

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

January 26, 2010  
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**

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

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

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)*

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

### PRESENTATIONS:

1. Status of the fixed Base Operator (FBO) for the Banning Municipal Airport – presented by Cory Hazlewood, C & S Engineers, Inc. (ORAL)
2. BPAL – Shop with a Hero Program Presentation (ORAL)

### **III. 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 Item 1 through 8  
Items to be pulled \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ for discussion.**  
*(Resolutions require a recorded majority vote of the total membership of the City Council)*

1. Approval of Minutes – Regular Meeting – 12/08/09. .... 1
2. Report of Investments for December 2009 ..... 18
3. Approval of Accounts Payable and Payroll Warrants for Month of  
December 2009 ..... 31
4. Ordinance No. 1414 – 2<sup>nd</sup> Reading: An Ordinance of the City Council  
of the City of Banning Approving Zone Text Amendment No. 09-97503  
Amending Section 17.08.100 and Section 17.44.010, Table 17.44.010  
of the Banning Municipal Pertaining to Second Units ..... 33
5. Ordinance No. 1418 – 2<sup>nd</sup> Reading: An Ordinance of the City Council of  
the City of Banning, California, Amending Section 3.16.030 and Adding  
Section 3.16.140 of Chapter 3.16 of the Banning Municipal Code. .... 37
6. Authorization to Fill a Vacant Position – Buyer..... 41
7. Support the Amendment to the California Conservation and Recreation  
Act ..... 42
8. Resolution No. 2010-06, Making Certain Finding that the City's Water  
Efficient Landscape Ordinance is as Effective as the States Model  
Water Efficient Landscape Ordinance (MWELO) In Connection with  
AB 1881 Water Conservation in Landscaping Act ..... 44

- Open for Public Comments
- Make Motion

### **IV. PUBLIC HEARINGS**

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

1. One Year Temporary Suspension of Fifty Percent (50%) in Development Impact Fees for Residential and Non-Residential Development.

Staff Report ..... 107

**Recommendation: That the City Council discuss the report on temporary suspension of development impact fees for residential and non-residential development, including consideration for supporting extension of the current incentive program to defer the collection of impact fees at the time of occupancy as opposed to suspending the collection of a certain percentage of the impact fees. Staff recommends the City continue collecting the full development impact fee and extend the current deferral incentive program for another year.**

2. Adoption of Ordinance No. 1419 to Extend Urgency Ordinance No. 1406 for an Additional 10 months and 15 days for Interim Sign Regulations for the Development and Placement of Freeway-Oriented Signage Located along the Interstate (I-10) Freeway in the city of Banning.

Staff Report ..... 118

**Recommendation: Adoption of Ordinance No. 1419.**

**Mayor asks the City Clerk to read the title of Ordinance No. 1419:**

*"An Ordinance of the City Council of the City of Banning, California, Extending Urgency Ordinance No. 1406 for an Addition 10 Months and 15 Days and Extending the Interim Development Sign Regulations for the Placement of Freestanding Freeway Oriented Signs."*

**Motion: I move to waive further reading of Ordinance No. 1419**  
(Requires a majority vote of Council)

**Motion: I move that Ordinance No. 1419 pass its first reading.**

## **V. REPORTS OF OFFICERS**

1. Sam Racadio, Interim City Manager
    - A. Appointment of Economic Development Committee Members To Staggered Terms ..... 129
- Recommendation: That the City Council assign a staggered term to each of the five recently appointed members of the Economic Development Committee pursuant to Ordinance No. 1411 and as recommended in this report.**

## **VI. ITEMS FOR FUTURE AGENDAS**

### **New Items –**

### **Pending Items –**

1. Schedule Meetings with Our State and County Elected Officials
2. Set New Date for Joint Meeting with Banning School Board (*Date to be determined*)
3. Massage Ordinance (*ETA 4/27/10*)
4. Budget Workshop (*ETA 3/9/10*)
5. Information of rotation of mayor position and also direction election of the mayor. (*ETA 3/9/10*)
6. Look at Council Assignments for a set term (*ETA 3/9/10*)

## **VII. CLOSED SESSION**

1. The City Council will meet in Closed Session pursuant to Government Code Section 54957 with regard to the following personnel issue: Final Selection of City Manager

## **VIII. ADJOURNMENT**

*Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Thursday, 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

12/08/09  
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Botts on December 8, 2009 at 6:37 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Sam Racadio, Interim City Manager  
David Aleshire, City Attorney  
Kirby Warner, Interim Finance Director  
Hoyl Belt, Human Resources Director  
Duane Burk, Public Works Director  
Zaiton Abu-Bakar, Community Development Dir.  
Leonard Purvis, Police Chief  
Hoyl Belt, Human Resources Director  
Fred Mason, Electric Utility Director  
Jeff Stowells, Battalion Chief  
Dr. John McQuown, City Treasurer  
Marie A. Calderon, City Clerk

The invocation was given by Interim City Manager Racadio. Councilmember Robinson invited the audience to join him in the Pledge of Allegiance to the Flag.

PUBLIC COMMENTS/CORRESPONDENCE /ANNOUNCEMENTS

Report by City Attorney – There was none.

Report by City Manager

City Manager said that there will not be a second meeting in December and the next regular City Council Meeting will be January 12, 2010.

PUBLIC COMMENTS – *On Items Not on the Agenda*

Bill Dickson, 5700 W. Wilson addressed the Council stating that there is five days until the Hispanic Chamber of Commerce Toy Giveaway. They are expecting a larger crowd this year due to the economic conditions and last year there were over 1200 children. They appreciate the financial help that they are receiving from the City. This event will be held on this Sunday from 1 to 5 p.m. at Repplier Park. Come out and support this fantastic program.

Don Smith, Co-Chairman of the "Good for Banning, Yes on Measure L Committee". He said that later on the agenda is the adoption of an emergency ordinance to effectuate that vote. He thanked everyone that was involved and introduced some of the members that were on that committee. He said that they were able to raise slightly over \$11,000 to run the campaign from donations and they didn't spend it all. He said that Dr. John McQuown was very cautious of making sure that they stayed within their budget and that they didn't exceed how much they actually raised. Some money came in late that they didn't actually spend and in fact, they were left with \$753.29 in their account. The Executive Committee took suggestions and they voted on what the best use of the funds were and ultimately decided that since the money was raised to help solve the money problems in the City's General Fund that they donate a Cashier's Check for \$753.29 to the General Fund. He also gave the City a disk of the different campaign literature that they used so that nine years from now when somebody has to start over they will have a starting place. Mr. Smith gave the check and the disk to the City Clerk.

Amy Herr, 964 Dorothy Anna and Executive Director of the Boys and Girl's Club addressed the Council inviting them to their Second Annual Martin Luther King Jr. Day Making It a Day On and Not a Day Off. It will be held on January 18, 2010 at 10:00 a.m. They will be having a neighborhood clean-up and barbeque and some speakers. It will be held on Roosevelt Williams Park and she encouraged everyone to come and join them.

#### CORRESPONDENCE:

There were none.

#### ANNOUNCEMENTS/COUNCIL REPORTS: *(Upcoming Events/Other Items and Report if any)*

Councilmember Franklin –

- Last week she had the opportunity to attend recognition of community builders. One out of thirty-seven people throughout the Inland Empire were selected from Banning and that was Marion Johnson. She received a nice picture item from a world-renown artist, Charles Gibb, as well as, a proclamation from our Legislature.
- Saturday was "Shop with a Hero" and 22 students from Banning and 22 students from Beaumont were given a ride through the two cities, treated to a breakfast and shopped at Wal-Mart with \$100, one dollar bills.
- After the holidays there is going to be a meeting in Moreno Valley on January 9<sup>th</sup> on "How to Manage Your Paycheck." It is free and will be held from 9:30 a.m. to Noon at the Moreno Valley Community Education Center, 23910 Alessandro Blvd.

Councilmember Machisic –

- Riverside County has put out their Progress Report and it covers every city in regards to housing units, medium priced homes, building permits, employment, etc. and he happened to read through Banning and it just goes to show you the economic circumstances and in medium home price in 2006 it was \$300,000 and through June 2009 it is \$128,000. There are also some other interesting facts and Riverside County is the fourth largest county in the state and it is the 11<sup>th</sup> largest in the United States.
- He said that at the WRCOG Meeting Dave Willmon from the League of California Cities stated that the League is getting together with some others to propose legislation through the initiative petition on the November 2010 election to stop all takeaways from cities by the State. He also addressed a recycling program that was mentioned in the WRCOG bulletin about Banning Recycling Household Batteries and he thinks that is a compliment to Duane Burk and his department. He also shared some interesting facts in regards to the census and the response rate for Riverside County in that the response rate for Riverside County in 2000 was 64% and it is estimated that for every person counted by the census your jurisdiction receives \$10,000 dollars a person over a ten-year period between census counts and if 10% of the people are not counted in Riverside County, this city and county will not be eligible for approximately \$2 billion dollars over ten years. It is estimated that Riverside County and its cities lost tens of millions of dollars of state and federal money each year. Also, if we do not get to that 60% and exceed the 2000 census, California will lose a seat in the House of Representatives to either Minnesota or South Carolina. Also, remember that we reduced the TUMF fee to 50% and a Nexus Study was done and the study said that a single family home should pay about \$8,873 and under the 50% reduction they are looking to collect \$4,473.00 for a year. Also there is another interesting wrinkle in this thing that there are some cities that are not adopting the 50% reduction so WRCOG is trying to figure out how to divide the money with the cities that don't pay the full amount.

#### PRESENTATIONS:

1. Presentation of Proclamation to Brian Santiago Flores, Banning High School Cross Country Runner

The Mayor and Council at this time presented to Mr. Flores a proclamation for his winning successes in Cross Country running for Banning High School throughout the 2009 season and for being the first Cross Country runner from Banning High School to participate in the State Finals. He was also presented with a Varsity Jacket from his Cross Country Coach, Ron Duncan.

#### REORGANIZATION OF CITY COUNCIL

City Clerk stated that nominations for the office Mayor are now in order and a second to the nomination is not required.

Councilmember Robinson nominated Councilmember Robert Botts stating that with a proud history of this last year and a prosperous future of this next year he feels he is the best nomination that we have.

Agency Secretary seeing no more nominations called for a motion that nomination be closed.

**Motion Machisic/Robinson that nominations be closed. Motion carried, all in favor.**

**City Clerk took a roll call vote in alphabetical order and the vote was unanimous for Councilmember Robert Botts to continue as the Mayor for another one year term.**

Mayor Botts called for nominations for the office of Mayor Pro Tem and stated that nominations are now open and a second to the nomination is not required.

Boardmember Robinson nominated Councilmember Hanna.

Mayor Botts seeing no more nominations called for a motion that nominations be closed.

**Motion Machisic/Robinson that nominations be closed. Motion carried, all in favor.**

**City Clerk took a roll call vote in alphabetical order and the vote was unanimous for Councilmember Hanna to continue as the Mayor Pro Tem for another one year term.**

Mayor Botts said thank you to his colleagues though they don't always agree and occasionally they will have a three to two or a four to one vote. If you look back over this past year during tough, tough economic times, we have accomplished so much. And when he said "we" he means City staff with a little direction of policy setting by this Council. He thanked his colleagues and every City employee.

Mayor Pro Tem Hanna said she also appreciates the opportunity although the Mayor doesn't give her a lot to do because he is at every meeting and she thanks him for his leadership. She also said that she wanted the Council to consider if they are interested at all for next year and she said this before and will keep saying it until they do it and that is that they select a person to serve as Mayor for up to two years and she looks at other cities and other councils and really appreciate and feel that another way to go is to rotate the mayor position rather than it be a selection process. She said that they are all elected equally and they are all council members and she thinks that they all deserve the chance to be a mayor. She finds that cities that rotate they know who will be the mayor for a year and it rotates. To set up they probably need to do some figuring and she will be happy to be at the bottom of the list and she is not doing it to become mayor. She would suggest that they do a rotation and that it is know in the future and if anyone has a circumstance where they don't for some reason want to be mayor, they can pass it on to the next person. She would like the Council to consider it and she what they think about it.

#### CONSENT ITEMS

Councilmember Robinson pulled Consent Items 4 and 8 for discussion. Interim City Manager said that they would like to continue Consent Item 4 until the next meeting. Mayor Botts said that he would like to pull Consent Item No. 5. Mayor Pro Tem Hanna pulled Consent Item No. 6.



1. Approval of Minutes – Regular Meeting – 11/24/09

Recommendation: That the minutes of the regular meeting of November 24, 2009 be approved.

2. Report of Investments for October 2009

Recommendation: That the City Council receive and place these required monthly Report of Investment on file.

7. Resolution No. 2009-109, Approving Payment in the Amount of \$3,648 for Participation in the Riverside County District Attorney's Office "Project Safe Neighborhoods" During FY 08-09.

Recommendation: That the City Council adopt Resolution No. 2009-109.

9. Accept the Right-of-Way Dedications from Assessor's Parcel Numbers: 541-290-003, 541-290-004, 541-290-005; 541-290-006, 541-290-007, 541-290-008 and 541-290-011 (*Airport Drainage Improvements and Lincoln St. Improvements*).

Recommendation: That the City Council accept the Right-of-Way dedications from the following Assessor's Parcel Numbers and direct the City Clerk to accept and record said dedications: 1) 541-290-003; 2) 541-290-004; 3) 541-290-005; 4) 541-290-006; 5) 541-290-007; 6) 541-290-008; and 7) 541-290-011.

**Motion Hanna/Machisic to approve Consent Items 1, 2, 3, 7 and 9.** Mayor Botts opened the item for public comments.

Lyndon Taylor addressed the Council stating that he would like to request that the Council remove from the Consent Calendar Item No. 3 dealing with the Schoen litigation settlement in order to address two items that he thinks are worthy of the Council's discussion. This agenda item is about a settlement of a law suit brought forward by a former tenant of the Oddfellows Building Mrs. Schoen who claims that she was falsely evicted. He sued the owner of the building Robert Freeman and Dirk Dorning and their representative companies, as well as, our City. First of all for the record Councilmember Hanna owns and operates a consulting firm named Hanna and Associates and it has been alleged that Mr. Ed Ball the husband of Councilmember Hanna and other representatives of Hanna and Associates served in a consulting capacity to Mrs. Freeman one of the owners of the building and also other persons associated with the ownership of the building. Furthermore, Form 460 – California Campaign Donations Statement by Councilperson Hanna reports that Freeman made a campaign contribution to her last campaign. Assuming the consulting relationship is correct and in light of the reported campaign contribution it would seem appropriate that Councilperson Hanna refrain from voting on this issue so as to avoid a potential conflict of interest. Second, in the matter of payment of the legal settlement of \$50,000 from prior approved redevelopment funds he would ask if such use of those funds is proper and legal under the regulations and guidelines governing redevelopment expenditures. He would appreciate an explanation of the City's

attorney as to whether or not this action indemnifies the City from any further legal entanglements involving either the plaintiff and/or the landlords and our City. In short, does the \$50,000 conclude the City's liability in this matter?

Mayor Pro Tem Hanna said that she has no idea what he is talking about and Hanna and Associates have never done any work with Mrs. Freeman and she met Mrs. Freeman for the first time a week ago and her husband, Ed Ball, has not done any work for Mrs. Freeman and there is no conflict of interest.

City Attorney said the question is are you going to pull it from the agenda. We could then be happy to comment on the questions raised.

There was Council consensus to pull Consent Item No. 3.

**Motion Hanna/Machisic restated to approve Consent Items 1, 2, 7 and 9. Motion carried, all in favor.**

**Motion Franklin/Robinson to continue Consent Item No. 4, Resolution No. 2009-103, Awarding the Construction Contract for Project No. 2009-04, Street Improvements and Sidewalk Improvements at Various Locations.** Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

3. **Approval of Settlement Agreements for Schoen Litigation**

Councilmember Franklin asked the City Attorney to respond to the questions that were brought up by Mr. Taylor.

City Attorney stated that there were basically three issues that were raised and he went over each of those issues give an explanation and said that the settlement agreement provides that neither party, neither the property owner nor the Schoen parties, can come back against the Agency for anything so the settlement agreement has a complete release and hold harmless.

**Motion Robinson/Machisic to approve Consent Item No. 3, to approve the two settlement agreements in Schoen v. Dorning, et al., Riverside Superior Court Case No. INC 079177. Motion carried, all in favor.**

5. **Resolution No. 2009-104, In Support of the Local Taxpayer, Public Safety and Transportation Protection Act of 2010.**

Mayor Botts said he asked that this be pulled because the State continues to raid cities and counties and special districts. They have taken hundreds of thousands of dollars out of property tax from the City in the amount of \$437,000 to try to balance the State budget. The City was able to recoup that through a mechanism that was put together where we will borrow that money and it has been approved and we will get the money back and basically made whole. They still want to come after us with a million or so in redevelopment money and it is not just

Banning but every city in the state. He said that the public needs to know what we as a City are trying to do along with the League of California Cities and others.

Kirby Warner, Interim Finance Director said that this particular resolution has been requested from all agencies throughout the state because they are anticipating trying to put on a new ballot measure on for November, 2010. He said the wording of this one is interesting because what the State has become very, very good at is wording laws that allow them to get around all of the previous propositions that the voters have voted on that say don't take local government's money and yet they continue to do and they are doing it again this year and they have many lawsuits on it. Mr. Warner read a portion of the resolution for the benefit of the audience in regards to prevent State politicians from taking tax revenues dedicated to funding local government activities including redevelopment. This particular resolution is to stop this from happening in the future.

**Motion Machisic/Franklin hat the City Council adopt Resolution No. 2009-104, in Support of the Local Taxpayer, Public Safety and Transportation Protection Act of 2010.** Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

6. Resolution No. 2009-106, Awarding a Professional Services Agreement for the Urban Water Management Plan Update for the City's Water Utility to Geoscience Support Services, Inc.

Mayor Pro Tem Hanna said that this is a really important plan and the basis for any future development. She asked if this company was the same one that did the last water management plan. Mr. Burk said no it is not.

Mayor Pro Tem Hanna said that they were last told from Mr. Earhart that we shouldn't do our water management plan until the San Geronio Pass Water Agency (SGPWA) has completed there's and is that in process or completed.

Mr. Burk said that the SGPWA is in the process right now with a company called CDM and basically this urban water management plan between all the regional purveyors are in the process right now either updating their current plan or staring over from ground zero. And all of those have to overlap and work together within a regional approach and this is kind of what this document is about.

City Attorney said that they have been talking with the SGPWA concerning having a technical committee where our experts would exchange information to make sure that we have a coordinated and consistent plan and they hope to have a meeting soon and possibly in January further that effort.

There was some further Council and staff discussion in regards to this item in regards to history, the contact with Geoscience and if there was a more recent engineer's report from the SGPWA on the water conditions. There were also some comments in regards to working on the flume issue. City Attorney said that one of the things he would ultimately like to

accomplish in terms of improving the process is that when the Council acts on things such as this that you actually have the contract in front of you. He said that he would request that in terms on acting on this tonight that you stipulation that the contract be in a form approved by the City Attorney and have a defined scope of work. He will make sure that the Council gets a copy of the contract when it is executed.

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

**Motion Hanna/Robinson to approve Consent Item No. 6, to adopt Resolution No. 2009-106, Awarding a Professional Services Agreement for the Urban Water Management Plan Update for the City's Water Utility to GEOSCIENCE Support Services, Inc. in a form as approved by the City Attorney. Motion carried, all in favor.**

8. Notice of Completion for Project No. 2006-02, "Storm Line D" Improvements on Ramsey Street, Martin Street and Williams Street.

Councilmember Robinson said in the completion of the Storm Line D it says that the street will be striped. Are they still going to do that because it hasn't been done out on to Ramsey Street. Mr. Burk said that they will get it striped.

**Motion Robinson/Hanna to approve Consent Item No. 8, to accept Project No. 2006-02, Storm Line D Improvements on Ramsey Street, Martin Street and Williams Street, as complete and direct the Secretary of the Redevelopment Agency to record the Notice of Completion. Mayor Botts opened the item for public comments. There were none. Motion carried, all in favor.**

#### ORDINANCES

1. Proposed Ordinance No. 1415, Stormwater Code  
(Staff Report – Sam Racadio, Interim City Manager)

Interim City Manager gave an abbreviated staff report on this item.

Mayor Botts asked the City Clerk to read the title of Ordinance No. 1415: City Clerk read: An Ordinance of the City Council of the City of Banning Amending the Code of the City of Banning, California, 1965, Title 13, Chapter 13.24 Now Entitled Stormwater Code."

**Motion Hanna/Robinson to waive further reading of Ordinance No. 1415. Mayor Botts opened the item for public comments. There were none. Motion carried, all in favor.**

**Motion Robinson/Machisic that Ordinance No. 1415 pass its first reading. Mayor Botts opened the item for public comments. There were none. Motion carried, all in favor.**

2. Transient Occupancy Tax Implementation Urgency Ordinance  
(Staff Report – Sam Racadio, Interim City Manager)

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

Mayor Botts asked the City Clerk to read the title of Ordinance No. 1416: City Clerk read: An Urgency Ordinance of the City Council of the City of Banning, California, Amending Section 3.16.030 and Adding Section 3.16.140 of Chapter 3.16 of the Banning Municipal Code.

**Motion Hanna/Robinson to waive further reading of Ordinance No. 1416.** Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

**Motion Robinson/Machisic that Urgency Ordinance No. 1416 be adopted.** Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

3. First Reading of an Amendment to the General Provision Chapter of the Municipal Code Regarding City Council Issuing of Subpoenas.  
(Staff Report – Sam Racadio, Interim City Manager)

Interim City Manager gave an abbreviated staff report on this item.

Mayor Botts asked the City Clerk to read the title of Ordinance No. 1417: City Clerk read: An Ordinance Adding Chapter 1.30 to Title 1 of the Banning Municipal Code Relating to Legislative Subpoenas, and Adding Section 2.68.040 to Title 2, Chapter 2.68, to Authorize the Issuance of Subpoenas in Personnel System Hearings.

**Motion Machisic/Robinson to waive further reading of Ordinance No. 1417.** Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

**Motion Hanna/Robinson that Ordinance No. 1417 pass its first reading.** Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

#### REPORTS OF OFFICERS

1. General Fund Budget Update  
(Staff Report - Kirby Warner, Interim Finance Director)

Interim City Manager said that this is going to be a comprehensive review of where we are going basically in the next 18 months and Mr. Warner has done very good analysis here of what our options are and there are three alternatives with a recommendation on which one to pursue. Also a recommendation that you instruct staff to come back with specific policies on some of the issues and assumptions that are outlined in this report.

Mr. Warner said this is not what you would consider to be a typical mid-year review where you go into detail on all of the funds in the City and various adjustments and those kinds of things. They are really trying to focus here on the General Fund and to get the Council more of a message and some alternatives as opposed to very specific things. At the end of this power point presentation he will go over some alternatives and issues he would like to have some further direction from Council when we get to them and those are very important as they relate

to what your actions will be over the next 18 months as we talk about the alternatives. He said as he as gone over this he has had a couple of months now to work with staff and work through the issues that the Council has dealt with and they have been significant and continue to be. He said that staff given the numbers we have and the people we have the information that he has been seeing and accuracy and so forth is very, very good. They have done an excellent job and the Council has been making decisions with good information. He said he is giving the Council what he believes to be a probably pretty optimistic view. Keep in mind that this is something that you are probably going to have to revisit which is why staff is giving the Council a long time frame to deal with it. Mr. Warner gave his staff report as contained in the agenda packet and he also started his power-point presentation at this time (see Exhibit "A").

