a jurisdiction already has such a distribution (a balancing of the distribution of households by income category). He continued his power-point presentation at this time in regards to RHNA numbers and breakdown and steps in achieving housing program goals and identification of action programs. He said that depending on the outcome of the HCD review they will either issue a letter of substantial compliance or a letter of comment. If there is a letter of comment, they will address their comments and at that point request a letter of certification.

There was some Council and staff discussion in regards to the document going over various figures, there was a typo on page 113 in regards to the Stagecoach being here from 1884 to 1987. There was discussion in regards to creative strategy in maintaining existing homes, latitude in making changes to the document, inclusionary housing, universal housing, and comparison of salaries to need for housing.

Mayor Botts opened the item for public comments.

Bill Dickson, 5700 W. Wilson addressed the Council stating that when you look at all the housing elements and you look at senior housing and you go through the housing elements it is almost shameful in what we have available for senior housing in the city of Banning. The thing that strikes him more is that we have an opportunity granted it is falling on the back of people who are in bad times we do have a tremendous number of foreclosures and he thinks this would be an opportunity somehow through redevelopment or whatever to acquire some senior housing. When someone comes to Banning now the only place we can send them is to Beaumont.

There was more Council and staff discussion in regards to disabled persons, senior housing communities not included in documents, inclusionary housing, completion of this 8-year program and needed resources, funding being too low and possibility of bumping up numbers, and low mod housing numbers.

Finance Director said in regards to balances they have projected in the low and moderate set aside at the end of June 2009 they have projected \$3.6 million and with the remainder of our low and moderate income bonds that were issued in 2003 we have a balance projected of about \$1.7 million.

Mayor Botts reopened the item for public comments.

Don Smith addressed the Council stating that in regards to the inclusionary pros and cons he would argue that you have in fact adopted an inclusionary ordinance. The option you give people for bonus density transfers if they choose to do that. So rather than just take it out of it, if he were sending it to Sacramento, he would quite possibly say we have adopted an inclusionary ordinance allowing for bonus density transfers. He said this was just a suggestion. He said based on looking at the report from yesterday you have \$5 million dollars in low/mod funds and he is wondering where the City stands and staff should be thinking about grabbing up houses because there are lots of them now under \$100,000. Now is the time for the City to solve part of the blight problem by picking up these foreclosures themselves and if you have to hold them for awhile before they sell them till the market goes up, this is your chance. You should be looking at a program of helping out the housing industry by getting rid of some of these foreclosures at ridiculously cheap prices historically.

Motion Hanna/Machisic 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 *minus inclusionary housing recommendation No. 17*. Motion carried, all in favor.

2. A. One Stop Shop Update: Presentation by the Community Development Department on the One Stop Shop Program.
(Staff Report – Matthew Bassi, Interim Community Development Director)

Mr. Bassi gave the staff report as contained in the agenda packet. He said several months ago the Council asked staff to give an update on the one stop shop process and staff put together a power-point presentation that will assist in that presentation going over the Land Development Task Force (LDTF) program and other steps in the “One Stop Shop” process.

There was some Council and staff discussion in regards to the project entitlement process schedule, project managers, different interpretations when person working on project is not available, written records and comments, and a way for an applicant to give feedback.

There was Council consensus to receive and file the report.

2. 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.
(Staff Report – Matthew Bassi, Interim Community Development Director)

Mr. Bassi said that this item was continued from a couple of meetings back for staff to do some research and in the staff report they have kind of enumerated the different comments made by the Councilmembers, as well as, the public. In an effort to address some of those concerns he met with the County Health Department, Mr. James Jo and Ms. Consuela Edmond to get some information in regards to what other communities and agencies are doing and he has provided quite a bit of backup information. The Council has heard testimony both for and against this ordinance and staff is recommending that the City Council adopt Ordinance No. 1400. In regards to enforcement, this is not going to be a proactive enforcement. It has to be reactive and complaint driven.

Councilmember Robinson asked what type of signage we have to put up for this ordinance in the city parks. Mr. Bassi said it would probably be a metal pole with a 3 x 3 sign. It would probably not be a complicated posting process but would need to check with Duane Burk.

Mayor Botts opened the item for public comments.

Gary Hironimus, 620 12th Street addressed the Council stating that he was here a couple of weeks ago and he wanted to apologize first in that he did make a mistake in the numbers that he had given the 6,000 and 2,000 as far as high school students in California try smoking everyday and become regular smokers and based on the number of high school students in California 2.5 million he was correct in stating that is 1/8th of 1%. However he applied that on a yearly basis and he apologizes because that is on a daily basis. He said if that is on a daily basis that means that in less than three years 100% of our high school students would be a smoker which clearly is not happening. According to the American Lung Association and University of Michigan studies youth smoking rates are at their lowest level in decades. He went back to the number 6,000 and 2,000 and he did some more research and according to the American Lung Association and the Center or Disease Control the number nationwide are 4,000 youths try smoking every day and about 1,200 become smokers. He doesn't see how the numbers for California alone can be 50% higher than the numbers just for the entire nation which includes California. Comments have been made that children seeing adults smoking at the parks will give them the wrong message that it is okay to smoke and that it's actually the youth who see people smoking are more likely to smoke. The studies don't bear that out. According to numerous studies the top reasons that kids start to smoke one or both parents smoke, people that they admire smoke, peer pressure, lack of parental support and involvement, low self esteem or self image, or it helps the teen lose weight or reduce stress. No studies that he has been able to find state that seeing strangers smoke contributes to youth smoking rates. In fact, the biggest draw for smoking is that it is an adult activity that is forbidden. So in a sense in banning smoking in parks the argument could be made that it makes it even more attractive for teens. He said basically his point is the same as two weeks ago. Our

public parks belong to all of us. Not just smokers, not just non-smokers, and not just the desirables. We all use the parks. It is open air. Instead of a park-wide ban we should designate areas around the playground structures as non-smoking and post the necessary signs so people know that. We should provide some ash cans or cigarette butt trays or something for smokers as an alternative so that they don't have to throw the butts on the ground or into the trash where a fire could start. We can still designate some of the larger park-wide group events as non-smoking on a case by case basis. Anything more than that accomplishes little. It will have no effect on youth smoking rates, it will have very little if any effect on a person's health, it will be difficult to enforce and again, it is a reactive enforcement instead. That just means that the City is encouraging residents to point fingers at each other. That doesn't build good neighborhoods.

Helen Barnes addressed the Council stating that most everyone in this room and everyone watching on Channel 10 knows that this ordinance in some form be approved this evening. As a majority of the Council knows she is a smoker but her being a smoker is irrelevant to what she is about to submit for Council's consideration. In reviewing the agenda packet the Council has received a lot of information regarding this issue. You have received survey results, data provided by staff and even the Press Enterprise published an article in last Saturday's paper. She would like to address some of the information that the Council has received. Not that the information is inaccurate however, she does believe that the information you received is incomplete. It has always been her opinion that the Council should be provided all information whether that information is favorable or unfavorable to an issue and only then can the Council make an appropriate decision. The information you received regarding this issue provides numbers for your consideration. However, numbers only mean something if you compare them with other numbers. An example would be information you received that there are 400 cities in California that have no smoking in parks ordinances on the books. The number 400 sounds significant however, it is only significant in comparing it with the total numbers of cities in the state. It also provides that there are approximately 2,600 cities in the nation that have this type of ordinance and in itself this number sounds significant but when you place that number next to the total number of cities in the entire nation it wouldn't look quite so significant and that is not provided. On the same note the Council was provided with the following information from a survey conducted of 43 people in the Banning city parks where there are currently six parks in the city and a city with a population of more than 26,000 people. If the people conducting this survey could only find 43 people in six parks to survey, it is not even worth considering. However, the percentage makes it look very valid. For instance, the report you received indicates that over 62% of the surveyed residents believe that tobacco litter is a problem in the parks. 62% of 42 residents that were surveyed turn out to be 26 people. Compare that to 25,000 or 26,000 and that is not very significant data with regard to informing the Council. She would suggest that along with the data already provided to the Council additional information should be included. For instance, where did this ordinance originated and why? Have there been any complaints received from citizens here in Banning that use the parks? How many complaints have been received? What was the nature of those complaints? Where they offended by the smoke in the park, where their children allergic to it or whether they are just concerned about their children's health or whether it is just because other cities have this ordinance and they believe we should have one also. This information would be helpful in deciding whether the city of Banning needs this type of ordinance at this time. The City of Banning needs to make rules and regulations on the needs of the majority of its citizens. If there had been a significant number of complaints, then maybe it is time to have such an ordinance. If that is the case, her question is why isn't that information a part of the staff report and provided to the Council. The City of Banning should base its rules and regulations on those

they represent the desires and needs of the majority, not what other cities have or plan to do. The staff report does state that cities that do have this type of ordinance stating that enforcement was their biggest problem. Members of this community have come before this Council and stated that we shouldn't have ordinances that cannot be enforced. Responding to a person smoking in a park is a waste of our police officers and our code enforcement personnel's time and a waste of taxpayer money. The most significant statement that she had read regarding this issue is a statement made by Council Member Hanna who was quoted as saying "it is not good to smoke around children." She personally doesn't know of anyone who truly believes that smoking around children is healthy.