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

There was Council and staff discussion in regards to utility bonds, the capacity to issue debt, making cuts in FY 10/11, the need for a budget session and the budget process, the need for a 2-year budget and policy directions.

**There was consensus of the Council for staff to bring back policy directions to the Council on January 12, 2010.**

Councilmember Franklin said she would like to move forward with there recommendation made by staff.

Mayor Botts said the Council at some point directed staff to try to balance this over 18 months and he thinks that he hears the Council saying the same thing that he is saying and he would agree with the utilizing the \$1.2 million that is left over from a couple of projects. He doesn't think that we ought to touch the reserves. He would concur with his colleagues that if you need that direction the \$1.2 million that is left over, no reserves and then come back with recommendations for what is going to be \$500,000.

Mr. Warner said the Council will get a specific set of actions to transfer those monies back and do the necessary adjustments and so forth and they will be brought back at a later date to do that. Keep in mind that it is triggered by the completion of the project and we are talking about interest payments that are not due until May and November of this next year so all of this is predicated on finishing the police station and staring that one year period and finishing the Brinton Reservoir. These are things that are going to come back to the Council either as specific actions in this next year's budget or something right before that.

**Interim City Manager confirmed for the record that it is by consensus that you want us to implement Option No. 1 and on January 12<sup>th</sup> bring back long term policies for the Council to act on. There was Council consensus.**

2. Resolution No. 2009-105, Approving the Projects for the Fiscal Year 2010-2011 Community Development Block Grant (CDBG) Program.  
(Staff Report - Duane Burk, Public Works Director)

Mayor Botts said that he is on the Board of Directors for the Boys and Girls Club and was in fact elected Interim President and in consultation with the City Attorney there is no conflict of interest. This is a volunteer group and he receives no compensation but he would excuse himself simply for perception of a conflict because he is on the Board of the Boys and Girls Club and they are one of the proposed organizations to receive funding.

Mayor Botts turned the meeting over to Mayor Pro Tem Hanna and left the Council Chambers.

There was Council discussion in regards to handling these as individual items for as a group.

City Attorney said he did talk to the Mayor about this and if you are not actually receiving money then there is not a technical conflict. However, there could be a public perception of involvement so he told the Mayor to use his own judgment so he did decide to leave the Council Chambers. City Attorney said he also told him that there was the option that you talk about these in essence the ones that Councilmember's are involved with you basically segregate this so that you talk about it in three groups. You talk about it in the group that nobody has an issue with and then each person step out on the one that they have an issue with.

Councilmember Franklin said that for the record she is not on the Board for the San Gorgonian Child Care Consortium but she is president emeritus.

City Attorney said that under the FPPC rules if they apply, you would step out even during the staff report. When you take the staff report you are taking it on all of them.

Councilmember Franklin said if it is on all of them she would leave and she left the Council Chambers at this time.

Duane Burk, Public Works Director gave the staff report on this item as contained in the agenda packet and stated that staff is recommending approval of the projects.

City Attorney asked the Council if it was their wish to now discuss this in a segregated fashion or a general discussion.

There was some Council and staff discussion in regards to getting answers from certain applicants and the need to set priorities when you look at each of these groups.

Marion Johnson, Past President of the San Gorgonio Child Care Consortium addressed the City Council stating that they have three programs there and one is supported by the State of California, the private program is supported by United Way and private donations and they have fundraisers to have that program function and that one is very critical and they are working with families that are going to school or trying to get a job so that they can get off of welfare or whatever. They have a license for 150 students and half of that is from the State and half is private. She said that they also have special needs students and those are Down Syndrome students and they graduate in caps and gowns and the parents are very proud of that and in what they have been able to do with kids. They have had children that have come to them that would not talk to anyone except each other and when they left they were

communicating with other students and doing very well. They have had students that have graduated and come back to volunteer to help the other students. The special needs students are both State or private and some come of the school district. Those students that are coming to them that way they have to work with them and have teachers that are trained especially to work with those students. They may get some help from the school district to get a person come in and help them to work with a child.

Councilmember Robinson said that he had talked to Linda Phillips when they did the interview and Mrs. Johnson had arrived a late and he didn't get to address the question to her. He said that the question he had was that it said, "Management has elected to omit substantially all of the disclosures and statement of cash flows required by generally accepted accounting principles. If the omitted disclosures and statement of cash flows were included in the financial statements, they might influence the user's conclusions about the organization's financial position, results of operation and cash flows." When he asked Linda about that she said it was at the direction of the Board of Directors.

Mrs. Johnson said yes and that she could get to the Council their financial report and that is public and they do get that once a year when that they get their audit report and that does go to the State and it is not private.

There was some discussion in regards to the amounts requested by the non-profit agencies and the ability to do their program if they received less than the amount requested. Also, there was discussion about the need for a report back to the Council about what was actually accomplished with the funds received the previous year by these groups.

Mayor Pro Tem Hanna asked if there were further comments regarding the Boys and Girls Club and if not, is there a motion on these two items.

**Motion Machisic/Robinson to approve the recommended amounts for the Boys and Girls Club and the San Geronio Child Care Consortium as recommended by the Ad Hoc Committee. Motion carried with Councilmembers Machisic, Franklin and Mayor Pro Tem Hanna voting in favor of the motion.**

City Attorney asked Mr. Burk if this had to be in the form of a resolution. Mr. Burk said it does not have to be in the form of a resolution. City Attorney said so that motion is sufficient for what you need legally. Mr. Burk said yes.

Councilmember Franklin returned to the Council Chambers at this time.

There was some discussion in regards to the project for the Banning Library District and them being able to obtain additional funding.

Mayor Pro Tem Hanna asked if there were any questions regarding the Soroptimist House of Hope. There were none.

Mayor Pro Tem Hanna asked for a motion on these two items.



**Motion Robinson/Machisic to approve the Banning Library District and the Soroptimist House of Hope for the Ad Hoc recommendation amounts shown for \$5,000 each. Mayor Pro Tem Hanna asked for public comments. There were none. Motion carried with Councilmembers Franklin, Machisic, Robinson and Mayor Pro Tem Hanna voting in favor of the motion.**

Mayor Botts returned to the Council Chambers at this time.

3. A. Resolution No. 2009-107, Approving the Repayment of the Electric Utility Charges to the Affected Schedule TOU Customers.  
(Staff Report - Fred Mason, Electric Utility Director)

There was some Council and staff discussion in regards to the processes being put in place to make sure that this does not happen again.

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

**Motion Machisic/Franklin that the City Council adopt Resolution No. 2009-107 and approve the repayment of the Electric Utility rate assessment overcharge to the affected Schedule Time of Use (TOU) customers in the amount of \$1,042,807.14, as detailed on the spreadsheet attached herewith as Exhibit "A", and authorize the appropriation and transfer of said amount from the Electric Rate Stability Fund (672) to the Electric Operations Fund (670). Motion carried, all in favor.**

3. B. Resolution No. 2009-108, Approving the Application for Energy Efficiency and Conservation Block Grant Funds from the California Energy Commission.

Mr. Mason gave the staff report as contained in the agenda packet going over the specific projects that these funds will be used for.

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

**Motion Franklin/Machisic that the City Council approve the application for Energy Efficiency and Conservation Block Grant ("EECBG") funds available through the California Energy Commission's ("CEC") EECBG Program, attached herewith as Exhibit "A". Motion carried, all in favor.**

#### ITEMS FOR FUTURE AGENDAS

##### New Items -

Councilmember Franklin said that she received an email from Mayor Pro Tem Hanna and it has to do with office hours for City Council members and she thinks this is something the Council might want to discuss and would like to see it brought back as a future agenda items. There was Council consensus to bring it back to a future meeting.

Councilmember Robinson said that he brought up at the last meeting the need for a project status report and he thought he was to be on this meeting and were hopping for a monthly or quarterly update. Mayor Pro Tem Hanna said that they also need a report from the City Attorney.

Mayor Botts said there was a consensus from the Council to ask for this again.

Pending Items –

1. Schedule Meetings with Our State and County Elected Officials
2. Set New Date for Joint Meeting with Banning School Board *(Date to be determined)*
3. Additional Splash Pad at Repllier Park Aquatics Center *(ETA 1/12/10)*
4. Community Advisory Panel for Renewable Energy Opportunities *(ETA 1/12/10)*
5. How AB 920 dealing with Electric Energy will affect City *(ETA 1/12/10)*
6. Development Impact Fees Report *(ETA 1/12/10)*
7. Massage Ordinance *(ETA 1/26/10)*

Future Meetings

1. Special Meeting – Closed Session – December 15, 2009 at 8:00 a.m. –  
City Manager Interviews

ADJOURNMENT

Mayor Botts said that we have lost a dear friend recently and he would like to the Council to adjourn the meeting in honor of Peggy Machisic and adjourned the meeting at 9:25 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 of Banning General Fund Update

### FY 09/10 General Fund

### Budget Update

December 8, 2009

- FY09/10 budget adopted June 23, 2009
- Reductions in the amount of \$5 million
- Represented more than 25% of GF
- Included elimination of 19.25 positions in the General Fund, 35 total for all funds.
- A deficit was still projected of (\$827,265)

-2-

## City of Banning General Fund Update

- First quarter review completed
- Expenditure levels appear in line with budget
- Revenue issues have occurred
- Combination of State of California budget issues, general economic conditions and local action

-3-

## City of Banning General Fund Update

- State "borrows" 8% property of local property taxes under State declared fiscal emergency \$437,000 for City of Banning
- City takes successful action to secure these taxes through the League of California Cities sponsored California Communities program.

-4-

## City of Banning General Fund Update

- Banning voters approved Measure L to increase the Transient Occupancy Tax (TOT) The increase will be from 6% to 10% and will generate approximately \$100,000 in FY 09/10
- Continued effects of economic recession - sales tax projections recommended for reduction of an additional \$280,000

-5-

## City of Banning General Fund Update

- Alternatives
- Staff is recommending first alternative
- Ultimately the solution may require some combination of all three
- They are presented to deal with the shortfall over an 18 month period

-7-

## City of Banning General Fund Update

- The impact- deficit now projected to be \$1,007,265 for FY 09/10
- FY 10/11 deficit estimated at \$800,000. Estimate includes full year of TOT increase and some improvement in sales tax receipts
- Therefore the 18 month shortfall will be approximately \$1,800,000.

-6-

## City of Banning General Fund Update

- Alternative 1- Use savings from project funds generated by \$17,000,000 lease payment in 2005
- Remaining funds (\$1.7-\$2.2 million) can be returned for payment of debt service.
- Budgeted water revenue can then be used to make a lease payment to the General Fund
- The amount would be \$1,250,000
- Remaining \$550,000 in FY 10/11

-8-

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## City of Banning General Fund Update

- Alternative 2- Take no immediate action and use reserves to cover shortfall
- General Fund available reserves approximately \$4,000,000
- The 18 month shortfall represents approximately 45% of total
- Reserves would be significantly depleted- without a solution for the structural deficit

-9-

## City of Banning General Fund Update

- Alternative 3- Begin making expenditure reductions immediately to reduce \$1,800,000 over 18 month period
- This would result in staff and service level reductions

-10-

## City of Banning General Fund Update

- Other Issues and Assumptions
- Current expenditure levels remain static. Any increases in employee related costs, service level modifications or general cost increases will cause the deficit to grow
- Some allocated costs accounted for in other funds may increase, thus affecting the General Fund
- The formation of the Banning Utility Authority anticipated ongoing lease payments based on a life of 55 years

-11-

## City of Banning General Fund Update

- A comprehensive rate study for water and wastewater will need to determine capacity for costs of operations, capital needs, debt service and lease payments
- During the 18 month period the hiring freeze should be continued
- Specific Council approval for any new hires- even if position is in the budget
- Summary of policies to guide the 18 month period is recommended for Council adoption

-12-

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## CITY COUNCIL AGENDA

**Date:** January 26, 2010  
**TO:** City Council  
**FROM:** Kirby Warner, Interim Finance Director  
**SUBJECT:** Report of Investments for December 2009

**RECOMMENDATION:** "The City Council receive and place these required monthly *Reports of Investments* on file."

**JUSTIFICATION:** State law requires that a monthly report of investments be submitted to the Chief Executive Officer and the Legislative Body.

**BACKGROUND:** This report includes investments on hand at the end of December 2009. As of December 31, 2009, the City's operating funds totaled \$67,670,130. Included in operating funds is \$3,565,144 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Treasurer's Report. As of December 31, 2009 approximately 52% of the City's unrestricted cash balances were invested in investments other than LAIF.

Presented are three months of Investment Reports. December is a first issue, while October and November are included to provide multiple months of statements for comparison.

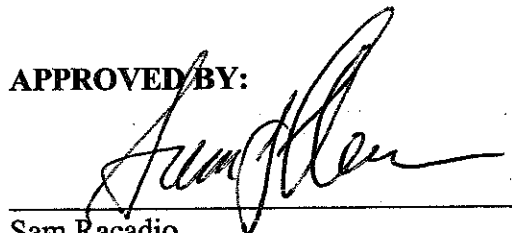
**FISCAL DATA:** The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) decreased to 0.569 % in December. The average rate for all investments in December was 0.955%.

**RECOMMENDED BY:**



Kirby Warner  
Interim Finance Director

**APPROVED BY:**



Sam Racadio  
Interim City Manager

**Summary Schedule of Cash and Investments****Operating Funds**Petty Cash

Amount

2,305

Bank Accounts

Interest

Rate

Amount

Wells Fargo Bank

0.000% 445,834

Wells Fargo Bank-Investment Account

0.100% 7,351,110

Bank of America-Airport

0.300% 3,444

Bank of America-Parking Citations

0.300% 3,243

Bank of America-CNG Station

0.300% 3,436

*Money Market and Bank Account Sub-Total*

7,807,066

Government Pools

Local Agency Investment Fund: Account #1

0.569% 31,196,602

Account #2 Operating Amount (1,412,681)

Account #2 CRA Bond Cash Bal 3,565,144

Local Agency Investment Fund: Account #2

0.569% 2,152,463

*Government Pool Sub-Total*

33,349,065

**Operating Cash Balance**

41,158,437

Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund

0.050%

1,411,988

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2

1.738%

25,099,705

**Operating Funds Total**

67,670,130

**Fiscal Agent**

Amount

BNY Western Trust Company

539,035

US Bank

57,323,355

**Fiscal Agent Total**

57,862,391

**Deferred Compensation**

City Employee Trust Accounts

4,504,297

**Deferred Compensation Total**

4,504,297

# City of Banning Investment Report

December 31, 2009

## Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
445,834	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	445,834	n/a	445,834
7,351,110	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	7,351,110	n/a	7,351,110
3,444	Bank of America-Airport	n/a	0.30%	daily	varies	3,444	n/a	3,444
3,243	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,243	n/a	3,243
3,436	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,436	n/a	3,436
Sub-total								7,807,066
<u>Government Pools</u>								
31,196,602	L.A.I.F. account #1	n/a	0.569%	daily	varies	31,196,602	n/a	31,196,602
2,152,463	L.A.I.F. account #2	n/a	0.569%	daily	varies	2,152,463	n/a	2,152,463
								33,349,065
<u>Investments-US Bank/Piper Jaffray</u>								
6,000,000	Federal Farm Credit Banks	n/a	2.120%	9/23/2011	3/24/2008	6,000,000	0	6,019,920
3,000,000	Fedl Natl Mtg Assn	n/a	2.040%	12/30/2011	12/23/2008	3,000,000	0	3,008,430
11,170,000	Federal Farm Credit Banks	n/a	2.000%	1/30/2012	6/12/2009	11,170,000	0	11,204,180
1,500,000	Federal Farm Credit Banks	n/a	1.550%	7/7/2011	7/7/2009	1,500,000	0	1,500,150
3,367,025	Money Market	n/a	0.000%	daily	varies	3,367,025	0	3,367,025
US Bank/Piper Jaffray Average Rate=								25,099,705
Average Rate All=								0.955%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 230 days and does not include Bond Reserve Fund Investments.



# City of Banning Investment Report

December 31, 2009

## Individual Investments with Fiscal Agent

TRUSTEE		Bond Maturity Date	Investment Description	Current Yield	Bond Reserve	Bond Maturity Date	Minimum Reserve Requirement	Interest Dec-09	12/31/2009 Market Value
BNY WESTERN TRUST COMPANY									
1997 Admin Building COPs Refunding			Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 0.010%	11/1/2020 daily		522,375	*	522,562 16,473
US BANK									
1991 Wilson St. Assessment District			AIM U.S. Treasury Money Market First Amer Treas Oblig Fd CL D	0.200% 0.280%	daily daily		265,580	10.81	265,612 14
2005 Fair Oaks Ranch Estates			First Amer Treas Oblig Fd CL D	0.300%	daily		190,323	46.71	189,491
2003 CRA Tax Allocation Bonds			Forward Delivery Agreement - B of A US Bank MmKt	4.560% 0.300%	daily daily		971,763	*	991,980 22,753
			First Amer Treas Oblig Fd CL D	0.300%	daily			0.04	146
Surplus Fund			First Amer Treas Oblig Fd CL D	0.025%	daily				8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007									
Redevelop Fund			First Amer Treas Oblig Fd CL D	0.300%	daily			652.98	7,202,536 3,336,669
			Reliance Trust Company GIC # 9AMGGBF37	0.000%					3,500,000
Reserve Fund			Reliance Trust Company GIC # 9AMGGBEU8	0.750%					1,877,922
Special Fund			First Amer Treas Oblig Fd CL D	0.300%	daily		1,880,751	462.93	185
Surplus Fund			First Amer Treas Oblig Fd CL D	0.300%	daily			0.05	9
			First Amer Treas Oblig Fd CL D	0.320%	daily				
BUA - WASTE WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Bond Fund			First Amer Treas Oblig Fd CL D	0.320%	daily			2.16	28
Principal Account			First Amer Treas Oblig Fd CL D	0.300%	daily			1.04	33
			First Amer Treas Oblig Fd CL D	0.300%	daily			187.03	3,675,898
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Bond Fund			First Amer Treas Oblig Fd CL D	0.300%	daily			10.19	2,918
Principal Account			First Amer Treas Oblig Fd CL D	0.300%	daily			2.75	85
Reserve Fund			First Amer Treas Oblig Fd CL D	0.300%	daily		2,310,710	569.93	2,311,897
Protect Fund			First Amer Treas Oblig Fd CL D	0.300%	daily			4,486.25	10,025,189

# City of Banning Investment Report

December 31, 2009

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve		Minimum Reserve Requirement	Interest Dec-09	12/31/2009 Market Value
				Bond Maturity Date	Reserve			
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>								
Reserve Fund Acquisition & Construction		First Amer Treas Oblig Fd CL D	0.300%	daily			163.08	163
	11/17/2011	Reliance Trust Company GIC # 9AMGGBEZ7	3.650%		2,961,500			3,016,509
		First Amer Treas Oblig Fd CL D	0.300%	daily			401.05	1,616,852
	11/27/2009	Reliance Tr Co Contract # 9AMGGBF29	0.400%					8,036,457
	5/21/2009	Reliance Trust Company GIC #9AMGGBEX2	0.750%					3,250,000
	11/19/2009	Reliance Trust Company GIC #9AMGGBEY0	0.500%					8,000,000
<b>Total</b>							<b>7,002.61</b>	<b>57,862,391</b>
<b>*Paid Semi-Annually-Deposited into Money Mkt Account</b>								

\*Paid Semi-Annually-Deposited into Money Mkt Account

## Deferred Compensation

<b>Balance</b>			
<b>12/1/2009</b>			<b>12/31/2009</b>
ICMA Retirement Corporation	932,548	Various Employee Selected Mutual Funds	947,273
CALPERS 457 Program	2,679,281	Various Employee Selected Mutual Funds	2,744,708
NATION WIDE-PEBS CO	803,403	Various Employee Selected Mutual Funds	812,315
	<u>4,415,233</u>		<u>4,504,297</u>

**Summary Schedule of Cash and Investments**

<b>Operating Funds</b>		Amount
<u>Petty Cash</u>		2,305
<u>Bank Accounts</u>	Interest	
	Rate	Amount
Wells Fargo Bank	0.000%	243,393
Wells Fargo Bank-Investment Account	0.100%	1,561,707
Bank of America-Airport	0.300%	7,085
Bank of America-Parking Citations	0.300%	4,127
Bank of America-CNG Station	0.300%	3,828
<i>Money Market and Bank Account Sub-Total</i>		1,820,139
<u>Government Pools</u>		
Local Agency Investment Fund: Account #1	0.646%	31,196,602
Account #2 Operating Amount		2,816,181
Account #2 CRA Bond Cash Bal		3,686,282
Local Agency Investment Fund: Account #2	0.646%	6,502,463
<i>Government Pool Sub-Total</i>		37,699,065
<b>Operating Cash Balance</b>		<b>39,521,509</b>
<u>Restricted Operating Funds at Riverside Public Utilities</u>		
Highmark U.S. Government Money Market Fund	0.150%	758,991
<u>Other Investments</u>		
Investments-US Bank/Piper Jaffray - See Page 2	1.982%	25,102,091
<b>Operating Funds Total</b>		<b>65,382,591</b>

**Fiscal Agent**

	Amount
BNY Western Trust Company	538,762
US Bank	65,262,006
<b>Fiscal Agent Total</b>	<b>65,800,768</b>

**Deferred Compensation**

City Employee Trust Accounts	4,276,527
<b>Deferred Compensation Total</b>	<b>4,276,527</b>

# City of Banning Investment Report

October 31, 2009

## Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<i>Bank Accounts</i>								
243,393	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	243,393	n/a	243,393
1,561,707	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	1,561,707	n/a	1,561,707
7,085	Bank of America-Airport	n/a	0.30%	daily	varies	7,085	n/a	7,085
4,127	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,127	n/a	4,127
3,828	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,828	n/a	3,828
Sub-total								1,820,139
<i>Government Pools</i>								
31,196,602	L.A.I.F. account #1	n/a	0.646%	daily	varies	31,196,602	n/a	31,196,602
6,502,463	L.A.I.F. account #2	n/a	0.646%	daily	varies	6,502,463	n/a	6,502,463
								37,699,065
<i>Investments-US Bank/Piper Jaffray</i>								
3,000,000	Federal Farm Credit Banks	n/a	2.000%	12/30/2010	12/30/2008	3,000,000	0	3,006,630
6,000,000	Federal Farm Credit Banks	n/a	2.120%	9/23/2011	3/24/2008	6,000,000	0	6,037,380
3,000,000	Fed Natl Mtg Assn	n/a	2.040%	12/30/2011	12/23/2008	3,000,000	0	3,015,000
11,170,000	Federal Farm Credit Banks	n/a	2.000%	1/30/2012	6/12/2009	11,170,000	0	11,233,446
1,500,000	Federal Farm Credit Banks	n/a	1.550%	7/7/2011	7/7/2009	1,500,000	0	1,503,360
306,275	Money Market	n/a	0.000%	daily	varies	306,275	0	306,275
US Bank/Piper Jaffray Average Rate=								25,102,091
Average Rate All=								1.148%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 276 days and does not include Bond Reserve Fund Investments.

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# City of Banning Investment Report

October 31, 2009

## Individual Investments with Fiscal Agent

Bond Maturity Date		Bond Reserve	Current Yield	Bond Maturity Date	Minimum Reserve Requirement	Interest Oct-09	10/31/2009 Market Value
<b>TRUSTEE</b>							
<b>BNY WESTERN TRUST COMPANY</b>							
Bond Issue Description	2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 0.000%	11/1/2020 daily	522,375	*	522,562 16,200
<b>US BANK</b>							
1991 Wilson St. Assessment District	2012	AIM U.S. Treasury Money Market First Amer Treas Oblig Fd CL D	0.500% 0.280%	daily daily	265,580	10.32 1.86	265,590 14
2005 Fair Oaks Ranch Estates	2035	First Amer Treas Oblig Fd CL D	0.280%	daily	190,323	47.69	189,396
2003 CRA Tax Allocation Bonds	2028	Forward Delivery Agreement - B of A US Bank MmKt First Amer Treas Oblig Fd CL D First Amer Treas Oblig Fd CL D	4.560% 0.300% 0.300% 0.025%	daily daily daily daily	971,763	0.00 * 5.61 0.04	991,881 22,741 146 8
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</b>							
Redevelop Fund	2037	First Amer Treas Oblig Fd CL D	0.300%	daily		2.92	11,841
	11/27/2009	Reliance Trust Company GIC # 9AMGGBF37	2.950%				3,336,669
	5/21/2009	Reliance Trust Company GIC # 9AMGGBEU8	0.750%				3,500,000
	11/19/2009	Reliance Trust Company GIC # 9AMGGBEV6	2.950%				8,000,000
Reserve Fund		First Amer Treas Oblig Fd CL D	0.300%	daily	1,880,751	462.70	1,876,981
Special Fund		First Amer Treas Oblig Fd CL D	0.300%	daily		0.05	185
Surplus Fund		First Amer Treas Oblig Fd CL D	0.320%	daily			9
<b>BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
Bond Fund		First Amer Treas Oblig Fd CL D	0.300%	daily		0.54	262,443
Principal Account		First Amer Treas Oblig Fd CL D	0.300%	daily		33.68	125,553
		First Amer Treas Oblig Fd CL D	0.300%	daily		571.67	758,346
<b>BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
Bond Fund		First Amer Treas Oblig Fd CL D	0.300%	daily			1,155,127
Principal Account		First Amer Treas Oblig Fd CL D	0.300%	daily		79.26	332,580
Reserve Fund		First Amer Treas Oblig Fd CL D	0.300%	daily	2,310,710	570.31	2,313,531
Project Fund		First Amer Treas Oblig Fd CL D	0.300%	daily		4,484.04	18,189,897

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# City of Banning Investment Report

October 31, 2009

TRUSTEE		Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Bond Maturity Date	Minimum Reserve Requirement	Interest Oct-09	10/31/2009 Market Value
Bond Issue Description								
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES								
Reserve Fund Acquisition & Construction	11/17/2011	Reliance Trust Company GIC # 9AMGGBEZ7	3.650%			2,961,500		3,016,509
		First Amer Treas Oblig Fd CL D	0.300%	daily			400.85	1,626,101
	11/27/2009	Reliance Tr Co Contract # 9AMGGBF29	2.950%					8,036,457
	5/21/2009	Reliance Trust Company GIC #9AMGGGBEX2	0.750%					3,250,000
	11/19/2009	Reliance Trust Company GIC #9AMGGGBEY0	2.950%					8,000,000
Total							6,671.54	65,800,768
*Paid Semi-Annually-Deposited into Money Mkt Account								

## Deferred Compensation

Balance		10/31/2009	
	10/1/2009		
ICMA Retirement Corporation	911,025	Various Employee Selected Mutual Funds	902,518
CALPERS 457 Program	2,590,298	Various Employee Selected Mutual Funds	2,580,509
NATION WIDE-PEBS CO	822,433	Various Employee Selected Mutual Funds	793,499
	<u>4,323,757</u>		<u>4,276,527</u>

**Summary Schedule of Cash and Investments****Operating Funds**Petty Cash

Amount

2,305

Bank Accounts

Interest

Rate

Amount

Wells Fargo Bank

0.000%

-

Wells Fargo Bank-Investment Account

0.100%

2,997,473

Bank of America-Airport

0.300%

5,444

Bank of America-Parking Citations

0.300%

3,627

Bank of America-CNG Station

0.300%

4,326

*Money Market and Bank Account Sub-Total*

3,010,870

Government Pools

Local Agency Investment Fund: Account #1

0.611% 31,196,602

Account #2 Operating Amount

1,260,019

Account #2 CRA Bond Cash Bal

3,642,444

Local Agency Investment Fund: Account #2

0.611% 4,902,463

*Government Pool Sub-Total*

36,099,065

**Operating Cash Balance****39,112,240**Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund

0.050%

747,749

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2

1.982%

25,082,496

*Operating Funds Total*64,942,485**Fiscal Agent**

Amount

BNY Western Trust Company

539,035

US Bank

63,685,381

*Fiscal Agent Total*64,224,417**Deferred Compensation**

City Employee Trust Accounts

4,415,233

*Deferred Compensation Total*4,415,233

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# City of Banning Investment Report

November 30, 2009

## Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
-	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	-	n/a	-
2,997,473	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	2,997,473	n/a	2,997,473
5,444	Bank of America-Airport	n/a	0.30%	daily	varies	5,444	n/a	5,444
3,627	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,627	n/a	3,627
4,326	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,326	n/a	4,326
Sub-total								3,010,870
<u>Government Pools</u>								
31,196,602	L.A.I.F. account #1	n/a	0.611%	daily	varies	31,196,602	n/a	31,196,602
4,902,463	L.A.I.F. account #2	n/a	0.611%	daily	varies	4,902,463	n/a	4,902,463
								36,099,065

## Investments-US Bank/Piper Jaffray

3,000,000	Federal Farm Credit Banks	n/a	2.000%	12/30/2010	12/30/2008	3,000,000	0	3,003,240
6,000,000	Federal Farm Credit Banks	n/a	2.120%	9/23/2011	3/24/2008	6,000,000	0	6,029,100
3,000,000	Fedl Natl Mig Assn	n/a	2.040%	12/30/2011	12/23/2008	3,000,000	0	3,012,180
11,170,000	Federal Farm Credit Banks	n/a	2.000%	1/30/2012	6/12/2009	11,170,000	0	11,229,871
1,500,000	Federal Farm Credit Banks	n/a	1.550%	7/7/2011	7/7/2009	1,500,000	0	1,501,830
306,275	Money Market	n/a	0.000%	daily	varies	306,275	0	306,275
US Bank/Piper Jaffray Average Rate=								25,082,496
1.982%								

Average Rate All= 1.121%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 266 days and does not include Bond Reserve Fund Investments.

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# City of Banning Investment Report

November 30, 2009

## Individual Investments with Fiscal Agent

Bond Maturity Date		Bond Reserve	Bond Maturity Date	Current Yield	Investment Description	Minimum Reserve Requirement	Interest Nov-09	11/30/2009 Market Value
TRUSTEE								
BNY WESTERN TRUST COMPANY								
1997 Admin Building COPs Refunding		2020	11/1/2020 daily	6.270% 0.010%	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	522,375	*	522,562 16,473
US BANK								
1991 Wilson St. Assessment District		2012	daily	0.500%	AIM U.S. Treasury Money Market	265,580	11.17	265,602
2005 Fair Oaks Ranch Estates		2035	daily	0.280%	First Amer Treas Oblig Fd CL D			14
2003 CRA Tax Allocation Bonds		2028	daily	0.300%	First Amer Treas Oblig Fd CL D	190,323	48.25	189,444
Surplus Fund			daily	4.560%	Forward Delivery Agreement - B of A US Bank MmKt	971,763	0.00 *	991,990
			daily	0.300%	First Amer Treas Oblig Fd CL D		8.79	22,747
			daily	0.300%	First Amer Treas Oblig Fd CL D		0.04	146
			daily	0.025%	First Amer Treas Oblig Fd CL D			8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007								
Redevelop Fund		2037	daily	0.300%	First Amer Treas Oblig Fd CL D			7,201,884
		11/27/2009		2.950%	Reliance Trust Company GIC # 9AMGGBF37			3,336,669
		5/21/2009		0.750%	Reliance Trust Company GIC # 9AMGGBEU8			3,500,000
		11/19/2009		2.950%	Reliance Trust Company GIC # 9AMGGBEV6		236,771.22	
Reserve Fund			daily	0.300%	First Amer Treas Oblig Fd CL D	1,880,751	478.24	1,877,459
Special Fund			daily	0.300%	First Amer Treas Oblig Fd CL D		0.05	185
Surplus Fund			daily	0.320%	First Amer Treas Oblig Fd CL D			9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund			daily	0.300%	First Amer Treas Oblig Fd CL D		26.23	26
Principal Account			daily	0.310%	First Amer Treas Oblig Fd CL D		31.99	32
			daily	0.300%	First Amer Treas Oblig Fd CL D		193.22	758,539
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund			daily	0.300%	First Amer Treas Oblig Fd CL D		113.93	2,907
Principal Account			daily	0.290%	First Amer Treas Oblig Fd CL D		84.74	85
Reserve Fund			daily	0.300%	First Amer Treas Oblig Fd CL D	2,310,710	589.47	2,311,327
Protect Fund			daily	0.300%	First Amer Treas Oblig Fd CL D		4,634.65	18,194,532

# City of Banning Investment Report

November 30, 2009

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve		Minimum Reserve Requirement	Interest Nov-09	11/30/2009 Market Value
				Bond Maturity Date				
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>								
Bond Fund		First Amer Treas Oblig Fd CL D	0.300%	daily		2,961,500		1,102,294
Reserve Fund	11/17/2011	Reliance Trust Company GIC # 9AMGGBEZ7	3.650%					3,016,509
Acquisition & Construction		First Amer Treas Oblig Fd CL D	0.300%	daily			414.32	1,626,516
	11/27/2009	Reliance Tr Co Contract # 9AMGGBF29	0.400%					8,036,457
	5/21/2009	Reliance Trust Company GIC #9AMGGBEX2	0.750%					3,250,000
	11/19/2009	Reliance Trust Company GIC #9AMGGBEY0	0.500%					8,000,000
<b>*Paid Semi-Annually-Deposited into Money Mkt Account</b>							<b>Total</b>	<b>64,224,417</b>
							<b>243,406.31</b>	

## Deferred Compensation

Balance				11/30/2009
11/1/2009				
902,518	Various Employee Selected Mutual Funds		varies	932,548
2,580,509	Various Employee Selected Mutual Funds		varies	2,679,281
793,499	Various Employee Selected Mutual Funds		varies	803,403
<u>4,276,527</u>				<u>4,415,233</u>

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## CITY COUNCIL AGENDA

**Date:** January 26, 2010  
**TO:** City Council  
**FROM:** Kirby J. Warner, Interim Finance Director  
**SUBJECT:** Approval of Accounts Payable and Payroll Warrants for Month of December 2009

**RECOMMENDATION:** "The City Council review and ratify the following reports per the California Government Code."

**FISCAL DATA:** The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of December 2009

The reports are:

### Expenditure approval lists

December 2, 2009	796,047.09
December 3, 2009	226,651.68
December 9, 2009	2,956,371.11
December 17, 2009	1,233,109.48
December 17, 2009	23,966.79
December 30, 2009	247,108.90
December 30, 2009	18,117.80
January 11, 2010	3,481,708.35 (December Month End)

### Payroll check registers

December 4, 2009	6,196.28
December 18, 2009	6,213.35
December 31, 2009	4,613.84

### Payroll direct deposits\*

December 4, 2009	319,021.89
December 18, 2009	317,004.27
December 31, 2009	307,118.06

As you review the reports, if you have any questions please contact the Finance Department so that we can gather the information from the source documents and provide a response.

\* Included on the December month end expenditure approval list of 1/11/2010.

<sup>(1)</sup> Due to Positive Pay reporting, manual checks must be recorded in the accounting system separately from the weekly check register.

Report Prepared by: Robin Anderson, Accounts Payable

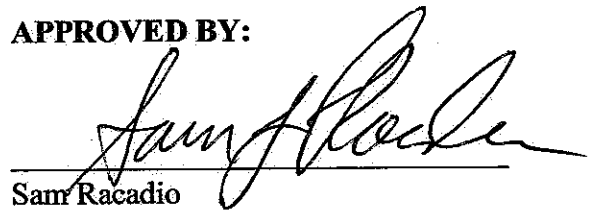
**RECOMMENDED BY:**



Kirby J. Warner

Interim Finance Director

**APPROVED BY:**



Sam Racadio

Interim City Manager

2nd Read.

**ORDINANCE NO. 1414**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING ZONE TEXT AMENDMENT NO. 09-97503 AMENDING SECTIONS 17.08.100 AND SECTION 17.44.010, TABLE 17.44.010 OF THE MUNICIPAL CODE PERTAINING TO SECOND UNITS.**

**WHEREAS**, the Municipal Code allows for Zone Text Amendments consistent with the goals and policies of the General Plan; and

**WHEREAS**, AB 1866 was adopted by the State in 2002 regarding construction of second-units and that these units must be approved ministerially; and

**WHEREAS**, Zone Text Amendment No. 09-97503 amends the Zoning Ordinance relating to second units so that the Ordinance is consistent with State law; and

**WHEREAS**, on the 20<sup>th</sup> of November, 2009, the City gave public notice as required under Zoning Code Section 17.68 by advertising in the Record Gazette newspaper of the holding of a public hearing by the Planning Commission at which the amendment to the Zoning Code would be considered; and

**WHEREAS**, on December 1, 2009, the Planning Commission held a duly noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment and at which time the Planning Commission considered the Zone Text Amendment and recommend to the City Council the adoption of Ordinance No. 1414; and

**WHEREAS**, on January 1, 2010, the City gave public notice as required under Zoning Code Section 17.68 by advertising in the Record Gazette newspaper of the holding of a public hearing by the City Council at which the amendment to the Banning Municipal Code would be considered; and

**WHEREAS**, the City Council held a duly noticed public hearing on January 12, 2010, at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment; and.

**NOW THEREFORE BE IT HEREBY ORDAINED**, that the City Council of the City of Banning does hereby find, determine, and resolve 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 Planning Commission as provided in the Staff Report dated December 1, 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 this proposed project and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under Section 15282(h) of the CEQA Guidelines and Section 21080.17 of the Public Resources Code which provide that CEQA does not apply to the adoption of an ordinance by a city to implement the provisions of Section 65852.2 of the Government Code (AB 1866) regarding second-units. The purpose of the amendment to the Zoning Code is to comply with State law, which is exempt by State Statute.

## SECTION 2. FINDINGS.

1. The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan.

Findings of Fact: The Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations will not change, and the text amendments will result in clarifying the goals, policies and programs of the General Plan. The primary General Plan Land Use Goal states "*A balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents*". Additionally, the General Plan Residential Goal states, "*A broad range of housing types to fill the needs of the City's current and future residents.*" The amendment to the existing second-unit standards provides a functional pattern of land uses and enhances the quality of life by providing a broad range of housing for all Banning residents by providing for the review of second unit development applications ministerially so that it is consistent with Government Code.

2. The proposed Zone Text Amendment is internally consistent with the Zoning Ordinance.

Findings of Fact: The Zone Text Amendment is consistent with the existing provisions of the Zoning Ordinance. The amendment will modify and update development standards pertaining to State regulations regarding second units.

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

Findings of Fact: The City Council has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under Section 15282(h) of the CEQA Guidelines and Section 21080.17 of the Public Resources Code which provide that CEQA does not apply to the adoption of an ordinance by a city to implement the provisions of Section 65852.2 of the Government Code (AB 1866) regarding second-units. The purpose of the amendment to the Zoning Code is to comply with State law, which is exempt by State Statute.

**SECTION 3. CITY COUNCIL ACTIONS.** The City Council hereby approves Zone Text Amendment No. 09-97503 and introduce the first reading of Ordinance amending Sections 17.08.100 and Section 17.44.010 regarding second units as indicated as Exhibit "A".

**SECTION 4. SEVERABILITY.** If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall take effect thirty (30) days after its enactment in accord with California law.

**SECTION 6. 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 \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Robert E. Botts, Mayor

**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. 1414 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 12th day of January, 2010, and was duly adopted at a regular meeting of said City Council on the \_\_\_\_ day of \_\_\_\_\_ 2010, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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



2nd Read.

**ORDINANCE NO. 1418**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF BANNING, CALIFORNIA, AMENDING SECTION  
3.16.030 AND ADDING SECTION 3.16.140 OF CHAPTER  
3.16 OF THE BANNING MUNICIPAL CODE**

WHEREAS, on July 28, 2009, the Banning City Council ordered an election for voters to consider whether the City of Banning Transient Occupancy Tax ("TOT") should be increased by amending Chapter 3.16 (Transient Occupancy Tax) of the Banning Municipal Code, and directing that the revenues be used for general fund purposes including for public safety, maintenance of streets and public areas, and other essential services; and

WHEREAS, on November 3, 2009, by a vote of 3,337 yes to 1104 no (75%), the voters of the City of Banning approved Measure L, which authorized the TOT rate to be increased from six percent (6%) to twelve percent (12%), thereby affecting the TOT rate paid by those occupying hotels, inns, tourist homes, motels, or other lodging within the City of Banning; and

WHEREAS, Measure L contained the following elements: (a) permitted a maximum rate of 12% which could only be increased by the voters, (b) permitted the City Council by ordinance to set a lesser rate and otherwise retain full authority to change the manner, mode and method of collecting TOT as set forth in Chapter 3.16, (c) established a sunset provision so that the authority in Measure L to increase the TOT rate would expire on November 3, 2014; and

WHEREAS, on November 24, 2009, the City Council declared the results of the election held on November 3, 2009, in which Measure L was approved by the voters of the City of Banning; and

WHEREAS, the City Council wishes to commence the new TOT rate at ten percent (10%), rather than the maximum twelve percent (12%) permitted by the voters; and

WHEREAS, the City Council plans to reconsider the TOT rate in Fiscal Year 2010-11 and reserves the right to increase it up to the maximum rate of twelve percent (12%), as approved by the voters on November 3, 2009, or decrease it, as need requires; and

WHEREAS, pursuant to Urgency Ordinance No. 1416, which was adopted and went into effect on December 8<sup>th</sup>, 2009, the City Council desired that the new TOT rate go into effect on January 1, 2010, in order to give hotel operators and those impacted by the increase in rates an opportunity to make any necessary adjustments.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY ORDAIN AS FOLLOWS:

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**SECTION 1. Tax Adopted.** The Banning Municipal Code, Chapter 3.16, Section 3.16.030, is hereby amended to read, in its entirety, as follows:

**"CHAPTER 3.16: TRANSIENT OCCUPANCY TAX**

**Section 3.16.030. Imposed--Amount--When payable**

A. For the privilege of occupancy in any hotel or motel, each transient is subject to and shall pay a tax in the amount set forth in subsection B hereof, but such rate shall not exceed twelve percent (12%) of the rent charged by the operator, which shall be referred to herein as the "Cap Rate." Such tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel or motel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid in each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel or motel. If for any reason the tax due is not paid to the operator of the hotel or motel, the tax administrator may require that such tax shall be paid directly to the tax administrator."

B. Notwithstanding the requirements of subsection A of this section, from January 1, 2010, until amended by ordinance of the City Council, the Transient Occupancy Tax ("TOT Rate") rate shall be ten percent (10%), but in no event may such amendment exceed the Cap Rate set forth in subsection A above.

C. The Cap Rate in subsection A may only be increased by a vote of the people pursuant to Proposition 218. The TOT Rate in Subsection B may be changed by ordinance of the Council so long as it does not exceed the Cap Rate.

D. The authority to increase the TOT rate from six percent (6%) to twelve percent (12%) as provided by Measure L shall expire on November 3, 2014 unless extended by a vote of the people of Banning.

E. The City Council retains full authority to modify or add to Chapter 3.16 to change the manner, mode and method of collecting Transient Occupancy Taxes as set forth in Chapter 3.16, to the extent provided by State law.

**SECTION 2. Severability.** If any sections, subsections, sentences, phrases, or portions are for any reason, held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of their Ordinance. The City Council of the City of Banning hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

**SECTION 3. Effective Date.** The City Clerk shall certify to the adoption of this Ordinance and shall cause a copy of the same to be published in a manner prescribed by law. This Ordinance shall take effect and be in force thirty (30) days after the adoption by the City Council for the City of Banning.

\_\_\_\_\_  
Robert E. Botts, Mayor

ATTEST:

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

APPROVED AS TO FORM  
AND LEGAL CONTENT:

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

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CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1418 was introduced at a regular meeting of the City Council of the City of Banning, California, held on the 12<sup>th</sup> day of January, 2010, and was duly adopted at a regular meeting of the City Council held on the \_\_\_\_\_ day of January, 2010, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

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## CITY COUNCIL AGENDA

**DATE:** January 26, 2010  
**TO:** Mayor and City Council  
**FROM:** Hoyl E. Belt, Human Resources Director  
**SUBJECT:** Authorization to Fill a Vacant Position - Buyer

**Recommendation:** That the City Council authorizes staff to fill the vacated position of Buyer.

**Justification:** At the last City Council meeting, the Finance Director directed Council to impose new supplemental budget policies to control and define the decision making process during the next eighteen months. The policies were designed to encourage the balancing of the structural deficit that exists in the General Fund. The supplemental policy that was approved stated that a hiring freeze will be in effect until cancelled by the City Council. Also, that all hiring requests shall be submitted for City Council for approval which included new positions, filling of vacated positions, departmental reorganization and other personnel actions with the potential of increasing costs or providing for savings. The policy would allow the Council to strategically determine how best to allocate personnel and service levels.

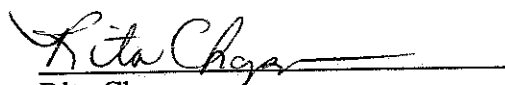
With this new policy in effect, staff is requesting that the City Council approve the filling of a vacant position that will occur on January 28, 2010 from the resignation of our current Buyer, Tony Segal. This position will have a significant impact on the Purchasing Division if it is not filled immediately. The Finance Department does not have any other Buyer position; it is a single class position.

In addition, staff recommends that Council approve filling a temporary employee until the position has been filled with a regular full-time employee.