Patricia Gonzales representing the American Lung Association of California addressed the Council stating that in California outdoor areas are the major place where individuals continue to be exposed to harmful second hand smoke. Many scientific studies document the negative health effects of second hand smoke, exposure outdoors, exposure to second hand smoke can have immediate health consequences including eyes, nose and throat irritation, as well as, asthma attacks and breathing problems for people with chronic lung disease. In 2006 the U.S. Surgeon General stating that second hand smoke exposure causes lung disease and premature death in non-smokers and maintained that there is no risk free level of exposure to second hand smoke. Also in 2006 the California Air Resources Board formally identified second hand smoke as a toxic air contaminate. This places second hand smoke in same category as asbestos and benzene. A recent study conducted by researchers with Stanford University shows that there is a public health need for restricting smoking in outdoor areas. This research measured air pollution levels at outdoor places such as dining areas in parks where people where smoking and found that levels of exposure to second hand smoke outdoors can be comparable to second hand exposure indoors. In addition, when an individual is near a smoker outdoors they are exposed to air pollution levels significantly higher than normal background air pollution levels. Infants and young children are especially susceptible because their lungs are still developing and childhood exposure to second hand smoke results in decreased lung function. Children who breathe second hand smoke are more likely to suffer from cough, wheeze, phlegm and breathlessness and other problems resulting in hospitalization and frequent doctor visits in a year. Beside the health impact there are other benefits to prohibiting smoking in parks and other large outdoor areas. Cigarettes are the top litter item found at beaches and major parks. Cigarettes also pose a risk for starting wildfires. The fact that these ordinances will prohibit smoking in outdoor areas where children are frequently present also models healthy behavior for children. Finally, reducing areas in which people can smoke makes it easier for people to quit because they have fewer opportunities to smoke and create a new social norm in which smoking in public becomes less accepted. I

Dr. James Jo of the Riverside County Public Health Department addressed the Council stating that each day many children and adults are visiting our local parks in the city of Banning and Beaumont to enjoy their time with friends and family. How unhealthy and unpleasant would it be for them to be exposed to second hand smoke? He said that Mrs. Patricia Gonzales just pointed out that the California Air Resources Board recently classified second hand smoke as a toxic air contaminant and that there is really no safe level of exposure to second hand smoke. Unfortunately, second hand smoke travels and even when non-smokers are visiting they can be exposed to deadly effects of second hand smoke in the far distance of a smoker. As she pointed out there are numerous studies that indicate the negative consequences of second hand smoke but according to The Center for Disease Control it is estimated that between 4,200 to 7,400 non-smokers die of heart disease each year as a result of second hand smoke. Littered cigarette butts

really make our City parks look very uninviting and dirty and he brought a jar of cigarette butts that they collected last year during the City park clean-up day with youth members and sad to say that there are a lot of littered butts in our playgrounds and in the City parks. He mentioned that all smoke free park ordinances currently enacted have been self-enforcing and self-enforcement means that we have clear, comprehensive signage throughout the park and local officials do report that the key to successful smoke free park compliance is the posting of clear, comprehensive signs throughout the parks. He is pleased to report that many California communities have adopted or are taking steps to make outdoor recreational areas such as parks smoke free. And in fact, more than 80% of Californians are supportive of the fact that outdoor areas should be smoke free. He truly believes that the smoke free park ordinance will protect the health and welfare of our community members in Banning.

Don Smith addressed the Council stating that he is not a scientist, not a smoker and he cannot give the Council studies and he has lived for 50 years and he is sure he has breathed his share of second hand smoke. Fifteen years ago he remembers hearing the argument when we quite allowing smoking in the restaurants that how are we going to enforce it, it would never work, police would have to be called into restaurants; when is the last time somebody had a problem in a restaurant with smoking. Same thing happened with bars and then government offices. The fact of the matter is that 99% of the citizens of Banning were law abiding and once they learned the rule they are going to abide by it. He said enforcement the first month might be a problem but most people when they are told there is a new rule they are not going to know about the new rule and once they know about the rule they are probably going to follow it. Basically what we are asking the smokers is to get away from people in the park by walking 50 feet to the sidewalk and he doesn't see the downside to the smoker. He sees the upside to the kids and people trying to enjoy the park especially in Banning because of the wind. No matter where you sit you might be sitting in the wrong place and it is going to blow in your direction. If enforcement is the big issue, it is going to self enforce itself over time just like in the restaurants, the bars and in businesses.

Ashley Bennett, Canyon Springs High School student, addressed the Council stating that is a very important issue to her and it affects nearly everyone here. She asked, "Do any of you know someone that has died of a smoking related disease?" She said she does and she knows first hand what it feels like to lose someone that smoked and it could have been prevented. Her grandfather died of lung cancer from the excessive use of cigarettes and she never got to meet him. His death was premature and it was brought on by smoking and it could have been prevented. When a smoker lights up in a park it sends a wrong message to young people that it is okay to smoke when in fact smoking is never a positive thing. This is coming from someone that is actually a youth and actually knows what the youth are thinking. Not only does it give a youth a place to see that smoking is okay but also gives them a place to go and smoke because when they see adults smoking in the park they think that it is going to be okay for themselves to do it as well. She has had this first hand experience with friends. Also, did you know that children exposed to second hand smoke are two times more likely to die from sudden infant death syndrome? Children exposed to second hand smoke are more likely to get sick and suffer asthma attacks. Smoking is something that affects old people and young alike. She would like to ask the Councilmembers to consider the negative affects of smoking and adopt an ordinance to prohibit smoking in the community parks. We believe that smoke free parks will help protect our families, young children and the environment.

Rainee from Poly High School addressed the Council stating that she visited the local community park a few times this year and unfortunately it was very sad to see so many cigarette butts carelessly thrown away in the parks. She researched on the internet and found that cigarette butts are the number one litter item found at beaches, road and parks. Because it is a top litter item there is a potential for young children to pick up cigarette butts they find in parks and either play with them or put them in their mouths. Think how terrible it would be to see a child put one of these littered items in their mouths. Cigarette butts are not biodegradable. It means that they will stay around the environment for a very long time. Often they will get washed away by the rain and into the waterways where they will pollute the ocean. A polluted ocean can kill innocent marine animals. She asked the Councilmembers to consider the negative effects of smoking and adopt an ordinance to prohibit smoking at our community parks. We believe that smoke free parks will help protect our families, young children and our environment.

Mayor Botts closed the item for public comments.

There was Council discussion in regards to pollution from car exhaust, designated areas for smoking or non-smoking, receptacles for cigarette butts, parks are for everybody, this ordinance would be a useful tool for the police, smoking is a terrible addiction, acceptance as the new social norm, research shows smoking is unhealthful in outside areas, self-enforcement, signage to educate people about the effects of smoking, possible trial period, and signage is critical if this is approved.

Mayor Botts asked the City Clerk to read the title of Ordinance No. 1400. City Clerk read: 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 Hanna/Robinson to waive further reading of Ordinance No. 1396. Motion carried, with Franklin and Machisic voting no.

Motion Hanna/Robinson that Ordinance No. 1396 pass its first reading. Motion carried, with Franklin and Machisic voting no.

3. 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.
(Staff Report – Brian Nakamura, City Manager)

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

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

Motion Machisic/Hanna 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. Motion carried, all in favor.

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.

CLOSED SESSION

Chairman Robinson reconvened the Community Redevelopment Agency Meeting at this time to continue the closed session in regards to property acquisition located at 1) 2736 W. Ramsey Street, 2736A W. Ramsey Street and 2736B W. Ramsey Street

City Council went into closed session pursuant to Government Code Section 54957 with regard to City Manager evaluation.

Meeting went into closed session at 9:28 p.m. and returned to regular session at 10:21 p.m. with not reportable action.