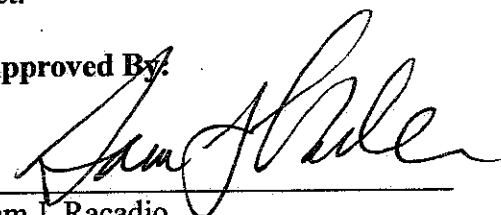
**Background:** This Buyer position provides a technical level of assistance in the purchasing function, including maintaining records, soliciting bids, and processing documents to expedite the flow of purchasing in the City's purchasing operations and other related duties. The position is pertinent to the City to assist the Purchasing Manager in fulfilling the daily duties.

**Fiscal Data:** The filling of this position will not cause a fiscal impact. The Buyer position was included with the adoption of the FY 2009-2010 Budget.

**Prepared By:**

  
Rita Chapparosa  
Sr. Human Resources Analyst/Recruitment &  
Benefits Manager

**Approved By:**

  
Sam J. Racadio  
Interim City Manager

## CITY COUNCIL AGENDA

**DATE:** January 26, 2010  
**TO:** City Council  
**FROM:** Duane Burk, Director of Public Works  
**SUBJECT:** California Desert Conservation and Recreation Act

**RECOMMENDATION:** That the City Council support the Amendment to the California Desert Conservation and Recreation Act and authorize staff to submit a letter of support to the Office of U.S. Senator Dianne Feinstein.

**JUSTIFICATION:** This amendment is essential in order to provide for the conservation of, and enhanced recreation opportunities in, the California Desert Area, and for other purposes.

**BACKGROUND:** The California Desert Protection Act, passed in 1994, doubled the amount of desert wilderness protected in California. The Act created Mojave National Preserve, Death Valley, and Joshua Tree national parks, along with nearly 5 million acres of designated wilderness. Within these expansive boundaries, the bill preserves geologic wonders, plant and wildlife habitats, ancient archeology and modern history and provides opportunities for learning, research and recreation.

Amendments to the California Desert Protection Act of 1994 that relate the City of Banning are as follows:

### **Section 4: Sand to Snow National Monument**

- Establishes a national monument covering approximately 161,000 acres of federal land between Joshua Tree National Park and the San Bernardino National Forest in San Bernardino and Riverside counties.
- Maintains existing recreation uses, including hunting, vehicular travel on existing open roads and trails, camping, horseback riding, rock collecting, etc.
- The monument would be jointly managed by the Bureau of Land Management (BLM) and the Forest Service with management guidance from an advisory committee comprised of local, state and federal government, conservation and recreation groups, and local Native American tribes.


### **Section 8: Wild and Scenic Rivers**

- Designates 76 miles of wild and scenic rivers, including Deep Creek and the Whitewater River in and near the San Bernardino National Forest and the Amargosa River and Surprise Canyon Creek near Death Valley National Park. As it relates to the Whitewater River, the bill would designate 24.5 miles of the river in the San Bernardino Mountains to be named wild and scenic.

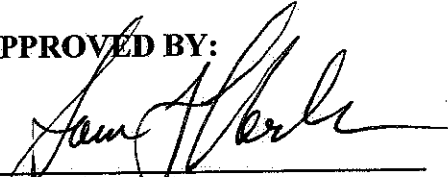
Staff recommends the support of this Amendment to the California Desert Conservation and Recreation Act, which does not negatively impact the City, and respectfully requests authorization to submit a letter of support to the Office of U.S. Senator Dianne Feinstein.

**FISCAL DATA:** Not applicable.

**RECOMMENDED BY:**

  
\_\_\_\_\_  
Duane Burk  
Director of Public Works

**APPROVED BY:**

  
\_\_\_\_\_  
Sam Racadio  
Interim City Manager

**CITY COUNCIL  
CONSENT ITEM**

**DATE:** January 26, 2010

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

**FROM:** Sam Racadio, Interim City Manager

**SUBJECT:** Resolution No. 2010-06 – Water Conservation in Landscaping Act (AB 1881)

**RECOMMENDATION:** The Community Development Department recommends that City Council adopt Resolution No. 2010-06 (Attachment 1) making certain findings that the City's water efficient landscape ordinance is as effective as the State's Model Water Efficient Landscape Ordinance (MWELO) in connection with AB 1881 Water Conservation in Landscaping Act.

**JUSTIFICATION:** Section 65595(c) of AB 1881 requires that the local agency adopt a water efficient landscape ordinance prior to January 1, 2010, or the model ordinance prepared by the State of California Department of Water Resources shall apply within the local agency (City).

**BACKGROUND/ANALYSIS:** Landscapes are essential to the quality of life in California and the City of Banning. They provide areas for recreation, enhance the environment, clean the air and water, prevent erosion, offer fire protection, and replace ecosystems lost to development. California's economic prosperity and environmental quality are dependant on an adequate supply of water for beneficial uses. In California, about half of the urban water used is for landscape irrigation. Ensuring efficient landscapes in new developments and reducing water waste in existing landscapes are the most cost-effective ways to stretch our limited water supplies and ensure that we continue to have sufficient water for California and the City to prosper. The Water Conservation in Landscaping Act of 2006 (Assembly Bill 1881, Laird) requires cities, counties, and charter cities and charter counties, to adopt landscape water conservation ordinances by January 1, 2010. The local agencies (City) may adopt the state Model Ordinance, or craft an ordinance to fit local conditions.

On February 14, 2006 the City Council adopted new zoning regulations by approving Ordinance No. 1339. The new zoning regulations include Chapter 17.32 *Landscaping Standards* that contain most of the elements that correspond to the requirements of AB 1881. Chapter 13.16 *Water Conservation* and Chapter 13.24 *Stormwater Code* as amended of the municipal code also contain some elements that correspond to the various requirements of AB 1881. Copies of the existing code citations are contained in Exhibit "A" of Resolution No. 2010-06. These existing municipal code sections and the actions of the California Department of Water Resources work together to meet the goals and policies of Water Conservation in Landscaping Act regulations. The chart shown below specifically identifies the requirements of AB 1881 and the corresponding City regulations or program that meets that requirement.



## Comparison Chart

AB 1881 Requirement	Corresponding City Code/Program
<p>65595. (a) (1) To the extent funds are appropriated, not later than January 1, 2009, by regulation, the department shall update the model water efficient landscape ordinance adopted pursuant to Chapter 1145 of the Statutes of 1990, after holding one or more public hearings. The updated model ordinance shall be based on the recommendations set forth in the report prepared pursuant to Chapter 682 of the Statutes of 2004 and shall meet the requirements of Section 65596.</p> <p>(c) On or before January 1, 2010, a local agency shall adopt one of the following:</p> <p>(1) A <b>water efficient landscape ordinance</b> that is, based on evidence in the record, at least as effective in conserving water as the updated model ordinance adopted by the department pursuant to subdivision (a).</p> <p>(2) The updated model ordinance described in paragraph (1).</p> <p>(d) If the local agency has not adopted, on or before January 1, 2010, a water efficient landscape ordinance pursuant to subdivision (c), the updated model ordinance adopted by the department pursuant to subdivision (a) shall apply within the jurisdiction of the local agency as of that date, shall be enforced by the local agency, and shall have the same force and effect as if adopted by the local agency.</p>	<p>The Zoning Code as adopted on February 14, 2006 contains Chapter 17.32 <i>Landscaping Standards</i> that corresponds with the requirements of AB 1881; also,</p> <p>Chapter 13.16 <i>Water Conservation</i> adopted in 1965.</p>
<p>65596. The updated model ordinance adopted pursuant to Section 65595 shall do all the following in order to reduce water use:</p> <p>(a) <b>Include provisions for water conservation</b> and the appropriate use and groupings of plants that are well-adapted to particular sites and to particular climatic, soil, or topographic conditions. The model ordinance shall not prohibit or require specific plant species, but it may include conditions for the use of plant species or encourage water conserving plants. However, the model ordinance shall not include conditions that have the effect of prohibiting or requiring specific plant species.</p>	<p>17.32.070; Chapter 13.16</p>
<p>(b) <b>Include a landscape water budget component</b> that establishes the maximum amount of water to be applied through the irrigation system, based on climate, landscape size, irrigation efficiency, and plant needs.</p>	<p>17.32.090</p>
<p>(c) <b>Promote the benefits</b> of consistent local ordinances in neighboring areas.</p>	<p>17.32.030(A)</p>
<p>(d) Encourage the capture and <b>retention of stormwater</b> onsite to improve water use efficiency or water quality.</p>	<p>13.24.120</p>
<p>(e) <b>Include provisions for the use of automatic irrigation systems</b> and irrigation schedules based on climatic conditions, specific terrains and soil types, and other environmental</p>	<p>17.32.030(H)</p>

conditions. The model ordinance shall include references to local, state, and federal laws and regulations regarding standards for water-conserving irrigation equipment. The model ordinance may include climate information for irrigation scheduling based on the California Irrigation Management Information System.	
(f) Include <b>provisions for onsite soil assessment</b> and soil management plans that include grading and drainage to promote healthy plant growth and to prevent excessive erosion and runoff, and the use of mulches in shrub areas, garden beds, and landscaped areas where appropriate.	17.32.090(A)(8)
(g) <b>Promote the use of recycled water</b> consistent with Article 4 (commencing with Section 13520) of Chapter 7 of Division 7 of the Water Code.	17.32.090
(h) Seek to <b>educate water users</b> on the efficient use of water and the benefits of doing so.	17.32.100
(i) Address regional differences, including fire prevention needs.	17.32.160(A); 17.32.170(C); 8.16.020
(j) Exempt landscaping that is part of a registered historical site.	13.16.030(D)(3)
(k) Encourage the use of <b>economic incentives</b> to promote the efficient use of water.	13.08.040 – escalating commodity charge.
(l) Include provisions for <b>landscape maintenance practices</b> that foster long-term landscape water conservation. Landscape maintenance practices may include, but are not limited to, performing routine irrigation system repair and adjustments, conducting water audits, and prescribing the amount of water applied per landscaped acre.	17.32.050
(m) Include provisions to <b>minimize landscape irrigation overspray</b> and runoff.	17.32.090
65598. Any model ordinance adopted pursuant to this article shall <b>exempt cemeteries</b> from all provisions of the ordinance except those set forth in subdivisions (h), (k), and (l) of Section 65596. In adopting language specific to cemeteries, the department shall recognize the special landscape management needs of cemeteries.	13.16.030(D)(2)
535. (a) A water purveyor shall require as a condition of new retail water service on and after January 1, 2008, the installation of <b>separate water meters</b> to measure the volume of water used exclusively for landscape purposes.	Include in conditions of approval for applicable projects.

**FISCAL DATA:** There is no fiscal impact associated with adoption of this resolution. However, there are fees in effect for future review of landscape plans for development projects. Currently, the fee amount is \$884.00 for a minor review, and \$2,030.00 for a major review. These fees offset the cost of landscape plan review that includes compliance with the Water Conservation in Landscaping Act.

**APPROVED BY:**

  
\_\_\_\_\_  
Sam Racadio  
Interim City Manager

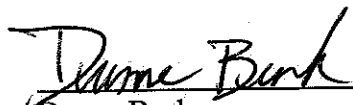
**RECOMMENDED BY:**

  
\_\_\_\_\_  
Zai Abu Bakar  
Community Development Director

**REVIEWED BY:**

  
\_\_\_\_\_  
Kirby Warner  
Interim Finance Director

**REVIEWED BY:**

  
\_\_\_\_\_  
Duane Burk  
Public Works Director

**PREPARED BY:**

  
\_\_\_\_\_  
Brian Guillot  
Assistant Planner

**CC Attachments:**

1. Resolution No. 2010-06
2. Copy of Assembly Bill (AB)1881
3. Copy of DWR letter dated October 8, 2009

# Attachment 1

(Resolution No. 2010-06)

**RESOLUTION NO. 2010-06**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING MAKING CERTAIN FINDINGS THAT THE CITY'S WATER EFFICIENT LANDSCAPE ORDINANCE IS AS EFFECTIVE AS THE STATE'S MODEL WATER EFFICIENT LANDSCAPE ORDINANCE (MWELO) IN CONNECTION WITH AB 1881 WATER CONSERVATION IN LANDSCAPING ACT.**

**WHEREAS**, California is experiencing its third consecutive year of sustained drought and historically drought has been a part of the California environment; and

**WHEREAS**, it is estimated that about half of urban water use is from landscape irrigation; and

**WHEREAS**, Assembly Bill (AB) 1881 the *Water Conservation in Landscaping Act* was approved by the Governor of the State of California on September 28, 2006; and

**WHEREAS**, AB 1881 requires local agencies to adopt a water efficient landscape ordinance by January 1, 2010, or the State's Model Water Efficient Landscape Ordinance prepared by the Department of Water Resources shall apply; and

**WHEREAS**, on February 14, 2006 the City Council for the City of Banning adopted new zoning regulations by approving Ordinance No. 1339; the new zoning regulations include Chapter 17.32 *Landscaping Standards* that correspond to the requirements of AB 1881. Additionally, Chapter 13.16 *Water Conservation* and Chapter 13.24 *Stormwater Code* of the municipal code contain elements that correspond to the various requirements of AB 1881; and

**WHEREAS**, the City now desires to notify the Department of Water Resources of compliance with AB 1881 requirements;

**NOW THEREFORE BE IT RESOLVED**, that the City Council of the City of Banning does hereby find, determine, and resolve as follows:

1. That the adopted regulations codified in Chapter 17.32 *Landscaping Standards*, Chapter 13.16 *Water Conservation*, and Chapter 13.24 *Stormwater Code*, copies of which are included as Exhibit "A" of this resolution and specifically detailed in the comparison chart listed below, are at least as effective in conserving water as the State's Model Water Efficient Landscape Ordinance.
2. That the City Clerk is directed to submit a copy of this resolution to the Department of Water Resources in accordance with the requirements of AB 1881.

## Comparison Chart

AB 1881 Requirement	Corresponding City Code/Program
<p>65595. (a) (1) To the extent funds are appropriated, not later than January 1, 2009, by regulation, the department shall update the model water efficient landscape ordinance adopted pursuant to Chapter 1145 of the Statutes of 1990, after holding one or more public hearings. The updated model ordinance shall be based on the recommendations set forth in the report prepared pursuant to Chapter 682 of the Statutes of 2004 and shall meet the requirements of Section 65596.</p> <p>(c) On or before January 1, 2010, a local agency shall adopt one of the following:</p> <p>(1) A water efficient landscape ordinance that is, based on evidence in the record, at least as effective in conserving water as the updated model ordinance adopted by the department pursuant to subdivision (a).</p> <p>(2) The updated model ordinance described in paragraph (1).</p> <p>(d) If the local agency has not adopted, on or before January 1, 2010, a water efficient landscape ordinance pursuant to subdivision (c), the updated model ordinance adopted by the department pursuant to subdivision (a) shall apply within the jurisdiction of the local agency as of that date, shall be enforced by the local agency, and shall have the same force and effect as if adopted by the local agency.</p>	<p>The Zoning Code as adopted on February 14, 2006 contains Chapter 17.32 <i>Landscaping Standards</i> that corresponds with the requirements of AB 1881; also,</p> <p>Chapter 13.16 <i>Water Conservation</i> adopted in 1965.</p>
<p>65596. The updated model ordinance adopted pursuant to Section 65595 shall do all the following in order to reduce water use:</p> <p>(a) Include provisions for water conservation and the appropriate use and groupings of plants that are well-adapted to particular sites and to particular climatic, soil, or topographic conditions. The model ordinance shall not prohibit or require specific plant species, but it may include conditions for the use of plant species or encourage water conserving plants. However, the model ordinance shall not include conditions that have the effect of prohibiting or requiring specific plant species.</p>	<p>17.32.070; Chapter 13.16</p>
<p>(b) Include a landscape water budget component that establishes the maximum amount of water to be applied through the irrigation system, based on climate, landscape size, irrigation efficiency, and plant needs.</p>	<p>17.32.090</p>
<p>(c) Promote the benefits of consistent local ordinances in neighboring areas.</p>	<p>17.32.030(A)</p>
<p>(d) Encourage the capture and retention of stormwater onsite to improve water use efficiency or water quality.</p>	<p>13.24.120</p>
<p>(e) Include provisions for the use of automatic irrigation systems and irrigation schedules based on climatic conditions, specific terrains and soil types, and other environmental</p>	<p>17.32.030(H)</p>

conditions. The model ordinance shall include references to local, state, and federal laws and regulations regarding standards for water-conserving irrigation equipment. The model ordinance may include climate information for irrigation scheduling based on the California Irrigation Management Information System.	
(f) Include <b>provisions for onsite soil assessment</b> and soil management plans that include grading and drainage to promote healthy plant growth and to prevent excessive erosion and runoff, and the use of mulches in shrub areas, garden beds, and landscaped areas where appropriate.	17.32.090(A)(8)
(g) <b>Promote the use of recycled water</b> consistent with Article 4 (commencing with Section 13520) of Chapter 7 of Division 7 of the Water Code.	17.32.090
(h) Seek to <b>educate water users</b> on the efficient use of water and the benefits of doing so.	17.32.100
(i) Address regional differences, including fire prevention needs.	17.32.160(A); 17.32.170(C); 8.16.020
(j) Exempt landscaping that is part of a registered historical site.	13.16.030(D)(3)
(k) Encourage the use of <b>economic incentives</b> to promote the efficient use of water.	13.08.040 – escalating commodity charge.
(l) Include provisions for <b>landscape maintenance practices</b> that foster long-term landscape water conservation. Landscape maintenance practices may include, but are not limited to, performing routine irrigation system repair and adjustments, conducting water audits, and prescribing the amount of water applied per landscaped acre.	17.32.050
(m) Include provisions to <b>minimize landscape irrigation overspray</b> and runoff.	17.32.090
65598. Any model ordinance adopted pursuant to this article shall <b>exempt cemeteries</b> from all provisions of the ordinance except those set forth in subdivisions (h), (k), and (l) of Section 65596. In adopting language specific to cemeteries, the department shall recognize the special landscape management needs of cemeteries.	13.16.030(D)(2)
535. (a) A water purveyor shall require as a condition of new retail water service on and after January 1, 2008, the installation of <b>separate water meters</b> to measure the volume of water used exclusively for landscape purposes.	Include in conditions of approval for applicable projects.

**PASSED, APPROVED, AND ADOPTED** this 26<sup>th</sup> day of January, 2010.

---

Robert E. Botts, Mayor  
City of Banning

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

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

**ATTEST:**

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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 the foregoing Resolution No. 2010-06, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 26<sup>th</sup> day of January, 2010.

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

---

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

52



Exhibit "A"  
to  
Resolution No. 2010-06

Copies of municipal code:

Chapter 17.32 *Landscaping Standards*

Chapter 13.16 *Water Conservation*

Chapter 13.24 *Stormwater Code (including Ordinance No. 1415  
amending Chapter 13.24)*

## Chapter 17.32

## LANDSCAPING STANDARDS

## Sections:

## Article I.

## General Provisions

- 17.32.010 Purpose.
- 17.32.020 Application.
- 17.32.030 General regulations.
- 17.32.040 Setback and parkway treatments.
- 17.32.050 Installation and maintenance.
- 17.32.060 Removal or destruction of trees.

## Article II.

## Water Conservation

- 17.32.070 Purpose and definitions.
- 17.32.080 Applicability.
- 17.32.090 Landscape documentation package.
- 17.32.100 Public education.
- 17.32.110 Provisions for existing landscapes.
- 17.32.120 Fees for initial review and program monitoring.
- 17.32.130 Appeals.

## Article IV.

## Landscape Design Guidelines

- 17.32.140 Purpose.
- 17.32.150 Applicability.
- 17.32.160 General guidelines.
- 17.32.170 Installation and maintenance.

## Article I.

## General Provisions

## 17.32.010 Purpose.

The purpose of this chapter is to establish landscaping regulations that are intended to:

A. Protect and preserve the natural environment in the City of Banning, and to incorporate green space, vegetation, and shade into the urban landscape.

B. Enhance the aesthetic appearance of development in all areas of the City by providing standards for quality, quantity and functional aspects of landscaping and landscape screening.

C. Reduce the heat and glare generated by development

D. Increase the compatibility between residential land uses and those abutting commercial and industrial land uses.

E. Provide privacy within residential developments, and to provide privacy on the perimeter of residential areas from various residential, commercial or other uses outside of the development.

F. Protect the public health, safety and welfare by minimizing the impact of all forms of physical and visual pollution, controlling soil erosion, screening incompatible land uses, preserving the integrity of neighborhoods, and enhancing pedestrian, cyclist and vehicular traffic and safety.

G. Increase the liveability of the City of Banning for children, adults, and visitors. (Zoning Ord. dated 1/31/06, § 9108.01.)

## 17.32.020 Application.

A. A concept landscaping plan shall be submitted as part of a planning permit application. The concept plan shall meet the intent of this chapter by exhibiting a generalized design layout which adequately demonstrates the desired landscaping program in terms of location, size/scale, function, theme and other attributes.

B. The concept plan shall provide the review authority with a clear understanding of the landscaping program prior to the preparation of a detailed, comprehensive landscaping plan. All landscaping plans must take into account the preservation of natural features including hills, topography, trees, shrubs, wildlife habitat, etc. The landscaping plan should refer to such natural elements, and enhance rather than detract from such elements.

C. Landscaping plans shall rely primarily on indigenous plant and tree species which are suitable to the local climate and soil types, rather than relying on foreign or invasive species which often compete with, and displace local species. The use of indige-

nous plant, shrub and tree types is also important in providing continuity of habitat for wildlife species, including local birds. The use of invasive species which have proven to be detrimental to flora species native to Southern California are strongly discouraged in all landscaping plans. Such species include the tamarisk (or salt cedar tree), and the Russian olive. Likewise many plants and trees from other areas (such as the tropics or the American southeast) have much greater water requirements than native species, and the planting and maintenance of such flora species will undermine the City's goal of water conservation. (Zoning Ord. dated 1/31/06, § 9108.02.)

#### 17.32.030 General regulations.

A comprehensive landscaping plan shall be prepared following approval of the permit application by the review authority, and shall be submitted at the same time as the grading plan and related documents and reports. The landscape and irrigation plans shall be approved by the Community Development Department, and this department may obtain any necessary input from the Public Works Department. Landscaping requirements include the following:

A. Designs shall be in harmony with the surrounding environment.

B. Landscape design and construction shall emphasize drought-tolerant landscaping whenever and wherever possible.

C. A comprehensive landscape and irrigation plan shall include, but not be limited to:

1. List of all plants (common and Latin) including trees and shrubs;
2. Size of plants;
3. Location of plants;
4. Irrigation plan for the plants;
5. Hardscape;
6. Water elements;
7. Any other information deemed necessary by the City.

D. Planting of trees and shrubs shall comply with the following installation requirements:

1. Landscape areas shall include plant material and planting methods which are suitable for the soil

of the site. The minimum percentage of plant sizes shall be as follows:

Trees:	20%, 36 inch box 50%, 24 inch box
Shrubs:	100%, 5 gallon
Groundcover:	100% coverage within 1 year

2. Trees and shrubs shall be planted so that at maturity they do not interfere with service lines, traffic safety sight area, and the basic property rights of adjacent property owners.

3. A variety of flowering trees, fragrant trees, and fruit trees, may all be included in the landscaping plan.

4. Trees planted near public rights-of-way shall have a limited deep root system and shall be installed so as to prevent physical damage to sidewalks, curbs, gutters and other public improvements.

5. Tree grates shall surround trees installed in paved areas or sidewalks. Trees with a deep root system shall be used in such areas.

F. Concrete mow strips are required to separate all turf areas from other landscaped areas in the commercial and industrial districts.

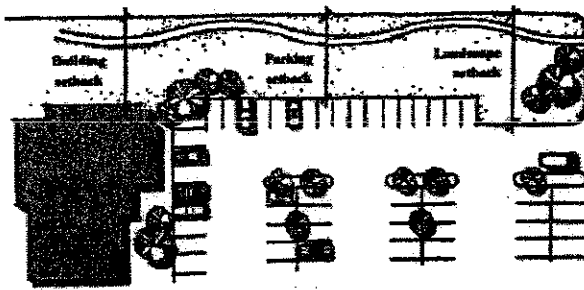
G. Inorganic groundcover shall be used in combination with live plants, and shall be used as an accent feature.

H. All landscaping shall include a water-efficient automatic irrigation system.

I. The front yards, and side yards visible from the public right-of-way, of all residential subdivisions shall be landscaped with trees, shrubs and groundcover. At a minimum, each front yard shall include 2 24 inch box trees, and sufficient shrubs and groundcover to provide full coverage within 2 years of installation. (Zoning Ord. dated 1/31/06, § 9108.03.)

#### 17.32.040 Setback and parkway treatments.

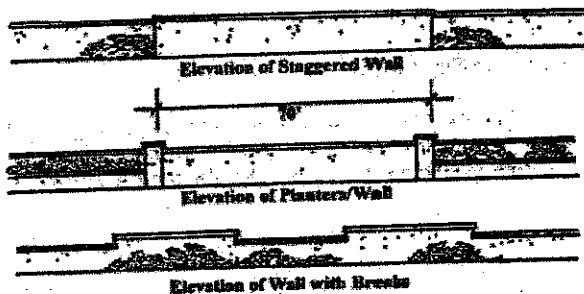
Landscape standards for setback and parkway areas shall include, but not be limited to:



A. Setback and parkway areas shall utilize uniform street tree plantings with complementary landscape materials.

B. Mounding or berming shall be incorporated within the overall design, with landscaped slopes not exceeding a three to one ratio, or four feet in height. A minimum of six feet of landscaping shall be placed on the exterior of perimeter walls and fences.

C. Walls and fences should be incorporated into the landscape design, including meandering walls, wall breaks, or openings where the design shall complement the landscaping of the adjacent development.



D. All designs shall insure compatibility with established setback and parkway areas, including transitions between landscape types and patterns.

E. Street trees shall be 24 inch box specimens or larger. (Zoning Ord. dated 1/31/06, § 9108.04.)

#### 17.32.050 Installation and maintenance.

A. Landscaping shall be permanently maintained by the developer or his/her successors. All required landscaping shall be properly installed, irrigated, and inspected prior to the issuance of a Certificate of Occupancy.

B. Maintenance of approved landscaping shall consist of:

1. Regular watering;
2. Mowing;
3. Pruning;
4. Fertilizing;
5. Clearing of debris and weeds;
6. Removal and replacement of dead plants;
7. The repair and replacement of irrigation systems; and
8. The repair and replacement of integrated architectural features. (Zoning Ord. dated 1/31/06, § 9108.05.)

#### 17.32.060 Removal or destruction of trees.

A. Removal of healthy, shade providing, and aesthetically valuable trees shall be strongly discouraged, and shall be in conformance with the policies and programs of the General Plan. A tree removal and replacement plan shall be required for the removal and replacement of all trees in excess of 50 years of age, unless their removal is required to protect the public health and safety.

B. Each tree that is removed in a new subdivision is considered a part of the common wealth of the citizens of Banning, is an important component of the habitat of surrounding wildlife, and is of value to the City. Each identified tree removed shall be replaced with at least one 36 inch box specimen tree, in addition to any other required landscaping. Individual single family residential lots of less than one-half acre and commercial tree farms shall be exempt from this provision. (Zoning Ord. dated 1/31/06, § 9108.06.)

### Article II.

#### Water Conservation

#### 17.32.070 Purpose and definitions.

A. In order to assure that the City's water resources are not significantly impacted by high water consuming landscape plans, the following standards for water efficiency shall be implemented for all landscaping plans required in this chapter, under Section 17.32.020, Applicability.

## B. Definitions.

**Anti-drain valve or check valve** means a valve located under a sprinkler head to hold water in the system so it minimizes drainage from the lower elevation sprinkler heads.

**Application rate** means the depth of water applied to a given area, measured in inches per hour. Also known as precipitation rate (sprinklers) or emission rate (drippers/microsprayers) in gallons per hour.

**Applied water** means the portion of water supplied by the irrigation system to the landscaping.

**Automatic controller** means a mechanical or solid-state timer, capable of operating valve stations to set the days and length of time of a water application.

**Backflow prevention device** means a safety device used to prevent pollution or contamination of the water supply due to the reverse flow of water from the irrigation system.

**Conversion factor (0.62)** means a number that converts the maximum applied water allowance from acre-inches per acre per year to gallons per square foot per year. The conversion factor is calculated as follows:

325,851 gallons/43,560 square feet/12 inches	= (0.62)
325,851 gallons	= one acre foot
43,560 square feet	= one acre
12 inches	= one foot

To convert gallons per year to 100 cubic feet per year, the common billing unit for water, divide gallons per year by 748. (748 gallons = 100 cubic feet.)

**Ecological restoration project** means a project where the site is intentionally altered to establish a defined, indigenous, historic ecosystem.

**Effective precipitation or usable rainfall** means the portion of total natural precipitation that is used by the plants.

**Emitter** means drip irrigation fittings that deliver water slowly from the system to the soil.

**Established landscape** means the point at which plants in the landscape have developed roots into the soil adjacent to the root ball.

**Establishment period** means the first year after installing the plant in the landscape.

**Estimated annual applied water use** means the portion of the estimated annual total water use that is derived from applied water. The estimated annual applied water use shall not exceed the maximum applied water allowance.

**Estimated total water use** means the annual total amount of water estimated to be needed to keep the plants in the landscaped area healthy. It is based upon such factors as the local evapotranspiration rate, the size of the landscaped area, the types of plants, and the efficiency of the irrigation system.

**ET adjustment factor** means a factor of 0.6 that, when applied to reference evapotranspiration, adjusts for plant factors and irrigation efficiency, two major influences upon the amount of water that needs to be applied to the landscape. A combined plant mix with a site-wide average 0.45 is the basis of the plant factor portion of this calculation. The irrigation efficiency for purposes of the ET adjustment factor is 0.75. Therefore, the ET adjustment factor  $(0.6) = (0.45/0.75)$ .

**Evapotranspiration** means the quantity of water evaporated from adjacent soil surfaces and transpired by plants during a specific time.

**Flow rate** means the rate at which water flows through pipes and valves (gallons per minute or cubic feet per second).

**Hydrozone** means a portion of the landscaped area having plants with similar water needs that are served by a valve or set of valves with the same schedule. A hydrozone may be irrigated or nonirrigated. For example, a naturalized area planted with native vegetation that will not need supplemental irrigation once established is a nonirrigated hydrozone.

**Infiltration rate** means the rate of water entry into the soil expressed as a depth of water per unit of time (inches per hour).

**Irrigation efficiency** means the measurement of the amount of water beneficially used divided by the

amount of water applied. Irrigation efficiency is derived from measurements and estimates of irrigation system characteristics and management practices. The minimum irrigation efficiency for purposes of this chapter is 0.75. Greater irrigation efficiency can be expected from well-designed and maintained systems.

**Landscape irrigation audit** means a process to perform site inspections, evaluate irrigation systems, and develop efficient irrigation schedules.

**Landscaped area** means the entire parcel less the building footprint, driveways, nonirrigated portions of parking lots, hardscapes such as decks and patios, and other nonporous areas. Water features are included in the calculation of the landscaped area.

**Lateral line** means the water delivery pipeline that supplies water to the emitters or sprinklers from the valve.

**Main line** means the pressurized pipeline that delivers water from the water meter to the valve or outlet.

**Service line** means the pressurized pipeline that delivers water from the water source to the water meter.

**Maximum applied water allowance** means for design purposes, the upper limit of annual applied water for the established landscaped area. It is based upon the area's reference evapotranspiration, the ET adjustment factor, and the size of the landscaped area. The estimated applied water use shall not exceed the maximum applied water allowance.

**Mined-land reclamation projects** means any surface mining operation with a reclamation plan approved in accordance with the Surface Mining and Reclamation Act of 1975.

**Mulch** means any material such as gravel, small rocks, pebbles, decorative sand, decomposed granite, bark, straw or other material left loose and applied to the soil surface for the beneficial purpose of reducing evaporation.

**Operating pressure** means the manufacturer's recommended pressure at which a system of sprinklers, bubblers, drippers or microsprayers is designed to operate.

**Overhead sprinkler irrigation systems** means those with high flow rates (pop-ups, impulse sprinklers, rotors, etc.)

**Overspray** means the water which is delivered beyond the landscaped area, wetting pavements, walks, structures, or other non-landscaped areas.

**Plant factor** means a factor that when multiplied by reference evapotranspiration, estimates the amount of water used by plants. For purposes of this chapter, the average plant factor of very low water using plants ranges from 0.01 to 0.10, for low water using plants the range is 0.10 to 0.35, for moderate water using plants the range is 0.35 to 0.60 and for high water using plants, the range is 0.60 to 0.90.

**Rain sensing device** means a system which automatically shuts off the irrigation system when it rains.

**Record drawing or as-builts** means a set of reproducible drawings which show significant changes in the work made during construction which are usually based on drawings marked up in the field and other data furnished by the contractor.

**Recreational area** means areas of active play or recreation such as sports fields, school yards, picnic grounds, or other areas with intense foot traffic.

**Recreational turfgrass** means turfgrass that serves as a playing surface for sports and recreational activities. Athletic fields, golf courses, parks and school playgrounds are all examples of areas hosting recreational turf grass.

**Recreational turfgrass ET adjustment factor** means a factor of 0.82 that, when applied to reference evapotranspiration, adjusts for the additional stress of high traffic on recreational turfgrass and the higher irrigation efficiencies of long range rotary sprinklers. These are the two major influences upon the amount of water that needs to be applied to a recreational landscape. A mixed cool/warm season turfgrass with a seasonal average of 0.7 is the basis of the plant factor portion of this calculation. The irrigation efficiency of long range sprinklers for purposes of the ET adjustment factor is 0.85. Therefore, the ET adjustment factor is  $0.82 = 0.7/0.85$ .

**Recycled water, reclaimed water or treated sewage effluent water** means treated or recycled

waste water of a quality suitable for nonpotable uses such as landscape irrigation; not intended for human consumption.

**Reference evapotranspiration or ETo** means a standard measurement of environmental parameters which affect the water use of plants. ETo is given in inches per day, month, or year, and is an estimate of the evapotranspiration of a large field of cool-season grass that is well watered. Reference evapotranspiration is used as a basis of determining the maximum applied water allowances so that regional differences in climate can be accommodated. For purposes of this chapter, the following ETo zone map will be used. (See map attached to the ordinance codified in this chapter.)

**Rehabilitated landscape** means any relandscaping project whose choice of new plant material and/or new irrigation system components is such that the calculation of the site's estimated water use will be significantly changed. The new estimated water use calculation must not exceed the maximum applied water allowance calculated for the site using a 0.6 ET adjustment factor.

**Runoff** means water which is not absorbed by the soil or landscape to which it is applied and flows from the planted area. For example, runoff may result from water that is applied at too great a rate (application rate exceeds infiltration rate), when there is a severe slope or when water is misapplied to hard-scapes.

**Soil moisture sensing device** means a device that measures the amount of water in the soil.

**Soil texture** means the classification of soil based on the percentage of sand, silt and clay in the soil.

**Sprinkler head** means a device which sprays water through a nozzle.

**Static water pressure** means the pipeline pressure when water is not flowing.

**Station** means an area served by one valve or by a set of valves that operates simultaneously.

**Turf** means a surface layer of earth containing mowed grass with its roots. Perennial and Annual Ryegrass are cool season grasses. Hybrid and common Bermuda grass, are warm season grasses.

**Valve** means a device used to control the flow of water in the irrigation system.

**Water conservation concept statement** means a one-page checklist and a narrative summary of the project.

**Water feature** means any water applied to the landscape for non-irrigation decorative purposes. Fountains, streams, ponds and lakes are considered water features. Water features use more water than efficiently irrigated turf grass and are assigned a plant factor value of 1.1 for a stationary body of water and 1.2 for a moving body of water. (Zoning Ord. dated 1/31/06, § 9108.07(1).)

### 17.32.080 Applicability.

A. Except as provided in Section 17.32.030, this article shall apply to:

1. All new and rehabilitated landscaping for private, public, commercial and governmental development projects that require a permit; and
2. Developer-installed landscaping in single-family tracts and multifamily projects.

B. Projects subject to this section shall conform to the provisions in this section.

C. This section shall not apply to resident homeowner-provided landscaping at single-family residences. (Zoning Ord. dated 1/31/06, § 9108.07(2).)

### 17.32.090 Landscape documentation package.

A. Each landscape documentation package shall include the following elements, which are described below under "Elements of Landscape Documentation Package".

1. Water conservation concept statement;
2. Calculation of the maximum applied water allowance;
3. Calculation of the estimated applied water use;
4. Calculation of the estimated total water use;
5. Landscape design plan;
6. Irrigation design plan;
7. Grading design plan;
8. Soil analysis (optional);

9. Certificate of substantial completion. (To be submitted by certified landscape designer, auditor or landscape architect after installation of the project.)

B. Three copies of the landscape documentation package conforming to this chapter shall be submitted to the city. No permit shall be issued until the city reviews and approves the landscape documentation package. Prior to preparation and submission of the landscape documentation package, the preliminary landscape design shall be approved by the Planning Commission.

C. A copy of the approved landscape documentation package shall be provided to the property owner or site manager along with the record drawings and any other information normally forwarded to the property owner or site manager.

D. Upon completion of construction, a copy of the water conservation concept statement and the certificate of substantial completion shall be sent by the project manager to the water management specialist of the water district and city/county having jurisdiction.

### ELEMENTS OF LANDSCAPE DOCUMENTATION PACKAGE

- A. Water Conservation Concept Statement. Each landscape documentation package shall include a cover sheet, referred to as the water conservation statement similar to the following example. It serves as a checklist to verify that the elements of the landscape documentation package have been completed and has a narrative summary of the project.

#### SAMPLE WATER CONSERVATION CONCEPT STATEMENT

Project Site: \_\_\_\_\_ Case Number: \_\_\_\_\_

Project Location: \_\_\_\_\_

Landscape Architect/Irrigation Designer/Contractor: \_\_\_\_\_

Included in this project submittal package are: (Check to indicate completion)

\_\_\_\_ 1. Maximum Annual Applied Water Allowance:  
 Conventional Landscape: \_\_\_\_\_ 100 cubic feet/year  
 + Recreational Turfgrass Landscape: \_\_\_\_\_ 100 cubic feet/year (if applicable)  
 Total Maximum Annual Applied Water Allowance: \_\_\_\_\_ 100 cubic feet/year \_\_\_\_

\_\_\_\_ 2. Estimated Annual Applied Water Use by Hydrozone:  
 Turfgrass: \_\_\_\_\_ 100 cubic feet/year  
 Recreational Turfgrass: \_\_\_\_\_ 100 cubic feet/year  
 Exotic Trees/Shrubs/Groundcovers: \_\_\_\_\_ 100 cubic feet/year  
 Desert Plants: \_\_\_\_\_ 100 cubic feet/year  
 Water features: \_\_\_\_\_ 100 cubic feet/year  
 Other \_\_\_\_\_: \_\_\_\_\_ 100 cubic feet/year \_\_\_\_

\_\_\_\_ 3. Estimated Annual Total Water Use:  
 \_\_\_\_\_ 100 cubic feet/year \_\_\_\_



- \_\_\_\_ 4. Landscape Design Plan
- \_\_\_\_ 5. Irrigation Design Plan
- \_\_\_\_ 6. Grading Design Plan
- \_\_\_\_ 7. Soil Chemical Analysis (Optional)

Description of Project: (Briefly describe the planning and design actions that are intended to achieve conservation and efficiency in water use.)

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Date: \_\_\_\_\_ Prepared by: \_\_\_\_\_

#### B. The Annual Maximum Applied Water Allowance

- a. A project's annual maximum applied water allowance shall be calculated using the following formula:

MAWA = (ETo) (0.6) (LA) (0.62) where:

MAWA = Maximum applied water allowance (gallons per year)  
 Eto = Reference evapotranspiration (i.e., 75.0 inches per year)  
 0.6 = ET adjustment factor  
 LA = Landscaped area (square feet)  
 0.62 = Conversion factor (to gallons per square foot)

- b. An example calculation of the annual maximum applied water allowance is:

Project site: Landscape area of fifty thousand square feet in Zone No. 3a of the City ETo Map.

MAWA = (ETo) (.6) (LA) (0.62)  
 = (75.0 inches) (.6) (50,000 square feet) (.62)

Maximum applied water allowance = 1,395,000 gallons per year, 1,865 hundred-cubic-feet per year (billing units), 4.28 acre feet/acre per year or 51.4% of water per year.

#### C. Estimated Annual Applied Water Use.

- a. The annual estimated applied water use shall not exceed the annual maximum applied water allowance.
- b. A calculation of the estimated annual applied water use shall be submitted with the landscape documentation package.

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- c. The estimated annual total water use for each hydrozone is calculated from the following formula:

$$\text{EWU (hydrozones)} = \frac{(\text{ETo}) (\text{PF}) (\text{HA}) (.62)/748}{(\text{IE})}$$

(in 100 cubic feet)

EWU (hydrozone)	=	Estimated water use (gallons per year)
ETo	=	Reference evapotranspiration (i.e., ETo Zone 3a = 75.00 inches per year)
PF	=	Plant factor (see definitions)
HA	=	Hydrozone area (square feet)
(.62)	=	Conversion factor
(IE)	=	Irrigation efficiency (see Section 17.04.070, Definitions)
748	=	Conversion to billing units (100 cubic feet)

#### D. Estimated Annual Total Water Use.

A calculation of the estimated annual total hydrozone water use shall be submitted with the landscape documentation package. The estimated annual total water use for the entire landscaped area equals the sum of the estimated annual water use (EWU) of all hydrozones in that landscaped area.

#### E. Landscape Design Plan.

A landscape design plan meeting the following requirements shall be submitted as part of the landscape documentation package.

##### a. Plant Selection and Grouping.

- i. Any plants may be used in the landscape, providing the estimated annual applied water use recommended does not exceed the maximum annual applied water allowance and that the plants meet the specifications set forth in subsections (C)(5)(a)(ii), (iii) and (iv) of this section.
- ii. Plants having similar water use shall be grouped together in distinct hydrozones.
- iii. Plants shall be selected appropriately based upon their adaptability to the climate, geologic, and topographical conditions of the site. Protection and preservation of native species and natural areas is encouraged. The planting of trees is encouraged whenever it is consistent with the other provisions of this chapter.
- iv. Fire prevention needs shall be addressed in areas that are fire prone. Information about fire prone areas and appropriate landscaping for fire safety is available from the fire marshal.

##### b. Water Features.

- i. Recirculating water shall be used for decorative water features.

##### c. Landscape Design Plan Specifications.

The landscape design plan shall be drawn on project base sheets at a scale that accurately and clearly identifies:

- i. Designation of hydrozones;
- ii. Landscape materials, trees, shrubs, groundcover, turf and other vegetation. Planting symbols shall be clearly drawn and plants labeled by botanical name, common name, water use classification, container size, spacing and quantities of each group of plants indicated;
- iii. Property lines and street names;
- iv. Streets, driveways, walkways and other paved areas;
- v. Pools, ponds, water features, fences and retaining walls;
- vi. Existing and proposed buildings and structures including elevation, if applicable;
- vii. Location of all overhead and underground utilities.
- viii. Natural features including but not limited to rock outcroppings, existing trees and shrubs that will remain;
- ix. Tree staking, plant installation, soil preparation details, and any other applicable planting and installation details;
- x. A calculation of the total landscaped area;
- xi. Designation of recreational areas.

#### F. Irrigation Design Plan.

An irrigation design plan meeting the following conditions shall be submitted as part of the landscape documentation package:

- a. Irrigation Design Criteria.
  - i. Runoff and Overspray. Soil types and infiltration rate shall be considered when designing irrigation systems. All irrigation systems shall be designed to avoid runoff, low-head drainage, overspray, or other similar conditions where water flows onto adjacent property, nonirrigated areas, walks, roadways or structures. Proper irrigation equipment and schedules, including features such as repeat cycles, shall be used to closely match application rates to infiltration rates therefore minimizing runoff. Special attention shall be given to avoid runoff on slopes and to avoid overspray in planting areas with a width less than ten feet. No overhead sprinkler irrigation systems shall be installed in median strips or islands.
  - ii. Irrigation Efficiency. For the purpose of determining the maximum applied water allowance, irrigation efficiency is assumed to be 0.75. Mixed irrigation system types shall be designed, maintained and managed to meet or exceed an average of 0.75 efficiency.
  - iii. Equipment.
    - (A) Water Meters. Separate landscape water meters shall be installed for all projects except for single-family homes or any project with a landscaped area of less than two thousand five hundred square feet.
    - (B) Controllers. Automatic control systems (solar or electric) shall be required for all irrigation systems and must be able to accommodate all aspects of the design. Mechanical irrigation controllers are prohibited.
    - (C) Valves. Plants which require different amounts of water shall be irrigated by separate valves. If one valve is used for a given area, only plants with similar water use shall be used in that area.
    - (D) Anti-drain (check) valves shall be installed in strategic points to prevent low-head drainage.

- (E) Sprinkler Heads. Heads shall have application rates appropriate to the plant water use requirements within each control valve circuit. Sprinkler heads shall be selected for proper area coverage, application rate, matched precipitation rate nozzles, operating pressure, adjustment capability and ease of maintenance.
- (F) Scheduling Aids—Soil Moisture Sensing Devices. It is required that soil moisture sensing devices be installed on all turfgrass sites exceeding 1.0 acres (43,560 square feet) of planted area.
- (G) Scheduling Aids—ETo Controllers. It is recommended that ETo controllers be considered for installation on all sites.
- (H) Equipment in Publicly Maintained Areas. Irrigation equipment in areas which may or will be maintained by the city shall conform to specifications of the city.
- (I) Emitters. Emitters shall have consistent application rates appropriate to the plant water use requirements within each control valve circuit. Emitters shall be selected for specific area coverage (individual plants), application rates, operating pressure, adjustment capability and ease of maintenance.

b. Recycled Water.

- i. The installation of recycled water irrigation systems (dual distribution systems) shall be required to allow for the current and future use of recycled water, unless a written exemption has been granted as described in the subsection (C)(6)(b)(ii) of this section.
- ii. Irrigation systems shall make use of recycled water unless a written exemption has been granted by the water district having jurisdiction, stating that recycled water meeting all health standards is not available and will not be available in the foreseeable future.
- iii. Recycled water irrigation systems shall be designed and operated in accordance with all local and state codes and be applicable to all of the provisions of this chapter.

c. Irrigation Design Plan Specifications.