ADJOURNMENT

By common consent the meeting adjourned at 10:21 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: February 10, 2009

TO: City Council

FROM: Bonnie J. Johnson, Finance Director

SUBJECT: Award of piggyback purchase to Godwin Pumps for a 6" Emergency Water Pump in the amount not to exceed \$37,916.42 for the City of Banning Water Department.

RECOMMENDATION: "Staff recommends the City Council piggyback on to the U.S. General Services Administration (GSA) contract number GS-07F-9491G and award the purchase of the a 6" Emergency Water Pump to Godwin Pumps in the amount not to exceed \$37,916.42."

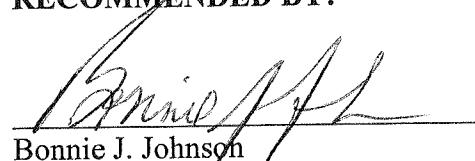
JUSTIFICATION: To provide an emergency back-up pump for the City of Banning Water Utility.

BACKGROUND & ANALYSIS: The City of Banning owns and operates the Water Utility that serves all City of Banning commercial and residential customers. The Water Department operates the water wells and lift stations that are necessary to provide the water service to all Utility customers. The lift stations are operated by pumps that move the water through the City's water infrastructure. If a pump fails the Water Department maintains providing water utility service by utilizing the emergency back-up pump. Currently the back-up pump is in none working condition and cannot be repaired. With this pump out of service the Water Department does not have the ability to provide water utility service if a pump in one of the lift stations fail. The City of Banning can piggyback onto the U.S. General Services Administration (GSA) contract number GS-07F-9491G for the purchase of the Emergency Back-up Pump, under their cooperative purchasing provision. This will save the City the cost of the formal bid process and allow us to take advantage of the volume discount afforded to U. S. GSA.

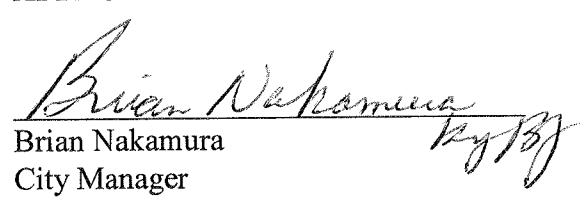
ALTERNATIVES: Solicit sealed bids for the purchase of the emergency Back-up Pump. However, the cost may well be higher due to the smaller quantity and by piggybacking onto U.S. GSA contract the City can take advantage of the volume discount pricing afforded under the pricing of the U.S. GSA contract.

FISCAL DATA: Sufficient funds are available for the purchase of the Emergency Back-up Pump in the Water Department account # 660-6300-471.95-08.

RECOMMENDED BY:


Bonnie J. Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: February 10, 2009

TO: City Council

FROM: Ernest P. Marquez, Jr., Senior Civil Engineer

SUBJECT: Emergency Well Repairs at Water Well M-10 Site

RECOMMENDATION: Approve emergency repairs to Water Well M-10 Site in the amount of \$78,250.70 and direct the City Clerk to record the *Notice of Completion* when the project is completed.

JUSTIFICATION: Repairs to the well at the Water Well M-10 Site are essential to ensure uninterrupted water supplies to the City's utility customers.

BACKGROUND: Water Well M-10 produces about 750 gallon per minute (gpm) of potable water into the City of Banning's domestic water system. The Public Utilities-Water Operation staff became aware of a noticeable vibration and bearing noise within the lower portion of the well. Water production decreased to 312 gpm with overall plant efficiency of 29%, which is not acceptable. Therefore, the well was taken out of service and staff solicited three firms to submit proposals to perform the emergency repairs. The initial proposals from the three firms are as follows:

1. General Pump Company	\$34,707.50
2. SoCal Pump & Well	\$34,765.00
3. Layne Christensen Company	\$45,908.05

General Pump Company (GPC) pulled the column shaft and pump bowels along with a video inspection of the steel casing of the well. After further investigation, it was determined that additional items needed replacement; the pump impellers and bearings are worn beyond reuse, 320 feet of the ductile column pipe is corroded and will need to be replaced and 460 feet of the column shaft ends will need to be squared, reassembled and installed.

Staff has negotiated with GPC to complete the initial emergency repairs (\$34,707.50) and in addition to the required items (\$43,543.00) as stated above to Water Well M-10 in the amount of \$78,250.70.

General Pump Company is a reputable firm in the Water Utility industry and has extensive experience with well & pumping equipment, design, and construction. This company has successfully completed numerous projects for the City.

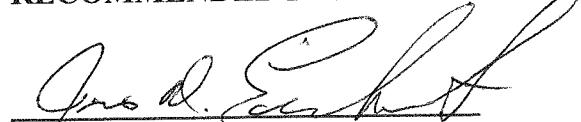
The City of Banning owns and operates its own water system throughout the City. It is the Department's policy to maintain all wells and booster pumps in operation at all times to prevent

water outages within the service area due to the different types of emergencies that can occur to effect the pumping of water into the distribution system. Multiple events can reduce the Department's ability to provide water and pressure to the City.

Authorization for this additional repair work is consistent with the City Policy as set forth in Ordinance No. 1266 for emergency well and booster pump repairs.

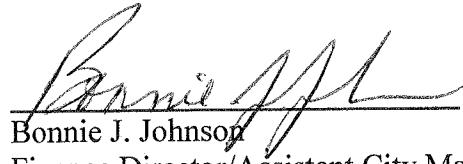
FISCAL DATA: The funds for the repairs to the booster pump was utilized from the FY 08-09 Water Division Operation Budget, Wells / Pump Equipment Account No. 660-6300-471-9508.

RECOMMENDED BY:



Jim Earhart
Director of Public Utilities

REVIEWED BY:



Bonnie J. Johnson
Finance Director/Assistant City Manager

APPROVED BY:



Brian Nakamura
City Manager

2nd Read.

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 10th day of February, 2009.

Robert E. Botts, Mayor
City of Banning

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

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

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, California

**City Council Agenda
Resolution/Ordinance**

DATE: **February 10, 2009**

TO: **Honorable Mayor and City Council**

FROM: **Hoyl E. Belt, Human Resources Director**

SUBJECT: **Amendment to CalPERS Contract – Two Years Additional Service Credit**

Recommendation: Consider the following actions in order to provide the CalPERS Two Year Additional Service Credit to employees under Government Code Section 20903 and Certification of Compliance with Government Code Section 7507.

- a. Adopt Resolution No. 2009-13, Resolution of Intention to approve an amendment to the Contract between the Board of Administration California Public Employees' Retirement System and the City of Banning
- b. Adopt an Urgency Ordinance amending the City's contract with the California Public Employees' Retirement System (CalPERS) to provide for the Two Year Additional Service Credit for Local Miscellaneous and Local Safety Members.
- c. Authorize the Mayor to execute the Certification of Compliance with Government Code Section 20903 for local miscellaneous and local safety members.

Justification: As part of the City's efforts to reduce expenditures in order to address the ongoing structural budget deficit and operational concerns, the City has initiated steps to offer employees a two year service credit as an inducement to retire early.

CalPERS requires that the contract amendments be adopted by the requesting agency by ordinance.

The Certification of Compliance indicates that due to an impending curtailment or change in the manner of performing services which would result in mandatory transfers, demotions and layoffs affecting 1% of the affected classifications, the best interests of the City will be served by granting the service credit. It also indicates the City's intention to keep at least one position in the city permanently unfilled to result in an overall savings. Lastly, it designates a window period during which eligible members must retire in order to obtain the service credit and it acknowledges that the cost of the service credit will be added to the City's employer contribution rate two years after the end of the designated period.

The City intends to designate the period from March 2, 2009 to May 31, 2009 as the period during which eligible employees may retire.

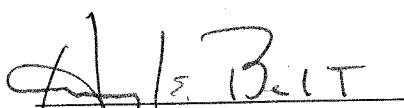
In order to offer the two year additional service credit, the City must make public the future annual cost of the credit at least two weeks prior to the adoption of the Urgency Ordinance. The Urgency Ordinance will be effective on March 2, 2009.

Background: The City will be granting two years of additional service credit pursuant to Government Code Section 20903 for miscellaneous and safety members. At this time, approximately 48 City employees are eligible but only 20 are interested. However, evidence from other agencies suggests that all those who have expressed interest may not ultimately take advantage of the program. The program is completely voluntary.