Irrigation systems shall be designed to be consistent with hydrozones. The irrigation design plan shall be drawn on project base sheets. It shall be separate from, but use the same format as, the landscape design plan. The scale shall be the same as that used for the landscape design plan. The irrigation design plan shall accurately and clearly identify:

- i. Location and size of separate water meters for the landscape;
- ii. Location, type, and size of all components of the irrigation system, including automatic controllers, main and lateral lines, valves, sprinkler heads, moisture sensing devices, rain switches, quick couplers, and backflow prevention devices;
- iii. Static water pressure at the point of connection to the water supply;
- iv. Flow rate (gallons per minute), application rate (inches per hour), and design operating pressure (psi) for each station;
- v. Recycled water irrigation systems.

G. Grading Design Plan.

Grading design plans satisfying the city/county grading ordinance and the following conditions shall be submitted as part of the landscape documentation package.

- a. A grading design plan shall be drawn on project base sheets. It shall be separate from but use the same format as the landscape design plan.
- b. The grading design plan shall indicate finished configurations and elevations of the landscaped area, including the height of graded slopes, drainage patterns, pad elevations, and finish grade.

#### H. Soil Analysis.

A soil analysis satisfying the following conditions should be submitted as part of the landscape documentation package:

- a. Determination of soil texture, indicating the available water holding capacity.
- b. An approximate soil infiltration rate (either) measured or derived from soil texture/infiltration rate tables. A range of infiltration rates shall be noted where appropriate.
- c. Measure of pH and total soluble salts.

#### I. Certification.

- a. A licensed landscape architect, designer of record or designated city staff shall conduct a final field observation and shall provide a certificate of substantial completion to the city. The certificate shall specifically indicate that plants were installed as specified, that the irrigation system was installed as designed, and that an irrigation audit has been performed, along with a list of any observed deficiencies.
- b. Certification shall be accomplished by completing a certificate of substantial completion and delivering it to the city, to the retail water supplier, and to the owner of record. A sample of such a form, which shall be provided by the city is:

#### EXAMPLE CERTIFICATE OF SUBSTANTIAL COMPLETION

Project Site: \_\_\_\_\_ Project Number: \_\_\_\_\_

Project

Location: \_\_\_\_\_

Preliminary Project Documentation Submitted: (Check indicating submittal)

\_\_\_\_ 1. Total Maximum Applied Water Allowance:

\_\_\_\_ (100 cubic feet/year)

\_\_\_\_ 2. Estimated Applied Water Use by Hydrozones:

Turfgrass: \_\_\_\_\_ 100 cubic feet/year

Recreational Turfgrass: \_\_\_\_\_ 100 cubic feet/year

Exotic Trees/Shrubs/Groundcovers: \_\_\_\_\_ 100 cubic feet/year

Desert Plants: \_\_\_\_\_ 100 cubic feet/year

Water features: \_\_\_\_\_ 100 cubic feet/year

Other \_\_\_\_\_: \_\_\_\_\_ 100 cubic feet/year

\_\_\_\_ 3. Estimated Total Water Use:  
 \_\_\_\_\_ (100 cubic feet/year)

- \_\_\_\_ 4. Landscape Design Plan  
 \_\_\_\_ 5. Irrigation Design Plan  
 \_\_\_\_ 6. Grading Design Plan  
 \_\_\_\_ 7. Soil Analysis (optional)

Post-Installation Inspection: (Check indicating substantial completion)

- \_\_\_\_ A. Plants installed as specified  
 \_\_\_\_ B. Irrigation system installed as designed  
     \_\_\_\_ dual distribution system for recycled water  
     \_\_\_\_ minimum run-off or overspray

\_\_\_\_ Project submittal package and a copy of this certification has been provided to owner/manager and local water agency.

Comments:

I/we certify that work has been installed in accordance with the contract documents:

Contractor	Signature	Date	State License Number
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I/we certify that based upon periodic site observations, the work has been substantially completed in accordance with the Water Efficient Landscape Ordinance and that the landscape planting and irrigation installation conform with the approved plans and specifications.

Landscape Architect	Signature	Date	State License Number
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or Irrigation Designer/Consultant  
 or Licensed or Certified Professional in a Related Field

I/we certify that I/we have received all of the contract documents and that it is our responsibility to see that the project is maintained in accordance with the contract documents.

Owner	Signature	Date
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(Zoning Ord. dated 1/31/06, § 9108.07(3).)

**17.32.100 Public education.****A. Publications.**

1. The city will, upon request, provide information to owners of all new, single family residential homes regarding the design, installation, and maintenance of water efficient landscapes.

2. Information about the efficient use of landscape water shall be provided to water users throughout the community.

**B. Model Homes.** At least one model home that is landscaped in each project consisting of eight or more homes shall demonstrate via signs and information, the principles of water efficient landscapes described in this chapter.

1. Signs shall be used to identify the model as an example of a water efficient landscape and featuring elements such as hydrozones, irrigation equipment, and others which contribute to the overall water efficient theme.

2. Information shall be provided about designing, installing, and maintaining water efficient landscapes. (Zoning Ord. dated 1/31/06, § 9108.07(4).)

**17.32.110 Provisions for existing landscapes.**

**A. Water Management.** All existing landscaped areas which use ground water and are over sixty thousand square feet, including golf courses, green belts, common areas, multifamily housing, schools, businesses, parks, and cemeteries shall have a landscape irrigation audit at least every five years unless granted an exemption by the City. At a minimum, the audit shall be in accordance with the California Landscape Irrigation Auditor Handbook, the entire document which is hereby incorporated by reference. (See Landscape Irrigation Audit Handbook, Department of Water Resources, Water Conservation Office (June, 1990), Version 5.5.)

**B. Water Waste Prevention.** Water waste resulting from inefficient landscape irrigation including run-off, low head drainage, overspray, or other similar conditions where water flows onto adjacent property, nonirrigated areas, walks, roadways, or structures shall be discouraged. Penalties for violation of these prohibitions shall be established. (Zoning Ord. dated 1/31/06, § 9108.07(5).)

**17.32.120 Fees for initial review and program monitoring.**

**A.** Fees for the purposes of meeting obligations under this chapter, the following fees are deemed necessary to review landscape documentation packages and monitor landscape irrigation audits and shall be imposed on the subject applicant, property owner or designee.

1. A landscape documentation package review fee will be due at the time initial project application submission to the planning and development department.

2. The project owner/developer must cause a landscape irrigation audit to be completed by a certified landscape irrigation auditor. No city fees will be due for the review of the audit by the planning and development department.

3. If a landscape documentation package is not submitted prior to the start of landscape construction work, for those persons required to submit a package, a late submittal fee of twice the review fee shall be required.

**B.** The city council, by resolution, shall establish the amount of the above fees in accordance with applicable law. (Zoning Ord. dated 1/31/06, § 9108.07(6).)

**17.32.130 Appeals.**

Decisions made by the Director may be appealed by an applicant, property owner(s), or designee(s) of any applicable project to the planning commission and thereafter the city council by an application in writing to the planning and development director and city clerk of the city council respectively within fifteen days from the date of notification of decision. (Zoning Ord. dated 1/31/06, § 9108.07(7).)

**Article IV.****Landscape Design Guidelines****17.32.140 Purpose.**

The design guidelines which follow are a reference to assist the designer in understanding the City's objectives for high quality landscaping. These guide-

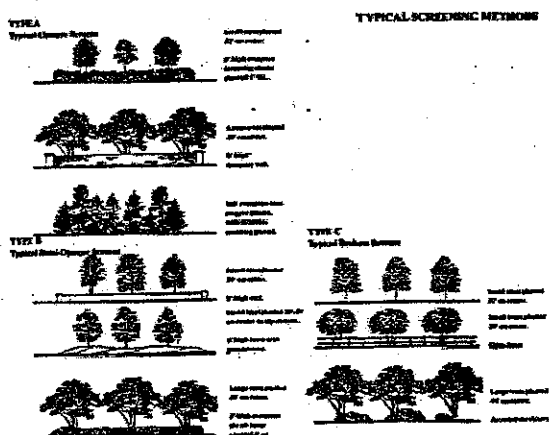
lines will be utilized during the design review process to encourage the highest level of design quality while at the same time providing the necessary flexibility to encourage creativity on the part of the project designers. (Zoning Ord. dated 1/31/06, § 9108.09(1).)

### 17.32.150 Applicability.

Any addition, remodelling, relocation or construction requiring a building permit subject to review by the Community Development Department, shall adhere to these guidelines unless exempted. (Zoning Ord. dated 1/31/06, § 9108.09(2).)

### 17.32.160 General guidelines.

A. Landscaping and open spaces should be designed as a central part of the site design, and should integrate development with the surrounding elements of the natural environment. Landscaping should enhance building design, public views and spaces, provide buffers and transitions, preserve and enhance wildlife habitat, provide shade and cooling, and provide screening from other nearby uses.



B. Landscape design should highlight the design theme through the use of arbors and trellises.

C. Landscaped areas should incorporate grasses and groundcovers; shrubs; and trees.

D. The following planting design concepts should be used whenever possible:

1. Trees to create canopies and shade, especially in parking areas;

2. Pots, vases, wall planters and raised planters;
3. Specimen trees used in informal groupings and rows at major focal points;
4. The use of flowering trees in informal groups to provide color;
5. The use of distinctive plants as focal points;
6. Berms, plantings and low walls to screen parking areas from public rights of way.

E. Landscaping should be installed at the base of buildings. Asphalt edges should be avoided.

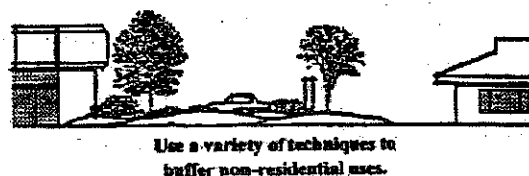
F. Plantings should be planned to create a simple, non-uniform arrangement. (Zoning Ord. dated 1/31/06, § 9108.09(3).)

### 17.32.170 Installation and maintenance.

A. Trees, shrubs and vines should have body and fullness that is typical of the species.

B. Herbaceous and flat plant groundcovers should be planted no more than 12 inches on center, and woody, shrub groundcover should be planted no more than 3 feet on center.

C. Plant materials should be spaced so they do not interfere with lighting, and so they do not restrict access to fire hydrants or fire alarm boxes. Proper spacing should insure unobstructed access for vehicles and pedestrians. The following spacing standards should be used:



1. 25 feet from the property corner at a street intersection to the center of the first tree or large shrub.
2. 15 feet between trees and large shrubs.
3. 15 feet between trees or large shrubs and fire hydrants.
4. 10 feet between trees or large shrubs and the edge of any driveway. (Zoning Ord. dated 1/31/06, § 9108.09(4).)



## Chapter 13.16

## WATER CONSERVATION

## Sections:

- 13.16.010** Urban water management/conservation plan.
- 13.16.020** Restricting water use during water supply emergencies.
- 13.16.030** Water conservation using xeriscape principles.

**13.16.010** Urban water management/conservation plan.

The City of Banning adopts the urban water management/conservation plan, a copy of which is on file in the office of the city clerk. (Code 1965, § 31-6.)

**13.16.020** Restricting water use during water supply emergencies.

A. Definitions. As used in this section:

"Agency" means City of Banning.

"Council" means city council of the city.

"Emergency supply shortage" means any water shortage caused by an earthquake, loss of electrical power, pipe line breakage, or any other threatened or existing water shortage caused by a disaster or facility failure which results in city inability to meet the water demands of its customers.

"Water operations superintendent" means the water services supervisor of the city.

"Waste" means any unreasonable or nonbeneficial use of water, or any unreasonable method of use of water, as determined by the council, including, but not limited to, the specific uses prohibited and restricted by this section as hereinafter set forth.

"Water users" means any person, firm, partnership, association, corporation or political entity using water obtained from the water system of the city.

"Water" means water supplied by the city.

B. Noticed public hearing prior to mandatory conservation. Except when an emergency is caused by the breakage or failure of a dam, pump, pipeline or conduit, a noticed public hearing shall be held prior to the adoption of stages 2, 3 or 4 of the water

supply plan for emergency supply shortage as set forth in subsections (C)(2), (C)(3) and (C)(4) of this section. Notice of the time and place of hearing shall be published at least seven days prior to the date of hearing in a newspaper printed, published, and circulated within the area in which the water supply is distributed, or if there is no such newspaper, in any newspaper printed, published, and circulated in the county in which the area is located.

C. Water supply plan for emergency supply shortage.

1. Stage No.1. Normal conditions: voluntary conservation measures. Normal conditions shall be in effect when the city is able to meet all the water demands of its customers in the immediate future. During normal conditions, all water users should continue to use water wisely, to prevent the waste or unreasonable use of water, and to reduce water consumption to that necessary for ordinary domestic and commercial purposes.

2. Stage No. 2. Water shortage alert: mandatory conservation measures. In the event of a sudden and unexpected water supply shortage which could prevent the city from meeting the water demands of its customers, the council shall immediately hold a public hearing at which consumers of the water supply shall have the opportunity to protest and to present their respective needs to the council. No public hearing shall be required in the event of a breakage or failure of a dam, pump, pipeline or conduit causing an immediate emergency. The council may then declare a water shortage emergency condition to prevail, and the following rules and regulations shall be in effect immediately following such declaration.

a. Washing driveways, parking lots, or other hard surfaced area, or building exteriors at any time, except to alleviate immediate fire hazards is prohibited;

b. Parks, golf courses and school grounds are to be irrigated during nighttime hours only, between sunset and sunrise;

c. Lawn watering and landscape irrigating, including construction meter use, is prohibited between the hours of 10:00 A.M. to 5:00 P.M.;

d. Running water shall not be used for washing privately owned vehicles. A bucket may be used for the washing of vehicles and only hoses equipped with shut-off nozzles may be used for rinsing;

e. Restaurants are requested not to provide drinking water to patrons except by request;

f. Commercial nurseries shall use water only during the hours from midnight to 6:00 A.M. Irrigation of propagation beds and watering of livestock is permitted as necessary during any hours.

g. Golf courses using reclaimed water are exempted from these restrictions.

3. Stage No. 3. Water shortage warning. The council may, following a public hearing as set forth in subsection B of this section, declare that an emergency water supply shortage exists, and that the agency is unable to meet all the water demands of its customers. Immediately thereafter, the following water conservation measures shall apply:

a. Parks and schools shall be watered on alternate days during the hours between sunset to sunrise, the schedule of which shall be set following the public hearing;

b. Golf courses which utilize domestic water from the city's domestic system may irrigate greens only during the hours between sunset to sunrise. Golf courses utilizing reclaimed water are exempted from this restriction;

c. Other lawn watering and landscape irrigating, including construction meter use, are restricted as follows: customers with even-numbered street addresses may water only on even-numbered days, customers with odd-numbered street addresses may water only on odd-numbered days, and no watering or irrigating shall be done between the hours of 10:00 A.M. and 5:00 P.M. on any day;

d. Washing down of driveways, parking lots, or other paved surfaces is prohibited;

e. Washing of vehicles is restricted to commercial car wash establishments which recycle their water;

f. Filling or adding water to swimming pools, wading pools, spas, ornamental ponds, fountains and artificial lakes is prohibited;

g. Restaurants shall not serve drinking water to patrons except by request;

h. No new construction meter permits shall be issued by the agency;

i. Construction metered water shall not be used for earth work or road construction purposes;

j. Water of livestock is permitted as necessary during any hours;

k. Commercial nurseries may use water only between the hours of midnight and 6:00 A.M. Irrigation of propagation beds is permitted as necessary during any hours. Commercial nurseries utilizing reclaimed water are exempted from this restriction.

4. Stage No. 4. Mandatory compliance. Water shortage emergency.

Following a declaration by the city council that an emergency water supply shortage due to a major failure in a supply of distribution facility exists, the following water conservation measures shall apply:

a. Watering of parks, school grounds and golf courses is prohibited, except by reclaimed water;

b. Watering of lawn and irrigating of landscape is prohibited;

c. Washing down of driveways, parking lots, or other paved surfaces is prohibited;

d. Washing of vehicles is prohibited, except when done by commercial car wash establishments using recycled or reclaimed water;

e. Filling or adding water to swimming pools, wading pools, spas, ornamental ponds, fountains and artificial lakes is prohibited;

f. No serving of drinking water by restaurants to patrons except by request;

g. No issuing of new construction meter permits by the city;

h. Turning off and locking all existing construction meters;

i. Discontinuing all watering and irrigating of commercial nurseries. Those utilizing reclaimed water are exempted from this restriction. Watering of livestock is permitted as necessary.

D. Council discretion to modify conservation measures upon a showing of necessity therefor. The specific requirements of each mandatory conservation stage shall be effective upon adoption by the

council following a public hearing, except that the council may modify or amend such requirements at the time of adoption upon a showing of the need for such modification or amendment.

E. Implementation and termination of mandatory compliance stages. The water operations superintendent of the city shall monitor the supply and demand for water on a daily basis to determine the level of conservation required by the implementation or termination of the water conservation stages, and shall notify the council of the necessity for the implementation or termination of each stage. Each declaration of the council implementing or terminating a water conservation stage shall be published at least once in a newspaper of general circulation, and shall remain in effect until the city council otherwise declares, as provided herein.

F. Exceptions. Application for exception permit. The water operations superintendent of the city may grant permits for uses of water otherwise prohibited thereby if he/she finds and determines that special circumstances make compliance not reasonably possible, or that restrictions herein would either:

1. Cause an unnecessary and undue hardship to the water user or the public; or
2. Cause an emergency condition affecting the health, sanitation, fire protection or safety of the water user or of the public.

Such exceptions may be granted only upon application therefor. Upon granting any such exception permit, the water operations superintendent may impose any conditions he/she determines to be just and proper.

G. Criminal proceedings for violation. The city council hereby declares that, pursuant to Water Code Section 377, it shall be a misdemeanor for any person to use or apply water contrary to or in violation of any mandatory restriction or requirement established by this section and, upon conviction thereof, that person, firm or corporation shall be punished by imprisonment in the county jail for not more than thirty days or a fine of not more than one thousand dollars or by both such fine and imprisonment.

H. Civil proceedings for violation. In addition to criminal penalties, violators of the mandatory provi-

sions of this section shall be subject to civil action initiated by the city.

1. First violation. For a first violation, the city shall issue a written notice of violation to the water user violating the provisions of this chapter.

2. Second violation: twenty-five percent surcharge. For a second violation of this section within a twelve-month period, a one-month surcharge is hereby imposed in an amount equal to twenty-five percent of the previous month's water bill for the meter through which the wasted water was supplied.

3. Third violation: fifty percent surcharge; installation of flow restrictor. For a third violation of this section within a twelve-month period, a one-month penalty surcharge is hereby imposed in an amount equal to fifty percent of the previous month's water bill for the meter through which the wasted water was supplied. In addition to the surcharge, the agency may at its discretion install a flow-restricting device at such meter with a one-eighth-inch orifice for services up to one and one-half inch size, and comparatively sized restrictors for larger services, on the service of the customer at the premises at which the violation occurred, for a period of not less than forty-eight hours. The charge for installing a flow-restricting device shall be based upon the size of the meter and the cost of installation but shall not be less than twenty-five dollars. The charge for removal of the flow-restricting device and restoration of normal service shall be twenty-five dollars if restoration of normal service is performed during the hours of 7:00 A.M. to 3:30 P.M. on regular working days. If the removal of the flow-restricting device and restoration of normal service is made after regular working hours, on holidays or weekends, the restoration service charge shall be forty dollars.

4. Subsequent violations; discontinuance of service. For any subsequent violation of this section within the twenty-four calendar months after a first violation as provided in subsection (H)(1) of this section, the penalty surcharge provided in subsection (H)(3) of this section shall be imposed and the city shall discontinue water service to that customer at the premises or to the meter where the violation occurred. The charge for reconnection and restoration

of normal service shall be twenty-five dollars. Such restoration of service shall not be made until the water operations superintendent of the city has determined that the water user has provided reasonable assurances that future violations of this section by such user will not occur.

**I. Notice.**

1. For a first violation, written notice may be given to the customer personally or by certified mail.

2. If the penalty assessed is a surcharge for a second or third violation, notice may be given by certified mail.

3. If the penalty assessed is, or includes, the installation of a flow restrictor or the discontinuance of water service to the customer for any period of time whatever, notice of the violation shall be given in the following manner:

a. By giving written notice thereof by certified mail or to the customer personally; or

b. If he/she is absent from his/her place of residence and from his/her assumed place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the United States mail, certified, addressed to the customer at either his/her place of business or residence; or

c. If such place of residence and business cannot be ascertained, or a person of suitable age or discretion cannot be found, then by affixing a copy in a conspicuous place on the property where the failure to comply is occurring and also by delivering a copy to a person residing, if such person can be found, and also sending a copy through the United States mail, certified, addressed to the customer at the place where the property is situated.

4. Any notice provided hereunder shall contain, in addition to the facts of the violation, a statement of the possible penalties for each violation and a statement of the possible penalties for each violation and a statement informing the customer of his right to a hearing on the violation.

**J. Hearing.** Any customer against whom a penalty is levied pursuant to subsections G and H of this section shall have a right to a hearing, in the first instance by the water operations superintendent, with

the right of appeal to the city council, on the merits of the alleged violation upon the written request of that customer within fifteen days of the date of infraction of the violation.

**K. Reservation of rights.** The rights of the city hereunder shall be cumulative to any other right of the city to discontinue service. All moneys collected by the department pursuant to any of the penalty provisions of this chapter shall be deposited in the operating fund as reimbursement for the city's costs and expenses of administering and enforcing this section.

**L. Concurrent authority.** The city manager, its water operations superintendent and designated employees, have the duty and are hereby authorized to enforce all provisions of this section, with the qualification that the city through enforcement of this section, the county as to unincorporated territory within the city, are recognized to have concurrent authority for, and shall have the primary responsibility for the control of water flowing in the streets where such occurs within their respective jurisdictions. (Code 1965, § 31-7.)

**13.16.030 Water conservation using xeriscape principles.**

**A. Intent.** Water is an increasingly limited and costly resource. It is the intent of this section to establish a water conservation plan to reduce water consumption in the landscape environment using xeriscape principles.

**B. Definitions.**

"Low water-using drought tolerant plant" includes species suited to our climate, requiring less water in order to grow well.

"Xeriscape" shall mean a combination of landscape features and techniques that in the aggregate reduce the demand for and consumption of water, including appropriate low water using plants, non-living ground-cover, a low percentage of turf coverage, permeable paving and water conserving irrigation techniques and systems.

**C. Applicability.** The provisions of this section shall apply to all developments within the city including, but not limited to, the following:

1. All new residential developments (including townhomes and apartment projects) on parcels greater than seven thousand square feet;

2. Rehabilitated landscaping (for projects on parcels greater than ten thousand square feet) for industrial, commercial, institutional, multifamily and residential common areas of PUDs (Planned Unit Developments);

3. Interior remodels, tenant improvements and demolitions for any of the above projects;

4. Schools, parks, golf courses or similar public open spaces;

5. Water conservation landscape requirements shall apply to all new developments. New development applications shall include landscape plans which require final approval at the time of final project approval.

D. Exceptions. The provisions of this section shall not apply to those projects which have been approved or accepted as complete for processing prior to the effective date of the ordinance codified in this section; provided no material amendments or extensions are made to such previously approved projects. These provisions shall also not apply to the following:

1. Homeowner-provided landscaping at single-family and multifamily projects;

2. Cemeteries;

3. Registered historical sites;

4. Ecological restoration projects that do not require a permanent irrigation system;

5. Mined-land reclamation projects that do not require a permanent irrigation system.

E. Requirements.

1. Turf limitation. The maximum allowed turf and/or water area (expressed as percent of planted area) shall be twenty-five percent for industrial, commercial, residential developments with common area, institutions and public/semi-public developments. If turf is an essential part of development, such as playing fields for schools or public parks, a higher percentage will be allowed, and will be evaluated on an individual basis. No turf shall be allowed in median strips or in areas less than eight feet wide.

If a residential development has one or more model homes, it is required that at least one model home in the development be planted with drought tolerant plants and a maximum of twenty-five percent turf and/or water area. Additionally, developers shall provide buyers with sample landscape plans using low water-using plants and a maximum twenty-five percent turf area. The developer shall also provide information about outdoor water conservation by distributing pamphlets to buyers regarding this subject. Such pamphlets are available from local water districts and the state department of water resources. The county community development department will have samples of appropriate types of pamphlets available. Landscape and distribution of literature shall require approval by the community development department.

2. Types of plants in non-turf areas. At least ninety percent of the plants in non-turf areas shall be low water-requiring, drought-resistant plants as approved by the community development department. A small percentage of the planted area (up to ten percent) can be used for nondrought tolerant varieties if they are grouped together and can be irrigated separately.

3. Use of mulch. A minimum of two inches of mulch shall be added to the soil surface after planting. Nonporous material shall not be placed under the mulch.

4. Irrigation.

a. Sprinklers and sprays shall not be used in areas less than eight feet wide. Drip and bubbler shall be used that do not exceed one and one-half gallons per minute per device.

b. Sprinkler heads with a precipitation rate of .85" per hour or less shall be used in slopes exceeding fifteen percent to minimize runoff, or exceeding ten percent within ten feet of hardscape.

c. Valves and circuits shall be separated based on water use.

d. Drip or bubbler irrigation systems are required for trees with the exception of those which can be sustained by ground or rain water.

e. Sprinkler heads must have matched precipitation rates within each control valve circuit.

f. Serviceable check valves are required where elevation differential may cause low head drainage.

g. Sprinkler head spacing shall be designed for head-to-head coverage. The system should be designed for minimum runoff and overspray onto nonirrigated areas.

h. All irrigation systems shall be equipped with a controller capable of dual or multiple programming. Controllers must have multiple cycle start capacity and a flexible calendar program.

5. Ornamental ponds. Water bodies that are part of the landscaping for new developments shall be restricted. Unless the water body is an integral part of the operations of the new development, the surface area of the water body shall be counted as turf in the calculations for limitation of turf for the landscaped area. Fountains or other types of decorative bodies where water is sprayed into the air shall be discouraged. Some allowance will be made for fountains for ponds where reclaimed irrigation is used and the water supply is recirculated.

6. Landscape plans. Landscape plans shall indicate the total landscape area, the area and percentage of drought-resistant plantings and the area and percentage of ornamental nondrought resistant plantings. The plans shall be reviewed by community development director or his designee to check for compliance with this section in regards to plant varieties, planting areas and irrigation design. Commercial, multiple dwellings, country clubs and condominiums shall be required to submit additional landscape plans which include a water budget that incorporates estimated annual water use (in gallons) and the area (in square feet) to be irrigated. Precipitation rates for each valve circuit and a monthly irrigation schedule for the plant establishment period including the year following shall be supplied as well. (Code 1965, § 31-8.)

## Chapter 13.24

**STORMWATER MANAGEMENT SYSTEM****Sections:**

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13.24.030	Definitions.
13.24.040	Responsibility for administration.
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13.24.060	Discharge of pollutants.
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13.24.090	Reduction of pollutants in stormwater.
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13.24.110	Construction sites.
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13.24.260	Notice to clean.
13.24.270	Nonexclusivity of remedies.
13.24.280	Appeal.

**13.24.010 Title.**

The ordinance codified in this chapter shall be known as the City of Banning stormwater management and discharge control ordinance and may be so cited. (Code 1965, § 34-1.)

**13.24.020 Purpose and intent.**

The purpose of this chapter is to ensure the future health, safety, and general welfare of the citizens by:

- A. Regulating nonstormwater discharges to the municipal separate storm drain; and
- B. Controlling the discharge to municipal separate storm drains from spills, dumping or disposal of materials other than stormwater; and
- C. Reducing pollutants in stormwater discharges to the maximum extent practicable.

The intent of this chapter is to protect and enhance the water quality of city watercourses, water bodies, groundwater, and wetlands in a manner pursuant to and consistent with the Clean Water Act. (Code 1965, § 34-2.)

**13.24.030 Definitions.**

The terms as used in this chapter shall have the following meanings:

A. Best Management Practice (BMP). "BMPs" means schedules of activities, prohibitions of practices, general good housekeeping practices, maintenance procedures, educational programs, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to waters of the United States. BMPs shall include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw materials storage. The California Stormwater Best Management Practice Handbooks for Municipal, Industrial/Commercial and Construction Activity provide a detailed discussion of BMPs.

B. "Director" means the director of the public works department, City of Banning.

C. "Enforcement officer" includes the director of public works, building official, code enforcement officer, city manager and their designees.

D. "Illicit connection" means any physical connection to a storm drain system which has not been permitted by the City of Banning, the Riverside County Flood Control and Water Conservation District, or other appropriate public agency.

E. "Illicit discharge" means any discharge to the storm drain system that is not composed entirely of stormwater runoff except discharges made pursuant to a National Pollutant Discharge Elimination System (NPDES) permit or as otherwise authorized by the Santa Ana or Colorado River Basin Regional Water Quality Control Board.

F. "Municipal NPDES permit" means an area-wide NPDES permit issued to a government agency or agencies for the discharge of stormwater from a stormwater system.

G. "National Pollutant Discharge Elimination System (NPDES) permit" means a stormwater discharge permit issued by the Santa Ana or Colorado River Basin Regional Water Quality Control Board in compliance with the federal Clean Water Act.

H. "Nonstormwater discharge" means any discharge to the storm drain system that is not entirely composed of stormwater.

I. "Person" means any natural person, firm, association, club, organization, corporation, partnership, business trust, company or other entity which is recognized by law as the subject of rights or duties.

J. "Pollutant" means anything which causes the deterioration of water quality such that it impairs subsequent and/or competing uses of the water. Pollutants may include but are not limited to paints, oil and other automotive fluids, soil, rubbish, trash, garbage, debris, refuse, waste, fecal coliform, fecal streptococcus, enterococcus, heavy metals, hazardous waste, chemicals, fresh concrete, yard waste from commercial landscaping operations, animal waste, materials that result from the process of constructing a building or structure, nauseous or offensive matter of any kind.

K. "Premises" means any building, lot, parcel of land, or portion of land whether improved or unimproved.

L. "Storm drain system" means any facility by which storm water may be conveyed to waters of the

United States. The storm drain system includes but is not limited to any roads with drainage systems, streets, curbs, gutters, catch basins, natural and artificial channels, ditches, aqueducts, storm drains, inlets, conduit or other drainage structures.

M. "Stormwater runoff" means surface runoff and drainage associated with rainstorm events and snow melt. (Code 1965, § 34-3.)

#### 13.24.040 Responsibility for administration.

This chapter shall be administered for the city by the director of public works. (Code 1965, § 34-4.)

#### 13.24.050 Regulatory consistency.

This chapter shall be construed to assure consistency with the requirements of the federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and any existing or future municipal NPDES permits and any amendments, revisions or reissuance thereof. (Code 1965, § 34-5.)

#### 13.24.060 Discharge of pollutants.

A nonstormwater discharge to the storm drain system is a violation of this chapter.

A. The prohibition of discharges shall not apply to any discharge regulated under a NPDES permit or waiver issued to the discharger and administered by the state of California under the authority of the EPA, provided that the discharger is in full compliance with all requirements of the permit or waiver and other applicable laws or regulations.

B. Discharges from the following activities will not be considered a source of pollutants to waters of the United States when properly managed: water line flushing and other discharges from potable water sources, landscape irrigation and lawn watering, irrigation water, diverted stream flows, rising groundwaters, infiltration to separate storm drains, uncontaminated pumped ground water, foundation and footing drains, water from crawl space pumps, air conditioning condensation, springs, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges or flows from fire fighting. (Code 1965, § 34-7.)



**13.24.070 Discharge in violation of permit.**

A. Any discharge that results in or contributes to a violation of an existing or future municipal NPDES permit(s) and any amendment, revision or reissuance thereof, either separately considered or when combined with other discharges, is a violation of this chapter and is prohibited.

B. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and such persons shall defend, indemnify and hold harmless the city in any administrative or judicial enforcement action relating to such discharge.

C. A copy of the current municipal NPDES permit will be filed in the city engineer's office. (Code 1965, § 34-8.)

**13.24.080 Illicit connections.**

It is a violation of this chapter to establish, use, maintain, or continue an illicit connection to the city storm drain system, or to commence or continue any illicit discharge to the city storm drain system. The prohibition against illicit connections is expressly retroactive and applies to connections made in the past, regardless of whether permissible under the law or practices applicable or prevailing at the time of the connection. (Code 1965, § 34-9.)

**13.24.090 Reduction of pollutants in stormwater.**

A. It is a violation of this chapter to throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left or maintained, any pollutant, including but not limited to refuse, rubbish, garbage, abandoned vehicles or other discarded or abandoned objects, articles, and accumulation, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, business place, or upon any public or private plot of land in the city.

B. It is an exception to the above that such pollutant is being temporarily placed in an appropriate container with a spill containment system for later collection and removal.

C. It is a violation of this chapter to cause or permit any Dumpster, solid waste bin, or similar container to leak such that any pollutant is discharged into any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, business place, or upon any public or private plot of land in the city. (Code 1965, § 34-10.)

**13.24.100 Outdoor storage areas—Commercial and industrial facilities.**

A. It is a violation of this chapter for any person to improperly store grease, oil or other hazardous substances in outdoor areas. In outdoor areas, no person shall improperly store motor vehicles, machine parts, or other objects in a manner that may leak grease, oil, or other hazardous substances.

B. To prevent the discharge of hazardous substances from the property, the city may require the installation of a spill containment system. Spill containment systems may consist of a system of dikes, walls, barriers, berms, or other devices as required.

C. It is a violation of this chapter for any person to operate a spill containment system such that it allows incompatible liquids to mix and thereby create a hazardous condition. (Code 1965, § 34-11.)

**13.24.110 Construction sites.**

Any person performing construction work in city shall comply with the provisions of this chapter, and the Uniform Building Code, latest edition, for erosion and sediment control. (Code 1965, § 34-12.)

**13.24.120 New development and redevelopment.**

A. Any new development or redevelopment project shall control the volume and rate of stormwater runoff from the project so as to prevent any deterioration of water quality which would impair the subsequent or competing uses of the water. The director of the public works department shall establish standards and guidelines implementing BMPs designed to control the rate and volume of stormwater runoff from new developments and redevelopments as may be

appropriate to minimize the discharge and transport of pollutants.

B. Acceptable methods and standards for controlling stormwater runoff volumes, rates, and pollutant load may include but are not limited to the following:

1. Increase Permeable Areas. Avoid placing impervious surfaces in highly porous soil areas; incorporate landscaping and open space into the project design; use porous materials for or near driveways and walkways; incorporate detention ponds and infiltration pits into the project's design; avoid placing pavement and other impervious surfaces in low lying areas.

2. Direct Runoff to Permeable Areas. Direct stormwater runoff away from impermeable areas to swales, berms, green strip filters, gravel beds, and french drains. Install rain gutters and orient them toward permeable areas. Modify the grade of the property to divert flow to permeable areas and minimize the amount of stormwater runoff leaving the property. When designing curbs, berms or other structures, avoid designs which isolate permeable or landscaped areas.

3. Maximize Stormwater Storage for Reuse. Use retention structures, subsurface areas, cisterns, or other structures to store stormwater runoff for reuse or slow release. (Code 1965, § 34-13.)

### 13.24.130 Compliance with general permits.

A. Any industrial discharger, discharger associated with construction activity, or other discharger subject to any NPDES permit issued by the United States Environmental Protection Agency, the State Water Resources Control Board, the Santa Ana Regional Water Quality Control Board or the Colorado River Basin Regional Water Quality Control Board, shall comply with all requirements of such permit.

B. Proof of compliance with said NPDES general permits may be required in a form acceptable to the director prior to issuance of any city grading, building, or occupancy permits. (Code 1965, § 34-14.)

### 13.24.140 Compliance with BMPs.

Where BMP guidelines or requirements have been adopted by any federal, state of California, regional, and/or local agency, for any activity, operation, or facility which may cause or contribute to stormwater pollution or contamination, illicit discharges, and/or discharge of nonstormwater to the stormwater system, every person undertaking such activity or operation, or owning or operating such facility shall comply with guidelines or requirements as may be identified by the director. (Code 1965, § 34-15.)

### 13.24.150 Authority to inspect.

A. Whenever necessary to make an inspection to enforce any of the provisions of this chapter or whenever an authorized enforcement officer has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this chapter, the enforcement officer may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the enforcement officer by this chapter.

B. Entry hereunder shall be subject to the following:

1. If such building or premises be occupied, he or she shall first present proper credentials and request entry; and

2. If such building or premises be unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or obtain a warrant to enter.

C. Any request for entry made hereunder shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a duly authorized magistrate. In the event the owner and/or occupant refuses entry after such request has been made, the official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

D. Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to random sam-

pling and/or sampling in areas with evidence of stormwater contamination, illicit discharges, discharge of non-stormwater to the stormwater system, or similar factors. (Code 1965, § 34-16.)

#### **13.24.160 Authority to sample and establish sampling devices.**

With the consent of the owner or occupant or pursuant to a search warrant, any authorized enforcement officer may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the enforcement officer may take any samples deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities on-site. (Code 1965, § 34-17.)

#### **13.24.170 Notification of spills.**

A. All persons in charge of a facility or responsible for emergency response for a facility are personally responsible to train facility personnel and maintain notification procedures to assure that immediate notification is provided to the city of any suspected, confirmed or unconfirmed release of material, pollutants or waste creating a risk of discharge into the city storm drain system.

B. As soon as any person in charge of a facility or responsible for emergency response for a facility has the knowledge described in subsection A of this section, such person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release, and shall notify the city of the occurrence by telephoning and confirming the notification by correspondence to the director of the public works department and fire department. (Code 1965, § 34-18.)

#### **13.24.180 Requirement to test or monitor.**

A. Any authorized enforcement officer may request that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to stormwater pollution or contamination, illicit discharges, and/or discharge of nonstormwater to the stormwater system, undertake such monitoring activities and/or analyses and furnish such reports as

the enforcement officer may specify. The burden, including costs, of these activities, analyses and reports shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained. The recipient of such request shall undertake and provide the monitoring, analyses and/or reports requested.

B. In the event the owner or operator of a facility subject to a monitoring and/or analyses order fails to conduct required monitoring and/or analyses and furnish the required reports in the form required, the authorized enforcement officer may cause such monitoring and/or analyses to be performed.

1. The cost therefor, including the reasonable additional administrative costs incurred by the city, shall be the responsibility of the owner of the property.

2. The cost thereof shall be invoiced to the owner of the property.

3. If the invoice is not paid within sixty days of the issuance thereof, the costs shall be a lien upon and against the property and continue in existence until the same shall be paid.

4. If the lien is not satisfied by the owner of the property within three months after the completion by an authorized enforcement officer of the required monitoring and/or analyses and reports, the property may be sold in satisfaction thereof in a like manner as other real property is sold under execution. (Code 1965, § 34-19.)

#### **13.24.190 Violations constituting misdemeanors.**

A. Unless otherwise specified by ordinance, the violation of any provision of this chapter, or failure to comply with any of the mandatory requirements of this chapter shall constitute a misdemeanor.

B. Notwithstanding any other provisions of this chapter, any such violation constituting a misdemeanor under this chapter, at the discretion of the authorized enforcement officer may be charged and prosecuted as an infraction. (Code 1965, § 34-20.)

### 13.24.200 Penalties.

A. It shall be unlawful for any person to violate any provision of this chapter.

1. Any person violating any provision of this chapter shall be deemed guilty of an infraction or misdemeanor as hereinafter specified.

2. Such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted.

B. Any person so convicted shall be:

1. Guilty of an infraction offense and punished by a fine not exceeding one hundred dollars for a first violation;

2. Guilty of an infraction offense and punished by a fine not exceeding two hundred dollars for a second violation;

3. The third and any additional violations shall constitute a misdemeanor offense and shall be punishable by a fine not exceeding one thousand dollars or six months in jail, or both.

C. Notwithstanding the above, a first offense may be charged and prosecuted as a misdemeanor.

D. Payment of any penalty herein shall not relieve a person from the responsibility for correcting the violation. (Code 1965, § 34-21.)

### 13.24.210 Concealment.

Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation of such provision. (Code 1965, § 34-22.)

### 13.24.220 Violations deemed a public nuisance.

A. In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the public health, safety and welfare, and may be declared and deemed a nuisance, and may be summarily abated and/or restored by any authorized enforcement officer, and/or civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken as authorized by this Code.

B. If any violation of this chapter constitutes a seasonal and recurrent nuisance, the director shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further hearing.

C. In any administrative or civil proceeding under this chapter in which the city prevails, the city shall be awarded all costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearing, costs of suit and reasonable attorney's fees. (Code 1965, § 34-23.)

### 13.24.230 Judicial review.

The provisions of Section 1094.6 of the California Code of Civil Procedure are applicable to judicial review of city decisions pursuant to this chapter. (Code 1965, § 34-24.)

### 13.24.240 Civil actions.

In addition to any other remedies provided herein, this chapter may be enforced by civil action brought by the city. In any such action, the city shall grant, as appropriate, any or all of the following remedies:

A. A temporary and/or permanent injunction;

B. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this section;

C. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation;

D. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life. Assessments under this section shall be paid to the city to be used exclusively for costs associated with monitoring and establishing stormwater discharge pollution control systems and/or implementing or enforcing the provisions of this chapter. (Code 1965, § 34-25.)

### 13.24.250 Cease and desist orders.

When an authorized enforcement officer finds that a discharge has taken place or is likely to take place in violation of this chapter, the officer may issue an

order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall:

- A. Comply with the requirement;
- B. Comply with a time schedule for compliance; and/or
- C. Take appropriate remedial or preventive action to prevent the violation from recurring. (Code 1965, § 34-26.)

#### 13.24.260 Notice to clean.

A. Whenever an authorized enforcement officer finds any oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds, which may result in an increase in pollutants entering a city storm sewer system or natural watercourse, or a nonstorm sewer system or natural watercourse, or a nonstorm water discharge to a city storm sewer system or natural watercourse, he or she may give notice to remove such oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or other material, in any manner that he or she may reasonably provide. The recipient of such notice shall undertake the activities as described in the notice.

B. In the event the owner or operator of a facility fails to conduct the activities as described in the notice, the authorized enforcement officer may cause such required activities as described in the notice, and the cost thereof shall be invoiced to the owner of the property.

1. If the invoice is not paid within sixty days, a lien shall be placed upon and against the property.

2. If the lien is not satisfied by the owner of the property within three months after the completion of the required activities by the authorized enforcement officer the property may be sold in a satisfaction thereof in a like manner as other real property is sold under execution. (Code 1965, § 34-27.)

#### 13.24.270 Nonexclusivity of remedies.

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein

shall be cumulative and not exclusive. (Code 1965, § 34-28.)

#### 13.24.280 Appeal.

Any person, firm, corporation or organization required to perform monitoring, analyses, reporting and/or corrective activities by an authorized enforcement officer who is aggrieved by the decision of the authorized enforcement officer may appeal such decision to the director within ten days following the effective date of the decision by writing to the director. Upon receipt of such request, the director shall request a report and recommendation from the authorized enforcement officer and shall set the matter for hearing at the earliest practical date. At said hearing, the director may hear additional evidence, and may reject, affirm or modify the authorized enforcement officer's decision. Such decision shall be final unless appealed by the city council under the general appeal procedures of the city. (Code 1965, § 34-29.)

**ORDINANCE NO. 1415**

**AN ORDINANCE OF THE CITY OF BANNING  
AMENDING THE CODE OF THE CITY OF BANNING,  
CALIFORNIA, 1965, TITLE 13, CHAPTER 13.24 NOW  
ENTITLED STORMWATER CODE**

**WHEREAS**, the City of Banning (the "City") duly enacted on June 24, 1997 Ordinance 1212 which is entitled "An Ordinance Of The City Of Banning Adding Chapter 34 To The Banning Ordinance Code Establishing Storm Water Management And Discharge Controls"; and

**WHEREAS**, the City codified Chapter 34 of Ordinance 1212 in the Banning Municipal Code through Chapter 13.24 of Title 13, which shall be known as the "City of Banning Stormwater Management and Discharge Control Code" or, "Stormwater Code" for short; and

**WHEREAS**, the City seeks through this Ordinance to amend the Stormwater Code to ensure the future health, safety, and general welfare of the citizens, as well as compliance with existing and future National Pollutant Discharge Elimination System ("NPDES") Permits; and

**WHEREAS**, NPDES Permit Number CAS617002 (R7-2008-0001) is the existing NPDES Permit applicable to the City, a copy of which is attached hereto as Exhibit "A".

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES ORDAIN AS FOLLOWS:**

**Section 1.** Section 13.24.010 (Title) of the Stormwater Code is hereby amended to read in its entirety as follows:

"The ordinance codified in this chapter shall be known as the 'City of Banning Stormwater Management and Discharge Control Code', or the 'Stormwater Code' for short, and may be so cited."

**Section 2.** Section 13.24.030 (Definitions) of the Stormwater Code is hereby amended to read in its entirety as follows:

"The terms as used in this Chapter shall have the following meanings:

- A. Best Management Practice (BMP). BMP or BMPs mean schedules of activities, prohibitions of practices, general good housekeeping practices, maintenance procedures, educational programs, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to waters of the United States. BMPs shall include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw materials storage. The California Stormwater Best Management Practice Handbooks for Municipal, Industrial/Commercial and Construction Activity provide a detailed discussion of BMPs.