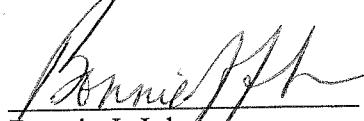
Fiscal Data: The estimated total cost of the service credit for eligible Miscellaneous Members is \$1,294,206 and \$145,540 for Safety Members if all eligible members retired. This amount will be reflected in the CalPERS retirement rates two years after the designated closing period. The cost of the additional service credit will be added to the City's actuarial accrued liability which will result in an increase in the employer contribution rate beginning with the 2011/12 fiscal year. The costs are amortized over twenty years. The additional increase to the City's CalPERS employer rate as a result of these costs would be 1.69% for miscellaneous and .28% for Safety if all 48 persons took advantage of the two years of additional service credit. In addition, there is a \$10.00 actuarial valuation fee for each member who retires during the designated period and receives the additional service credit.

On an annual basis, the salary and benefit savings is estimated at \$3,886,692 for all 48 employees.

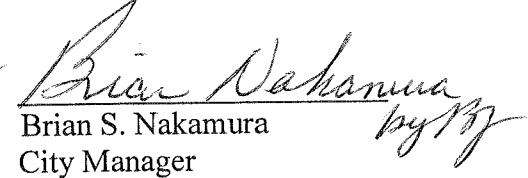
Recommended By:


Hoyl E. Belt
Human Resources Director

Reviewed By:


Bonnie J. Johnson
Finance Director

Approved By:


Brian S. Nakamura
City Manager

Attachments:

Urgency Ordinance No. 1403,
Resolution No. 2009-13, Resolution of Intention
Certification of Compliance with Government Code Section 20903
Exhibit – Amendment to Contract

RESOLUTION NO. 2009-13

**A RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO
CONTRACT BETWEEN THE BOARD OF ADMINISTRATION CALIFORNIA
PUBLIC EMPLOYEES RETIREMENT SYSTEM AND THE CITY COUNCIL OF
THE CITY OF BANNING**

WHEREAS, The Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 20903 (Two Years Additional Service Credit) for local miscellaneous members and local safety members.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

PASSED, APPROVED, AND ADOPTED this 10th day of February, 2009.

Robert E. Botts, Mayor
City of Banning, California

APPROVED AS TO FORM AND
LEGAL CONTENT

David Aleshire, Attorney
Aleshire & Wynder, LLP

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. 2009-13 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held 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, California



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Banning

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective July 1, 1965, and witnessed May 27, 1965, and as amended effective October 8, 1973, September 9, 1974, June 27, 1977, August 1, 1983, April 13, 1992, July 26, 1999, June 26, 2001, September 17, 2001, September 30, 2002 and July 2, 2007 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

A. Paragraphs 1 through 17 are hereby stricken from said contract as executed effective July 2, 2007, and hereby replaced by the following paragraphs numbered 1 through 17 inclusive:

1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after July 1, 1965 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).
4. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
 - a. **ELECTED OFFICIALS.**
5. Prior to January 1, 1975, those members who were hired by Public Agency on a temporary and/or seasonal basis not to exceed 6 months were excluded from PERS membership by contract. Government Code Section 20336 superseded this contract provision by providing that any such temporary and/or seasonal employees are excluded from PERS membership subsequent to January 1, 1975. Legislation repealed and replaced said Section with Government Code Section 20305 effective July 1, 1994.
6. The percentage of final compensation to be provided for each year of credited prior and current service for those local miscellaneous members in employment prior to September 17, 2001 shall be determined in accordance with Section 21354 of said Retirement Law (2% at age 55 Modified).
7. The percentage of final compensation to be provided for each year of credited prior and current service for those local miscellaneous members in employment on September 17, 2001 and those local miscellaneous members in employment before and not on or after September 30, 2002, shall be determined in accordance with Section 20515 and 21354 of said Retirement Law (2% at age 55 Full).

8. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment on and after September 30, 2002 shall be determined in accordance with Section 21354.4 of said Retirement Law (2.5% at age 55 Full).
9. The percentage of final compensation to be provided for each year of credited prior and current service as a local police member shall be determined in accordance with Section 21362.2 of said Retirement Law subject to the reduction provided therein for Federal Social Security (3% at age 50 Modified).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a local fire member in employment prior to April 13, 1992 shall be determined in accordance with Section 21362 of said Retirement Law subject to the reduction provided therein for Federal Social Security (2% at age 50 Modified).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a local fire member in employment on or after April 13, 1992 shall be determined in accordance with Section 21362 of said Retirement Law (2% at age 50 Full).
12. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Sections 21624 and 21626 (Post-Retirement Survivor Allowance) for local safety members.
 - b. Section 20042 (One-Year Final Compensation).
 - c. Section 20515 (Full Formula Plus Social Security) for past and future service for local fire members in employment on and after April 13, 1992 and for local miscellaneous members in employment on and after September 17, 2001. Legislation repealed said Section effective January 1, 2002.
 - d. Section 20903 (Two Years Additional Service Credit).
13. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on April 1, 1983. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.

14. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
15. Public Agency shall also contribute to said Retirement System as follows:
 - a. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - b. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
16. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
17. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
LORI MCGARTLAND, CHIEF
EMPLOYER SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF BANNING

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

ORDINANCE NO. 1403

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
BANNING, CALIFORNIA AUTHORIZING AN AMENDMENT TO THE
CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF BANNING
AND THE BOARD OF ADMINISTRATION TO THE CALIFORNIA PUBLIC
EMPLOYEES' RETIREMENT SYSTEM.**

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

SECTION 1

That an amendment of the contract between the City Council of the City of Banning and the Board of Administration, California Public Employees Retirement System allowing for two years of additional service credit for all local miscellaneous and local safety employees is hereby authorized. A copy of said amendment being attached hereto, marked Exhibit A, and by such reference is made a part hereof as though herein set out in full.

SECTION 2

The Mayor of the City Council is hereby authorized, empowered, and directed to execute said amendment for and on behalf of said Agency.

SECTION 3

If any section, subsection, sentence, clause, or phrase of the Ordinance is, for any reason, found to be invalid or unconstitutional, such finding shall not affect the remaining portions of this Ordinance.

SECTION 4

To the extent that the terms or provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance(s), motion, resolution, rule, or regulation governing the same subject matter thereof and such inconsistent and conflicting provisions of prior ordinances, motions, resolutions, rules, and regulations are hereby repealed. The City Council hereby declares that it would have passed this ordinance by section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

SECTION 5

This ordinance is an urgency ordinance and shall take effect immediately upon adoption. The City Council hereby declares that the need for adoption of this ordinance as an urgency measure is necessary to preserve the public health, safety and welfare and is based upon the following facts:

a. This ordinance will authorize the execution of an amendment to the contract between the California Public Employee Retirement System and the City regarding the retirement benefits to be paid to the members of CalPERS. Pursuant to law, the ordinance to amend the contract cannot take effect at for least twenty (20) days after the adoption of a resolution of intention to approve the amendment to the contract. The resolution of intention will be adopted by the City Council at its meeting of February 10, 2009.

b. Based on the cost analysis, the adoption of the plan amendment will result in an increase in the amount of benefits to certain CalPERS members, however, should result in overall savings to the City.

c. Based on the time the annual actuarial valuation reports are prepared by CalPERS, if this ordinance is not adopted as an urgency measure, the City would likely receive another annual actuarial valuation report prior to the effective date of the ordinance. In such event, the adoption of the amendment to the contract would be delayed further, and could result in a significant increase in the amount to be paid by the City to CalPERS.

SECTION 6

The City Clerk is hereby directed to cause publication of this ordinance within 15 days from its passage in a newspaper of general circulation, published and circulated in the City of Banning in accordance with Section 36933 of the Government Code, and thenceforth and thereafter the same shall be in full force and effect.

Introduced at a regular meeting of the City Council held on February 10, 2009, and approved and adopted this 10th day of February 2009 by the following four-fifths vote:

Robert E. Botts, Mayor
City of Banning, California

APPROVED AS TO FORM AND
LEGAL CONTENT

David Aleshire, Attorney
Aleshire & Wynder, LLP

ATTEST:

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Urgency Ordinance No. 1403 was duly introduced at a regular meeting of the City council of the City of Banning held on 10th day of February, 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, California



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT
Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Banning

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A. Paragraphs 1 through 17 are hereby stricken from said contract as executed effective July 2, 2007, and hereby replaced by the following paragraphs numbered 1 through 17 inclusive:

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 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).
4. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
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5. Prior to January 1, 1975, those members who were hired by Public Agency on a temporary and/or seasonal basis not to exceed 6 months were excluded from PERS membership by contract. Government Code Section 20336 superseded this contract provision by providing that any such temporary and/or seasonal employees are excluded from PERS membership subsequent to January 1, 1975. Legislation repealed and replaced said Section with Government Code Section 20305 effective July 1, 1994.
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8. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment on and after September 30, 2002 shall be determined in accordance with Section 21354.4 of said Retirement Law (2.5% at age 55 Full).
9. The percentage of final compensation to be provided for each year of credited prior and current service as a local police member shall be determined in accordance with Section 21362.2 of said Retirement Law subject to the reduction provided therein for Federal Social Security (3% at age 50 Modified).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a local fire member in employment prior to April 13, 1992 shall be determined in accordance with Section 21362 of said Retirement Law subject to the reduction provided therein for Federal Social Security (2% at age 50 Modified).
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 - b. Section 20042 (One-Year Final Compensation).
 - c. Section 20515 (Full Formula Plus Social Security) for past and future service for local fire members in employment on and after April 13, 1992 and for local miscellaneous members in employment on and after September 17, 2001. Legislation repealed said Section effective January 1, 2002.
 - d. Section 20903 (Two Years Additional Service Credit).
13. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on April 1, 1983. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.

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15. Public Agency shall also contribute to said Retirement System as follows:
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 - b. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
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17. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF BANNING

BY _____
LORI MCGARTLAND, CHIEF
EMPLOYER SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date _____

Attest: _____

Clerk _____

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Actuarial and Employer Services Branch
Public Agency Contract Services
P.O. Box 942709
Sacramento, CA 94229-2709
(888) CalPERS (225-7377)

**CERTIFICATION OF COMPLIANCE WITH
GOVERNMENT CODE SECTION 20903**

In accordance with Government Code Section 20903 and the contract between the Public Employees' Retirement System, the City Council of the City of Banning hereby certifies that:

1. Because of an impending curtailment of, or change in the manner of performing service, the best interests of the agency will be served by granting such additional service credit.
2. The added cost to the retirement fund for all eligible employees who retire during the designated window period will be included in the contracting agency's employer contribution rate for the fiscal year that begins two years after the end of the designated period.
3. It has elected to become subject to Section 20903 because of impending mandatory transfers, demotions, and layoffs that constitute at least 1 percent of the job classification, department or organizational unit, as designated by the governing body, resulting from the curtailment of, or change in the manner of performing, its services.
4. Its intention at the time Section 20903 becomes operative is to keep all vacancies created by retirements under this section or at least one vacancy in any position in any department or other organizational unit permanently unfilled thereby resulting in an overall reduction in the work force of such department or organizational unit.

THEREFORE, the City Council of the City of Banning hereby elects to provide the benefits of Government Code Section 20903 to all eligible members who retire within the designated period, March 2, 2009 through May 31, 2009.

**CITY COUNCIL
OF THE
CITY OF BANNING**

By: _____
Presiding Officer

Attest:

Clerk/Secretary

Date

CITY OF BANNING

MEMORANDUM



DATE: February 10, 2009

TO: Honorable Mayor and Members of the City Council

FROM: Matthew Bassi, Interim Community Development Director *[Signature]*

RE: **Council Agenda Item #1 – Public Hearings - Resolution No. 2009-09 to Establish Fees for Vacant and Distressed Buildings in the City of Banning**

Background

At the August 12, 2008 City Council meeting, the Council adopted Ordinance No.1394 which was an amendment to Section 8.12 of the Banning Municipal Code to address vacant and distressed buildings in the City of Banning. This Ordinance contained a provision that allowed the City to establish fees to oversee the administration of the vacant and distressed building program.

Staff scheduled and publically noticed adoption of Resolution No. 2009-09 for the February 10, 2009 City Council meeting. However, in finalizing the Resolution staff needs additional time to revise the Resolution with some minor changes. Therefore, staff is recommending that this item be continued specifically to the February 24, 2009 meeting, so it will not have to be advertised a second time.

Recommendation

1. Staff recommends that the City Council open the public hearing and continue this item to the February 24, 2009 City Council meeting.

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.

**CITY COUNCIL
PUBLIC HEARING**

Date: February 10, 2009
TO: Honorable Mayor and City Council Members
FROM: ~~✓~~ Timothy Steenson, Development Services Manager
SUBJECT: Update on the City's Neighborhood Stabilization Program

RECOMMENDATION:

That the City Council open the Public Hearing, and take public comment on the proposed participation in the Neighborhood Stabilization Program by the City of Banning.

BACKGROUND:

Status update since December 10, 2008

On December 10, 2008, a report was presented to the Council to introduce the opportunity to participate in the Neighborhood Stabilization Program (NSP) and receive any direction or public comment.

On January 13, 2009, the first of two required Public Hearings was set to review the City's participation in the NSP, but this hearing was postponed that evening due to a technical omission on the hearing notice. On January 12th, the City received correspondence from the State of California Department of Housing and Community Development (HCD) indicating that specific language was required in publishing Public Hearing Notices for the NSP Program that was not contained in the January 13, 2009 notice, therefore the public hearing was postponed to February 10, 2009.

Since January 13, 2009, Mayor Botts has corresponded with the City of Beaumont to request a partnership with the City of Banning to submit a joint application to HCD which would place both jurisdictions in Tier 2 of the program as explained further, in the latter portion of this report. Staff will notify the Council when the City receives a response to Mayor Botts' letter.

In addition, on January 23, 2009, the City received new correspondence from HCD informing applicants that HCD is revising its estimates of each jurisdiction's potential funding level which may increase/decrease based upon revised information received from the United States Department of Housing and Urban Development (HUD).

Program Description and 2008 Background

In the 2008 session, Congress passed HR 3221, the American Housing Rescue and Foreclosure Prevention Act of 2008. One of the provisions of this act is the Neighborhood Stabilization

Program, which provides \$3.9 billion in Community Development Block Grant funds, through the Department of Housing and Community Development (HCD), to state and local governments to help them deal with the neighborhoods and communities that are hardest hit by the foreclosure crisis. This funding will allow local municipalities to renovate and rehabilitate abandoned and foreclosed homes eliminating blight and reinvigorating and stabilizing the affected neighborhoods.

HR 3221 stipulates that each state and U.S. territory is entitled to a minimum amount of funding and that the actual amount be based on some specific criteria. The bill also provides funding to local municipalities based on that same specific criteria. This is somewhat different from the normal CDBG process whereby an applicant would develop a program including funding needs and submit for a grant of the specific amount the proposed program would cost. In this case the funding level is predetermined by a formula based on the criteria specified in HR 3221.

That criteria includes:

- those areas with the greatest number and percentage of home foreclosures
- those areas with the greatest number and highest percentage of homes financed by subprime mortgage related loans
- those areas identified as likely to face a significant rise in the rate of home foreclosures

Because of our size, based on the above criteria Banning did not have the kind of numbers that would qualify us for funding from a federal grant. The cities in Riverside County that received federal level funding were Moreno Valley, Riverside, Corona, and Hemet. These cities have built a significant number of new residential housing units over the past 5 years, so it goes that they would have significantly higher numbers than we have.

The State of California received a \$145 million dollar grant and the State Department of Housing and Community Development (HCD) will disseminate those funds along the same guide lines as the federal program and based on the same criteria. The State's plan will be a three tiered one. The funds must be used to benefit households that are at or below the middle, moderate, or low income levels.

The objective of Tier 1 of the State program is to allocate funds to the jurisdictions with the greatest need, as determined by HCD targeting the ones that did not receive a direct allocation from HCD. To receive a direct allocation under Tier 1, the jurisdiction's allocation based on the formula must equal or exceed \$1 million dollars. In Tier 1, HCD calculated allocations to cities and counties based on a combination of the number and per mortgage percentage of home foreclosures for each jurisdiction. To maximize the impact of these allocations, HCD set a minimum funding limit of \$1 million and set aside any allocations below this amount for Tier 2.

The cities in Riverside County that received Tier 1 allocations (\$1 million or more) are Perris, San Jacinto, and Indio.

The objective of Tier 2 is to allow jurisdictions that did not receive allocations under Tier 1 an opportunity to receive funds and to permit counties the choice to obtain unallocated funds assigned to their cities and unincorporated areas. The minimum joint or cumulative funding allocation for Tier 2 is \$1 million. To be eligible to receive an allocation under Tier 2, the jurisdiction's allocation based on the formula must be at least \$100,000 but less than \$1 million.

In Tier 2, HCD will permit jurisdictions with calculated allocations below the \$1 million limit to combine their allocations with other contiguous jurisdictions to meet or exceed the minimum threshold of \$1 million. If these jurisdictions are unable to meet the minimum threshold of \$1 million through a joint application with other contiguous jurisdictions, HCD will reallocate any amounts not used to their respective counties. The counties may then request the funds and distribute them in accordance with the needs of the jurisdictions.

Tier 3 allocates funds reserved for households at or below 50 percent of the area median income. To be eligible to apply for funds under Tier 3, the jurisdiction must be eligible to receive a direct allocation from HCD or through HCD's Tiers 1 or 2. For Tier 3, HCD set aside 25 percent of the State's allocation (\$36,250,000) to be used to fund housing for households at or below 50 percent of the area median income.

SUMMARY:

Banning's allocation is set at \$659,478, and thus qualifies us for participation in Tier 2 of the State's program. This means that we will have to "partner" with a contiguous jurisdiction to achieve the minimum \$1 million level required for direct funding from the State. The City of Beaumont was allocated \$441,455, so there is an opportunity for us to combine our allocation with the City of Beaumont to reach the minimum \$1 million level required for direct funding. There is also the opportunity for us to apply directly to HCD for additional funding under Tier 3 of the program which targets those households at or below 50 percent of the area median income.

Staff is currently engaged in dialogue with staff from the City of Beaumont and Habitat for Humanity. We are exploring the possibility of partnering with Beaumont to receive funding from the State and partnering with Habitat for Humanity to expend the funds we receive. Habitat for Humanity already has the organization in place to do the type of work these funds are targeted towards and to qualify the income groups meant to benefit from this program.

There are some very tight time constraints placed on the commitment of this funding so the longer it takes to get the funds, the shorter the time available for their use. Any funds not committed within the required time period would have to be returned to their source. The time frame allowed by the federal statute is 18 months for commitment of funds and 48 months to account for those expenditures.

Since the federal program is the source of all these funds the clock is already ticking. By the time the funds are dispersed to the State this time frame will be reduced by several months and then

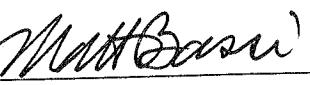
further reduced when the funds are dispersed from the State to the individual jurisdictions. HCD estimates that will have approximately 12 months to commit the funds and 36 months to expend and account for the funds.

If we are not able to "partner" with the City of Beaumont then our allocation will be available for Riverside County to request it from the State and then it could be allocated to Banning through the County Neighborhood Stabilization Program. This would further reduce the short time frames outlined above.

The State estimated that applications for this funding would be available mid-to-late January 2009 and that funds could be dispersed in March of 2009. However, as of this writing February 2, 2009, HCD has not released the application nor has a revised application date been provided by HCD.

This Public Hearing will fulfill the first of two Public Hearings required by the NSP. This Hearing will fulfill the Program Design Phase requirement and the second Public Hearing is to be held no sooner than 15 days after the first, which would suggest that the second Public Hearing for the Program Application Phase could be held on March 10, 2009 or at a later date.

PREPARED BY:


Timothy Steenson
Development Services Manager

REVIEWED BY:


Matthew C. Bassi
Interim Community Development Director

APPROVED BY:


Brian Nakamura
City Manager

Attachments:

1. HCD Memo RE: Change in Allocation Methodology (January 23, 2009)

*NEIGHBORHOOD
STABILIZATION
PROGRAM*

*JANUARY 23, 2009
HCD MEMO*

ATTACHMENT “1”

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF FINANCIAL ASSISTANCE

1800 Third Street, Suite 390
P. O. Box 952054
Sacramento, CA 94252-2054
(916) 322-1560
FAX (916) 327-6860



January 23, 2009

MEMORANDUM FOR: HCD Customers

THROUGH: Lynn L. Jacobs
Director

FROM: Chris Westlake *Chris Westlake*
Deputy Director

SUBJECT: Notice of Changes to the State of California's NSP
Allocation Methodology

At the request of the Department of Housing and Urban Development (HUD), the State of California's Department of Housing and Community Development is in the process of revising its methodology for the allocation of funds under the Neighborhood Stabilization Program (NSP). This revision will affect the allocations to jurisdictions that are part of an Urban County agreement and add additional jurisdictions to Tiers 1 and 2.

In the original Substantial Amendment, which described the proposed methodology for the distribution of the NSP funds, the State of California excluded from its direct funding the 46 jurisdictions that received allocations from HUD. In its assessment of this methodology, HUD noted that some of these 46 jurisdictions were part of Urban County agreements. Because of these agreements, HUD understood that any funds allocated to these jurisdictions also represented allocations to any cities included in their Urban County agreement. According to HUD, it adjusted its direct allocations to the jurisdictions to account for this understanding, which resulted in more NSP funds for these jurisdictions. As a result of these adjustments, HUD indicated that the State's proposed methodology, which excluded HUD's direct grantees from its Tier 1 funds, should also exclude the cities included in Urban County agreements in order to remain consistent with the stated objective of funding jurisdictions that had not received any of HUD's NSP funds.

As a result of HUD's concerns, the State of California is revising the methodology presented in the Substantial Agreement submitted to HUD on December 1, 2008. Once the State completes the necessary revisions and receives HUD's approval, the State will notify all of the jurisdictions of the changes to their allocations. Although the changes to the methodology will not require a formal public comment period or hearing, the State will conduct at least one public forum to explain the changes. At this time, the

State has not set a date for either the notification to the jurisdictions or the public forums. However, because HUD must act on all NSP applications by February 13, the State will make its announcements by this date.

This January 23rd memo is posted on our website, www.hcd.ca.gov. As soon as we have additional information, we will post it there and distribute it via e-mail to those on the distribution lists. If you have additional questions, please contact me at 916-322-1560.

**CITY COUNCIL
REPORT OF OFFICERS**

Date: February 10, 2009

TO: Honorable Mayor and City Council Members

FROM: Dave Aleshire, City Attorney
Matthew C. Bassi, Interim Community Development Director

SUBJECT: Urgency Ordinance No. 1402- Freeway Oriented Freestanding Signage
City Council Adoption of Urgency Ordinance No.1402 for the Approval of Interim Sign Regulations for the Development and Placement of Freeway-Oriented Freestanding Signage in the Downtown Commercial (DC), Highway Serving Commercial (HSC) and General Commercial (GC) Zones Located Along the Interstate (I-10) freeway in the City of Banning.

RECOMMENDATION:

Staff recommends adoption of Urgency Ordinance No. 1402 (Attachment 1) approving interim sign regulations for the development and placement of freeway-oriented freestanding signage in the Downtown Commercial (DC), Highway Serving Commercial (HSC) and General Commercial (GC) zones located along the Interstate (I-10) freeway in the city of Banning.

BACKGROUND:

Prior to the adoption of Ordinance No. 1377, the City had specific codes in place that regulated the placement and design of freeway-oriented signage along the I-10 freeway. The then existing regulations did not address sign uniformity nor visibility and added to the "sign clutter" present along the freeway. On September 25, 2007, the City Council adopted Ordinance No. 1377 (Attachment 2) which amended the Freeway Sign Ordinance. The new regulations were established for the purpose of improving visibility, eliminating "sign clutter" and addressing sign blight issues along the I-10 freeway.

The new regulations created six (6) "sign districts" where existing individual freeway-oriented signs along the I-10 freeway would be phased out and a program established to group all of the individual signs onto seven (7) large freeway-oriented signs. The amendment also established new height and size regulations and removed the limitation on the type of businesses allowed to have a freeway-oriented sign. Likewise, the City Council also adopted Resolution No. 2007-137(Attachment 3) on November 13, 2007, that approved a special design for new freeway oriented signs.

Since its adoption and approval, the "sign district" project has not been implemented. The cost to implement the ordinance is considerable and the project has not been funded by the City, nor has

any individual property owner proposed paying for a sign in their district. Subsequent to adoption there has only been one formal sign application submitted proposing to erect a freestanding freeway-oriented sign.

ANALYSIS:

Ordinance No. 1377 established “sign districts” within the City of Banning for freeway-oriented signs. As a result of the current sign ordinance regulations, the City is prohibited from approving any requests for freeway-oriented signs unless and until a “sign district” is implemented.

While the concept of establishing “sign districts” and the grouping of existing freeway-oriented signs onto larger signs has merit, and will achieve the City’s desired objective of improving visibility and eliminating sign blight, the cost of actually implementing “sign districts” has proven to present significant economic challenges for the City given the current economic climate. It is unlikely that either public or private financing is available to implement the project. In addition, existing business owners cannot be required to remove existing non-conforming freeway oriented signs unless compensated, and the inability to erect any signage outside of a “sign district” may impact revenue/economic opportunities of new businesses.

The City needs to have regulations in place that allow for the consideration of new freestanding freeway-oriented signage until a further analysis and study can be completed on the implementation of “sign districts”.

CONCLUSION:

Staff believes that the proposed Urgency Ordinance No. 1402 amending Banning Municipal Code Section 17.36.110 (b) (6), a - j will accomplishes two (2) things. First, it would give the Community Development Department the authority to approve new freeway-oriented signs subject to the location, height, size and sign area regulations that previously existed prior to the adoption of Ordinance No. 1377 on September 25, 2007. Second, it would remove the non-conforming status of existing freeway oriented signs approved prior to September 27, 2007, and eliminate the financial burden on the City for constructing the new freeway oriented monument signs as part of the removal process of these non-conforming signs which are inconsistent with the “sign district” concept.

FISCAL DATA:

The proposed Urgency Ordinance will not result in any fiscal impacts.

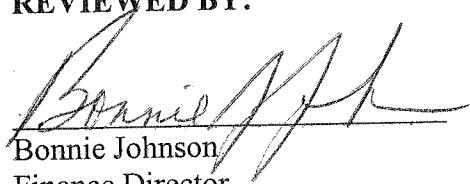
RECOMMENDED BY:



Matthew C. Bassi
Interim Community Development Director

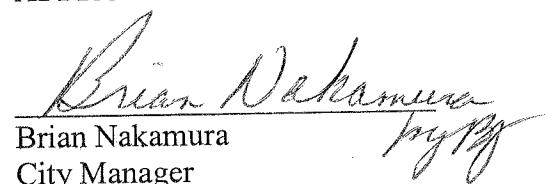
David J. Aleshire
City Attorney

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

CC Attachments:

1. Urgency Ordinance No. 1402
2. City Council Ordinance No. 1377
3. Resolution No. 2007-137

ATTACHMENT 1

URGENCY ORDINANCE NO. 1402

ORDINANCE NO. 1402

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADOPTING INTERIM DEVELOPMENT REGULATIONS FOR THE PLACEMENT OF FREEWAY ORIENTED FREESTANDING SIGNS

WHEREAS, the City of Banning (“City”) has long recognized the use and value of freeway oriented signage for business development along Interstate 10; and

WHEREAS, prior to September 25, 2007 the City sign ordinances allowed the use and placement of freestanding freeway oriented signs subject to location, height, size and sign area requirements; and

WHEREAS, historically the use of signage has been utilized by merchants and citizens as a significant form of business development; and

WHEREAS, the use of such signage resulted in decreased visibility and non-uniformity in appearance and location of signage along the Interstate 10 corridor; and

WHEREAS, on September 25, 2007, the City of Banning adopted Ordinance No. 1377 amending sections 9009.06(G), 9109.11 (2) (f) of the Banning Municipal Code which provides for (1) the creation of six (6) sign districts, (2) grouping of individual signs onto seven (7) large freeway oriented signs of similar size and shape, and (3) the establishment of new size and height regulations without any limitation on the type of businesses allowed to have signage.

WHEREAS, the purpose of creating “sign districts” was to preserve the aesthetics of the City, create uniformity and improve sight visibility of freeway oriented signs and established new size and height regulations; and

WHEREAS, to date there has only been one request for additional freeway oriented signage; and

WHEREAS, the adoption of Ordinance No. 1377 precludes the approval of any freeway oriented signs subsequent to September 25, 2007 and by its purpose and language likewise prevents the placement of any new signage that is not within a sign district; and

WHEREAS the City has not begun to implement the use of “sign districts” and has no other options available to merchants for freeway oriented sign placement; and

WHEREAS, the City recognizes that the implementation of “sign districts” which require the removal of existing non-conforming freeway signs and construction of new “sign districts”, presents significant financing challenges and could only be accomplished in the current economic environment at considerable cost to the City; and

WHEREAS, in light of the severely declining economy within the State of California in general, and the City of Banning specifically, the City Council believes that the current standards set for the use of signage may not appropriately take the economy, welfare and concerns of businesses and citizens into consideration, and pose an immediate and current threat to the public health, safety or welfare; and

WHEREAS, the City does not wish to immediately implement the "sign district" concept wishes to study it further, and finds that in the interim it is in the best interest of the City and its citizens to allow new freeway oriented signs subject to location, height, size and sign area requirements consistent with pre-September 25, 2007 sign ordinances; and

WHEREAS, the City Council desires to respond to the concerns of its citizens regarding the economic impact of freeway oriented signage on local businesses and believes that it is in the best interest of its citizens to put forth a sign ordinance that addresses the immediate concerns of businesses desiring to advertise; and

WHEREAS, the City Council desires that staff undertake a comprehensive study and analysis of possible public and private funding sources for later implementation of "sign districts" along the Interstate 10 corridor; and

WHEREAS, Government Code Sections 65858, 36934, and 36937 expressly authorize the City Council to adopt an urgency ordinance and to impose interim regulations which are applicable to freeway oriented signage, until updated regulations are adopted.

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

SECTION 1. Above-Recitals. The above recitals are true and correct.

SECTION 2. Effectiveness of Ordinance. This Interim Urgency Ordinance shall be effective for forty-five (45) days from and after the date of its adoption, pursuant to the authority conferred upon the City Council by Government Code Section 65858(a), and may thereafter be extended twice provided notice is given pursuant to Government Code section 65090 and a public hearing is held thereon.

SECTION 3. Urgency Declaration. The City Council finds and determines that the City's current standards for freeway oriented signage cannot be immediately implemented because to do so would pose a severe and significant economic hardship on the City, residents and businesses thereby creating a current and immediate threat to the public health, safety or welfare. Thus, the City Council directs staff to undertake a comprehensive study and analysis of development standards to be applied to freeway oriented signage, possible public and private funding sources for later implementation of "sign districts" along the Interstate 10 corridor and development of new freeway oriented sign standards. The study shall be completed within a reasonable time.

SECTION 4. Urgency Findings. In adopting this Interim Urgency Ordinance, the City Council finds and determines that the adoption of this Interim Urgency Ordinance is necessary to protect the public safety, health, and welfare, as those terms are defined in Government Code Section 65858(a), for the reasons set forth below in this Section 4.

(a) The City Council of the City of Banning has determined that the current economy, as well as community and merchant concerns about the economy and ability to generate interest and advertise businesses within the City through freeway oriented signage, has resulted in an urgent need to re-evaluate the immediate implementation of Section 17.36.110 (B) (6) subsections a-j of the Banning Municipal Code, Sign Ordinances and Regulations, and their direct effect upon the public safety, health, and welfare.

(b) The City Council of the City of Banning has determined that the use of freeway oriented signage has a direct relationship and impact on the City's ability to generate revenue, which in turn affects the general welfare and economic well being of the residents of the City of Banning.

(c) The City Council of the City of Banning has determined that without the proposed ordinance there will be an immediate, negative and detrimental impact on the welfare of the City.

(d) The City Council of the City of Banning has determined that there is a need to further study what impact, if any, a "sign district" has on the public safety, specifically on those traveling through the City of Banning on Interstate 10 and who reside near the freeway.

(e) The City Council of the City of Banning has determined that the use of freeway signage is an important aspect of the success of freeway oriented businesses and that freeway oriented signs provide positive benefits to motorists as they easily advertise businesses along the freeway to prospective customers.

SECTION 5. Interim Regulations. From and after the date of this Interim Urgency Ordinance, until the adoption of revised regulations, the Planning Commission and the City Council shall authorize the Community Development Department to consider requests for freeway oriented signage in accordance with the following regulations:

(a) The consideration of freeway oriented signage shall be permitted in accordance with Banning Municipal Code 17.36 to the extent consistent and applicable to the adoption of this urgency ordinance.

(b) Banning Municipal Code Chapter 17.36.110 (B) (6) subsections a - j, shall be amended to read as follows:

6. Freeway-oriented freestanding sign. A freestanding sign proposed to be located and designed in such a manner as to be viewed by the freeway traveling public and limits its advertising to such services as food, lodging and automotive services shall be subject to the following regulations:

- a. Said business must be a freeway-oriented business, as determined by the Planning Commission.
- b. Said business must be easily accessible to a freeway off-ramp, as determined by the Planning Commission.
- c. Said sign shall not block another freeway oriented freestanding sign. The applicant shall be responsible for providing the Planning Commission with evidence to assure satisfactory compliance with this requirement.
- d. Said sign shall be located in a planter area not less than fifty (50) square feet with one dimension being at least four (4) feet, unless from the evidence presented to the Planning Commission it can be determined that the area is not visible from Ramsey Street, or the absence of the planter shall not be detrimental to the appearance of the area.
- e. Said sign shall not exceed an overall height of fifty-five (55) feet.
- f. Said sign shall not exceed one hundred and seventy-five (175) square feet per display face (a variance not to exceed an additional fifty (50) square feet may be possible providing the applicant meets the requirements for a variance as outlined in Article 17 of the Municipal Code.

SECTION 6. CEQA Finding. The City Council hereby finds that there is no possibility that the adoption of this Interim Urgency Ordinance will have a significant effect on the environment. This finding is supported by the following facts: (1) this ordinance authorizes the undertaking of feasibility and planning studies; and (2) any development which may occur pursuant to the interim standards will not be approved until a complete environmental evaluation of the proposed project has occurred. This Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14 California Code of Regulations, Section 15262.

SECTION 7. Grandfathering. This Interim Urgency Ordinance shall only apply to sign applications for new freeway oriented signage for development projects that have been issued a Certificate of Occupancy by the City subsequent to September 27, 2007. This Interim Urgency Ordinance shall not apply to any project which has been previously approved by the City or its constituent boards, commissions or officials so long as such approvals remain valid, nor shall it apply to any application for discretionary land use development entitlements, or zoning variances which were approved and that were issued a Certificate of Occupancy by the City prior to the effective date of this Interim Urgency Ordinance.

SECTION 8. Vote Required for Adoption of Ordinance. This Interim Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Banning by Government Code Section 65858, 36934 and 36937, and shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council.

PASSED, APPROVED, AND ADOPTED as an URGGENCY ORDINANCE this 10th day of February, 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 Urgency Ordinance No. 1402 was duly adopted at a regular meeting of the City Council of the City of Banning, held 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

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ATTACHMENT 2
ORDINANCE NO. 1377

ORDINANCE NO. 1377

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING SECTIONS 9009.06(G), 9109.11 (2)(f), AND 9109.15 OF THE MUNICIPAL CODE REGARDING FREEWAY ORIENTED FREESTANDING SIGN PROVISIONS.

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

SECTION 1. Section 9109.06(G) of the Banning Municipal Code is hereby amended to read in its entirety as follows:

“G. New freestanding signs, except for new freeway oriented freestanding signs permitted pursuant to Section 9109.11(2)(f).”

SECTION 2. Section 9109.11(2)(f) of the Banning Municipal Code is hereby amended to read in its entirety as follows:

“f) Freeway Oriented Freestanding Sign. A freeway oriented freestanding sign (“freeway sign”) is a sign located and designed in such a manner as to be viewed by the public traveling to, from or through the City of Banning on Interstate 10. To prevent visual clutter and preserve the aesthetics of the City, there shall be no more than seven freeway signs in the City. Freeway signs shall be located along the Interstate 10 right of way in accordance with the Freeway Oriented Freestanding Sign District Map, as illustrated in section 9109.11(2)(f)(10). Freeway signs shall be subject to the following regulations:

- 1) The freeway sign shall be designed in accordance with the City’s Freeway-Oriented Freestanding Sign Design Criteria, as illustrated in 9101.11(2)(f)(11).
- 2) The freeway sign shall accommodate advertising displays for multiple businesses, and shared use of the freeway sign, including any video displays, shall be required.
- 3) The freeway sign shall not block any portion of another freeway sign from the view of any vehicle driver or passenger traveling on Interstate 10. The applicant shall be responsible for providing the Director with evidence to assure satisfactory compliance with this requirement.
- 4) The freeway sign shall be located in a planter area not less than 50 square feet with one dimension being at least four feet.
- 5) The freeway sign shall not exceed an overall height of 55 feet as measured from the Interstate 10 surface road grade.
- 6) The freeway sign’s display faces shall not exceed 180 square feet per display face, and no variance to this maximum dimension may be granted.
- 7) Video displays, if used, shall be turned off between the hours of 10:00 PM and 6:00 AM.
- 8) Sound shall not be permitted.
- 9) Freeway Oriented Freestanding Sign District Map. [Exhibit “A”]

10) Freeway Oriented Freestanding Sign Design Criteria shall be established by City Council resolution.

SECTION 3. Section 9109.15 of the Banning Municipal Code is hereby amended to read in its entirety as follows:

"(a) Any sign that does not conform to the requirements of this Section, either by variance previously granted or by conformance to the existing sign regulations at the time the initial permit for the sign was issued, shall either be removed or brought up to code requirements within 10 years from the date it became noncompliant with the Section. Notwithstanding the foregoing, the City shall not require a nonconforming sign to be removed pursuant to this Section without paying compensation to the sign owner, if compensation is required by the Outdoor Advertising Act (Business and Professions Code section 5200 et seq.), or Division 3, Chapter 2.5 ("On-Premises Advertising Displays") of the Business and Professions Code, or compensation is otherwise required by Federal or State law.

(b) In accordance with California Business and Professions Code section 5499, no legal nonconforming sign will be required to be removed on the sole basis of its height or size if special topographic circumstances would result in a material impairment of visibility of the sign or the owner's or user's ability to adequately and effectively continue to communicate to the public through the use of the sign. The owner or user may maintain the sign at the premises and at a location necessary for continued public visibility at the height or size at which the sign was previously lawfully erected pursuant to all applicable codes, regulations and permits. Any such sign will be deemed to be in conformance with this article."

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. NON-EXCLUSIVITY. Nothing in this Ordinance shall limit or preclude the enforcement of other applicable laws.

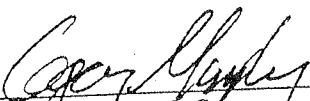
SECTION 6. EFFECTIVE. This Ordinance shall take effect thirty (30) days after its enactment in accord with California law.

SECTION 7. 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 9th day of October, 2007.


Deborah Franklin, Mayor Pro Tem

APPROVED AS TO FORM AND
LEGAL CONTENT:



Burke, Williams & Sorensen, LLP
George H. Williams
City Attorney

ATTEST:



Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

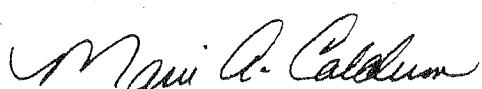
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1377 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 25th day of September, 2007, and was duly adopted at a regular meeting of said City Council on the 9th day of October, 2007, by the following vote, to wit:

AYES: Councilmembers Botts, Franklin, Hanna, Machisic

NOES: None

ABSTAIN: None

ABSENT: Mayor Salas



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

ATTACHMENT 3
RESOLUTION NO. 2007-137

RESOLUTION NO. 2007-137

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADOPTING A FREEWAY-ORIENTED FREESTANDING SIGN DESIGN IN ACCORDANCE WITH SECTION 9109.11 (2)(f)(10) OF THE MUNICIPAL CODE.

WHEREAS, at the September 25th meeting, the City Council adopted Ordinance No. 1377 approving Zone Text Amendment #07-97504, amending Sections 9009.06(G), 9109.11(2)(f) and 9109.15; and

WHEREAS, Section 9109.11(2)(f)(10) of this Ordinance requires the design to be adopted by resolution.

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

SECTION 1. In accordance with the provisions of Section 9109.11(2)(f)(10) the following figure (Figure 1) represents the Banning Municipal Code Freeway Oriented Freestanding Sign Design:



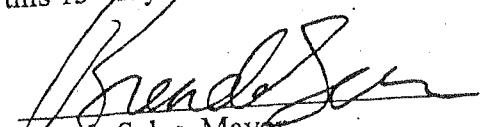
Figure 1: Freeway-Oriented Freestanding Sign Design

SECTION 2. CITY COUNCIL ACTIONS.

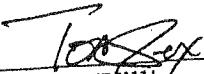
The City Council hereby takes the following actions:

1. Approval of Freeway-Oriented Freestanding Sign Design. The City Council hereby approves the Freeway-Oriented Freestanding Sign Design.

PASSED, APPROVED AND ADOPTED this 13th day of November, 2007.

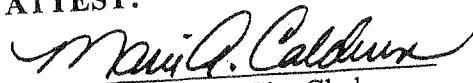

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:



Burke, Williams & Sorensen, LLP
Tom Rex
City Attorney

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. 2007-137, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13th day of November 2007, by the following vote, to wit:

AYES: Councilmembers Botts, Franklin, Hanna, Machisic, Mayor Salas
NOES: None
ABSENT: None
ABSTAIN: None



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