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- B. Detention Basin refers to a basin type structure which permits large flows of stormwater to enter and remain, but limits and controls the outflow (i.e. discharge) by having a small opening at the lowest point of the structure.
- C. Director means the Director of the Public Works Department of the City of Banning.
- D. Enforcement Officer includes the City Manager, Public Works Director, City Engineer, Building and Safety Official, Code Enforcement Officer, and their designees.
- E. Illicit Connection means any physical connection to a Storm Drain System which has not been permitted by the City of Banning, the Riverside County Flood Control and Water Conservation District, or other appropriate public agency.
- F. Illegal Discharge means any discharge to the Storm Drain System that is not composed entirely of Stormwater Runoff except discharges made pursuant to a National Pollutant Discharge Elimination System (NPDES) permit or as otherwise authorized by the Santa Ana or Colorado River Basin Regional Water Quality Control Board.
- G. Infiltration Basin refers to designs and/or practices for directing stormwater from a basin type of structure to the groundwater table through permeable soils.
- H. Municipal NPDES Permit means an area-wide NPDES permit issued to a government agency or agencies for the discharge of stormwater from a stormwater system, and shall refer to NPDES Permit Number CAS617002 (R7-2008-0001) or its successor.
- I. National Pollutant Discharge Elimination System (NPDES) Permit means a stormwater discharge permit issued by the Santa Ana or Colorado River Basin Regional Water Quality Control Board in compliance with the federal Clean Water Act.
- J. Non-Stormwater Discharge means any discharge to the Storm Drain System that is not entirely composed of stormwater.
- K. Person means any natural person, firm, association, club, organization, corporation, partnership, business trust, company or other entity which is recognized by law as the subject of rights or duties.
- L. Pollutant means anything which causes the deterioration of water quality such that it impairs subsequent and/or competing uses of the water. Pollutants may include but are not limited to paints, oil and other automotive fluids, soil, rubbish, trash, garbage, debris, refuse, waste, fecal coliform, fecal streptococcus, enterococcus, heavy metals, hazardous

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waste, chemicals, fresh concrete, yard waste from commercial landscaping operations, animal waste, materials that result from the process of constructing a building or structure, nauseous or offensive matter of any kind.

- M. Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved.
- N. Retention Basin allows for relatively large flows of stormwater to enter in a basin type of structure during large storm events for which discharges are limited by outlet structures to a storm drain, the street, or other parts of the Storm Drain System. This type of basin notably has an outlet or discharge point so that stormwater does not accumulate in the basin for extended periods of time, when feasible, such that the stormwater permeates to a groundwater table.
- O. Storm Drain System means any facility by which stormwater may be conveyed to waters of the United States. The Storm Drain System includes, but is not limited to, any roads with drainage systems, streets, curbs, gutters, catch basins, natural and artificial channels, ditches, aqueducts, storm drains, inlets, conduit or other drainage structures.
- P. Stormwater Runoff means surface runoff and drainage associated with rainstorm events and snow melt."

**Section 3.** Section 13.24.070 (Discharge In Violation of Permit), subsection C., of the Stormwater Code is hereby amended to read in its entirety as follows:

- "C. A copy of the current Municipal NPDES Permit will be filed in the City Clerk's Office."

**Section 4.** Section 13.24.080 (Illicit Connections) of the Stormwater Code is hereby amended to be entitled "Illicit Connections and Illegal Discharges" and to read in its entirety as follows:

- "A. It is a violation of this Chapter to establish, use, maintain, or continue an Illicit Connection to the City's Storm Drain System, or to commence or continue any Illegal Discharge to the City's Storm Drain System. The prohibition against Illicit Connections is expressly retroactive and applies to past illicit connections when made.
- B. Illegal Discharges include, without limitation, the following:
  - 1. Discharges of wash water resulting from the hosing or cleaning of gas stations, auto repair garages, or other types of automotive services facilities;
  - 2. Discharges resulting from the cleaning, repair, or maintenance of any type of equipment or machinery including motor vehicles, cement-related equipment, and port-a-potty service;



3. Discharges of wash water from mobile operations such as oily or greasy discharges from mobile automobile washing or similar mobile services, and/or discharges from steam cleaning, power washing, and carpet cleaning;
4. Discharges of runoff from material storage areas containing chemicals, fuels, grease, oil, or other Hazardous Materials as that term is defined by the federal Department of Transportation; and
5. Discharges of food-related wastes, including without limitation, grease, fish processing, and restaurant kitchen mat and trash bin wash water."

**Section 5.** Section 13.24.100 (Outdoor storage areas – Commercial and Industrial Facilities) of the Stormwater Code is hereby amended to read in its entirety as follows:

- "A. It is a violation of this chapter for any person to improperly store grease, oil or other hazardous substances in outdoor areas such that any of these substances may leak or otherwise discharge from the container in which the substance is stored. In outdoor areas, no person shall improperly store motor vehicles, machine parts, or other objects in a manner that may leak grease, oil, or other hazardous substances.
- B. To prevent the discharge of hazardous substances from the property, the City shall require the installation of a spill containment system. Spill containment systems may consist of a system of dikes, walls, barriers, berms, or other devices as required.
- C. It is a violation of this Chapter for any person to operate a spill containment system such that it allows incompatible liquids to mix and thereby create a hazardous condition.
- D. Any person or entity that owns or operates a commercial and/or industrial facility(s) shall comply with the provisions of this Chapter. All such facilities shall be subject to inspection as required by this Chapter, California Water Code §§ 13000 *et seq.* (Porter-Cologne Water Quality Control Act), Title 33 U.S.C. §§ 1251 *et seq.* (Clean Water Act), any applicable State or federal regulations promulgated thereto, and any related administrative orders or permits issued in connection therewith."

**Section 6.** Section 13.24.110 (Construction Sites) of the Stormwater Code is hereby amended to be entitled "Construction Sites and Onsite Storage and Infiltration of Stormwater" and to read in its entirety as follows:

"Any person performing construction work in the City shall comply with the provisions of this Chapter and the Uniform Building Code, latest edition, for erosion and sediment control, as well as City of Banning Ordinance 1388 which is incorporated by reference hereto. In addition, except as waived by or agreed to by the Director or the Director's designee consistent with NPDES permit provisions

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and requirements, development of all land within the City must include provisions for the management of Stormwater Runoff from the property which is to be developed, including volumetric or flow based treatment control BMP design criteria, and/or exceptions to these requirements, and methodologies used to ensure proper management of Stormwater Runoff post-construction. This management shall consist of constructing storage and/or infiltration facilities, which includes basins. At a minimum, all development will make provisions to store runoff from rainfall events up to and including the one-hundred-year, three-hour duration event. Post-development peak urban runoff discharge rates shall not exceed pre-development peak urban runoff discharge rates.

The City Engineer shall be provided for review, comment and/or approval the drainage study, hydrologic analysis and design of drainage facilities prepared by a licensed professional engineer."

**Section 7.** Section 13.24.120 (New Development and Redevelopment) of the Stormwater Code is hereby amended to read in its entirety as follows:

"A. Existing development shall control Stormwater Runoff so as to prevent any deterioration of water quality that would impair subsequent or competing uses of the water. The Director shall identify the BMPs that may be implemented to prevent such deterioration and shall identify the manner of implementation.

B. Any new development or redevelopment project shall control the volume and rate of Stormwater Runoff from the project so as to prevent any deterioration of water quality which would impair the subsequent or competing uses of the water. The Director shall establish written retention standards and guidelines and/or implement BMPs designed to control the rate and volume of Stormwater Runoff from new developments and redevelopments as may be appropriate to minimize the discharge and transport of pollutants. The standards, guidelines and BMPs shall include a provision permitting adjustments for specific projects where the Director finds that due to unique circumstances not generally applicable to other properties, such adjustments are required but in such circumstances the Director shall provide a written finding.

1. All new development and redevelopment projects that fall into one of the following categories are subject to the Water Quality Management Plan Design Standards for Best Management Practices as set forth in the NPDES Permit Number CAS617002 (Section F.1.c.), which is incorporated by reference hereto, a copy of which is available in the City Clerk's Office:

a. Singly-family hillside residences that create 10,000 square feet, or more, of impervious area where the natural slope is twenty-five percent (25%) or greater, including single-

family hillside residences that create 10,000 square feet of impervious area where the natural slope is ten percent (10%) or greater where erosive soil conditions are known;

- b. 100,000 square foot commercial and industrial developments;
- c. Automotive repair shops (with Standard Industrial Classification ("SIC") codes 5013, 7532, 7533, 7534, 7537, 7438, and 7539);
- d. Retail gasoline outlets disturbing greater than 5,000 square feet;
- e. Restaurants disturbing greater than 5,000 square feet;
- f. Home subdivisions with 10 or more housing units; and
- g. Parking lots 5,000 square feet or more or with 25 or more parking spaces and potentially exposed to non-stormwater discharges.

C. Acceptable methods and standards for controlling Stormwater Runoff volumes, rates, and pollutant load may include but are not limited to the following:

1. Increase Permeable Areas. Avoid placing impervious surfaces in highly porous soil areas; incorporate landscaping and open space into the project design; use porous materials for or near driveways and walkways; incorporate detention ponds and infiltration pits into the project's design; avoid placing pavement and other impervious surfaces in low lying areas.
2. Direct Runoff to Permeable Areas. Direct Stormwater Runoff away from impermeable areas to swales, berms, green strip filters, gravel beds, and french drains. Install rain gutters and orient them toward permeable areas. Modify the grade of the property to divert flow to permeable areas and minimize the amount of Stormwater Runoff leaving the property. When designing curbs, berms or other structures, avoid designs which isolate permeable or landscaped areas.
3. Maximize Stormwater Storage for Reuse. Use retention structures, subsurface areas, cisterns, or other structures to store Stormwater Runoff for reuse or slow release.
4. Any new development shall comply with the provisions of this Chapter, City of Banning Ordinance 1388 and the Municipal NPDES Permit, all of which are incorporated by reference hereto.

D. In the event the Municipal NPDES Permit is modified, the Director is authorized to apply the criteria of such successor permit.

- E. In addition to the foregoing provisions, all existing and new development and redevelopment plans shall comply with Stormwater Code Section 13.24.110.
- F. Any violation of this Section is punishable as provided in the Banning Municipal Code including this Chapter. In addition, fines may be imposed on a schedule agreed to between the City and any person or entity seeking to engage in a development or redevelopment project in the City."

**Section 8.** Section 13.24.125, "Issuance, Suspension and Revocation of Permits or Licenses," of the Stormwater Code is hereby added to read in its entirety as follows:

- "A. No permit or license shall be issued unless it is in accordance with all the provisions of City ordinances as codified in the Banning Municipal Code, including Titles 5, 13 and 15, and any permit or license issued contrary to the provisions of the Banning Municipal Code shall be void and of no effect.
- B. An Enforcement Officer, after compliance with the procedures hereunder, may revoke or suspend a permit or license issued by the City upon a finding that:
  - 1. The permittee or licensee has violated any of the conditions or requirements of the permit or license, or provisions of the Banning Municipal Code and any ordinances, rules or regulations pertaining to the permit or license; or
  - 2. The permit or license was issued in error; or
  - 3. The permit or license was issued on the basis of incorrect information supplied by the permittee or licensee.
- C. Revocation or suspension of a permit or license issued by the City is proper when written notice of the violation(s) has been sent to the permittee or licensee by first class mail and the permittee or licensee has failed or neglected to correct the violation within twenty (20) days from the date the written notice was mailed."

**Section 9.** Section 13.24.130 (Compliance with General Permits), subsection B., of the Stormwater Code is hereby amended to read in its entirety as follows:

- "B. Proof of compliance with the Municipal NPDES Permit will be required in a form acceptable to the Director prior to issuance of any city grading, building, or occupancy permits. Due to requirements set forth in the NPDES Permit changing from time to time, said compliance with the Municipal NPDES Permit requires compliance with the most recent NPDES Permit on file in the City Clerk's Office."

**Section 10.** Section 13.24.150 (Authority to Inspect) of the Stormwater Code is hereby amended to read in its entirety as follows:

- "A. Whenever necessary to make an inspection to enforce any of the provisions of this chapter or the Municipal NPDES Permit, or whenever an Enforcement Officer has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this Chapter, the Enforcement Officer may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the Enforcement Officer by this chapter.
- B. Entry hereunder shall be subject to the following:
1. If such building or premises be occupied, an Enforcement Officer shall first present proper credentials and request entry; and
  2. If such building or premises be unoccupied, an Enforcement Officer shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or obtain a warrant to enter.
- C. Any request for entry made hereunder shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a duly authorized magistrate. In the event the owner and/or occupant refuses entry after such request has been made, the official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.
- D. Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this Chapter and the Municipal NPDES Permit, including but not limited to random sampling and/or sampling in areas with evidence of stormwater contamination, Illicit Connections, Illegal Discharges, Non-Stormwater Discharge to the Stormwater System, follow up inspections as required by the County of Riverside, the Compliance Assistance Program ("CAP") of the NPDES Permit, or the California State Water Quality Regional Control Board, or similar factors.
- E. The property owner and/or occupant are liable for Inspection Fees as set forth in the City's adopted Fee Schedule through City Resolution 2006-114 duly adopted on September 12, 2006, which may be amended by the City Council from time to time."

**Section 11.** Section 13.24.180 (Requirement to Test or Monitor) of the Stormwater Code is hereby amended to read in its entirety as follows:

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"A. An Enforcement officer may request that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to Stormwater Runoff, Illicit Connections, Illegal Discharges, and/or discharge of Pollutants or Non-stormwater to the Stormwater System, undertake such monitoring activities and/or analyses and furnish such reports as the Enforcement Officer may specify. The burden, including costs, of these activities, analyses and reports shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained. The recipient of such request shall undertake and provide the monitoring, analyses and/or reports requested within a reasonable time frame as set forth by the Enforcement Officer or as agreed to between the Enforcement Officer and the person.

B. In the event the owner or operator of a facility subject to a monitoring and/or analyses order fails to conduct required monitoring and/or analyses and furnish the required reports in the form required, an Enforcement Officer may cause such monitoring and/or analyses to be performed within thirty (30) days.

1. The costs, therefore, including the reasonable additional administrative costs incurred by the City, shall be the responsibility of the owner of the property and/or the person or entity in possession of the property.
2. The costs thereof shall be invoiced to the owner of the property and/or the person or entity in possession of the property.
3. If the invoice is not paid within sixty (60) days of the issuance thereof, the costs may be levied as a lien upon and against the property and continue in existence until the same shall be paid consistent with the Banning Municipal Code including Chapter 8.48.
4. If the lien is not satisfied by the owner of the property within three (3) months after the completion by an Enforcement Officer of the required monitoring and/or analyses and reports, the property may be sold in satisfaction thereof in a like manner as other real property is sold under execution."

**Section 12.** Section 13.24.220 (Violations Deemed a Public Nuisance), subsection A., of the Stormwater Code is hereby amended to read in its entirety as follows:

"A. In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to the public health, safety and welfare, and may be declared and deemed a nuisance, and may be summarily abated and/or restored by an Enforcement Officer, and/or civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken as authorized by the Banning Municipal Code including Chapter 8.48 or in any other manner provided by law."

**Section 13.** Section 13.24.225, "Payment of Abatement Costs, Penalties or Damages," of the Stormwater Code is hereby added to read in its entirety as follows:

"If payment of an award of abatement costs, penalties or damages is not made within ten (10) days of an administrative or judicial determination of such costs, penalties or damages, the Enforcement Officer may file a Notice of Lien as provided for in the Banning Municipal Code, Chapter 8.48, describing the real property affected and the amount of the costs, penalties or damages claimed by the City with the Office of the County Recorder of Riverside County. The Enforcement Officer may transmit the judgment or award of abatement costs, penalties or damages of the City, which shall place the amount thereof on the Assessment Roll as a special assessment to be paid with County taxes, unless paid earlier. A judgment or award of such costs, penalties or damages may also be enforced in any other manner provided by law, including the property being sold under execution if the recorded lien remains unpaid for at least three (3) months."

**Section 14.** Section 13.24.240 (Civil Actions), subsection B., of the Stormwater Code is hereby amended to read in its entirety as follows:

"B. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs and attorney's fees of preparing and bringing legal action under this subsection."

**Section 15.** Section 13.24.270 (Nonexclusivity of Remedies) of the Stormwater Code is hereby amended to read in its entirety as follows:

"Remedies under this Chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal, as provided by federal, State and local law. The remedies provided for herein shall be cumulative and not exclusive."

**Section 16.** Section 13.24.280 (Appeal) of the Stormwater Code is hereby amended to read in its entirety as follows:

"In addition to the provisions of Chapter 1.20 of the Banning Municipal Code, any person, firm, corporation or organization required by an Enforcement Officer to perform monitoring, analyses, reporting, or corrective activities, or for revocation or suspension of a permit or license, and who is aggrieved by the decision of an Enforcement Officer, may appeal such decision to the Director within fifteen (15) days following the effective date of the Enforcement Officer's decision by writing to the Director. Upon receipt of such request, the Director shall request a report and recommendation from the Enforcement Officer and shall set the matter for hearing at the earliest practical date not to exceed sixty (60) days from the date the request is filed. At said hearing, the Director may hear additional evidence, and may reject, affirm or modify the Enforcement Officer's decision. Such decision shall be written and final unless appealed to the

City Council, which is required pursuant to California Code of Civil Procedure § 1094.6 prior to commencing any civil action commencing."

**Section 17.** If any part of this Ordinance are held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, and the City hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been declared invalid or unconstitutional.

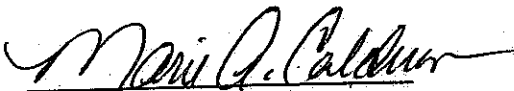
**Section 18.** The City Clerk shall certify to the adoption of this Ordinance and shall cause a copy of the same to be published in a manner prescribed by law. This Ordinance shall take effect and be in force thirty (30) days after the adoption by the City Council for the City of Banning.

**PASSED, APPROVED and ADOPTED** this 12<sup>th</sup> day of January, 2010.




Robert E. Botts, Mayor

**ATTEST:**



Marie A. Calderon, City Clerk

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



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



**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing Ordinance No. 1415 was duly introduced at a regular meeting of the City Council of the City of Banning, California, held on the 8<sup>th</sup> day of December, 2009 and was duly adopted at a regular meeting of said City Council held on the 12th day of January 2010 by the following vote, to wit:

AYES: Councilmembers Franklin, Hanna, Machisic, Robinson, Mayor Botts

NOES: None

ABSENT: None

ABSTAIN: None



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

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**EXHIBIT "A"**

**NPDES Permit Number CAS617002 ( R7-2008-0001)**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION**

73-720 Fred Waring Drive, Suite 100, Palm Desert, CA 92260  
Phone: (760) 346-7491 • Fax (760) 341-6820  
<http://www.waterboards.ca.gov/coloradriver>

**ORDER NO. R7-2008-0001  
NPDES NO. CAS617002**

**WASTE DISCHARGE REQUIREMENTS  
FOR  
DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)  
WITHIN THE WHITEWATER RIVER WATERSHED  
RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT,  
OWNER/OPERATOR  
COUNTY OF RIVERSIDE, OWNER/OPERATOR  
COACHELLA VALLEY WATER DISTRICT, OWNER/OPERATOR  
AND INCORPORATED CITIES OF RIVERSIDE COUNTY WITHIN THE  
WHITEWATER RIVER BASIN, OWNERS/OPERATORS**

**Table 1. Administrative Information**

This Order was adopted by the Regional Water Quality Control Board on:	May 21, 2008
This Order shall become effective on:	May 21, 2008
This Order shall expire on:	May 21, 2013
The Discharger shall file a Report of Waste Discharge in accordance with title 23, California Code of Regulations, not later than 180 days in advance of the Order expiration date as application for issuance of new <b>Waste Discharge Requirements</b> . The date for submitting a complete application for reissuance is November 23, 2012.	

IT IS HEREBY ORDERED that this Order shall supercede Order No. 01-077 except for enforcement purposes, and, in order to meet the provisions contained in division 7 of the California Water Code (**CWC**) (commencing with section 13000) and regulations adopted hereunder, and the provisions of the federal Clean Water Act (**CWA**) (33 U.S.C. § 1251 et seq.) and regulations and guidelines adopted hereunder, the discharger shall comply with the requirements in this Order.

I, Robert Perdue, **Executive Officer**, do hereby certify that this Order, with all attachments, is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on May 21, 2008.

  
ROBERT PERDUE, Executive Officer

# Attachment 2

(copy of AB 1881)

**Assembly Bill No. 1881**

**CHAPTER 559**

An act to add Section 1353.8 to the Civil Code, to repeal and add Article 10.8 (commencing with Section 65591) of Chapter 3 of Division 1 of Title 7 of the Government Code, to add Section 25401.9 to the Public Resources Code, and to add Article 4.5 (commencing with Section 535) to Chapter 8 of Division 1 of the Water Code, relating to water conservation.

[Approved by Governor September 28, 2006. Filed with  
Secretary of State September 28, 2006.]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1881, Laird. Water conservation.

(1) Existing law, the Davis-Sterling Common Interest Development Act, defines and regulates common interest developments, which include community apartment projects, condominium projects, planned developments, and stock cooperatives.

This bill would provide that the architectural guidelines of a common interest development shall not prohibit or include conditions that have the effect of prohibiting the use of low water-using plants as a group.

(2) The Water Conservation in Landscaping Act requires the Department of Water Resources to appoint an advisory task force to work with the department to draft a model local water efficient landscape ordinance that local agencies may adopt, requires the task force to submit the ordinance to the department on or before May 1, 1991, and requires the task force to cease to exist on the date the department adopts the model ordinance or January 1, 1992, whichever occurs first. The act requires the department, not later than January 1, 1992, to adopt a model local water efficient landscape ordinance which each local agency may adopt. The act makes the model local water efficient landscape ordinance adopted by the department applicable within the jurisdiction of a local agency if that local agency, by January 1, 1993, has not adopted a water efficient landscape ordinance or has not adopted certain findings that the adoption of the ordinance is unnecessary.

This bill would specify that the provision making the model ordinance applicable to a local agency on and after January 1, 1993, does not apply to chartered cities. The bill would require the department, to the extent funds are appropriated, not later than January 1, 2009, by regulation, to update the model ordinance in accordance with specified requirements. The bill would require the department to prepare and submit to the Legislature a prescribed report before the adoption of the updated model ordinance. The bill would require a local agency, not later than January 1, 2010, to adopt the updated model ordinance or other water efficient

landscape ordinance that is at least as effective in conserving water as the updated model ordinance. The bill would make the updated model ordinance applicable within the jurisdiction of a local agency, including a chartered city, if, by January 1, 2010, the local agency has not adopted its own water efficient landscape ordinance or the updated model ordinance. The bill would require each local agency, not later than January 31, 2010, to notify the department as to whether the local agency is subject to the department's updated model ordinance and, if not, to submit to the department a copy of the water efficient landscape ordinance adopted by the local agency, among other documents. The bill would require the department, to the extent funds are appropriated, not later than January 31, 2011, to prepare and submit a report to the Legislature relating to the status of water efficient landscape ordinances adopted by local agencies.

By imposing requirements on local agencies in connection with the adoption of water efficient landscape ordinances, the bill would impose a state-mandated local program.

(3) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission), after one or more public hearings, to take specified action to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy. Existing law requires the Energy Commission, by January 1, 2004, to amend specified regulations to require that residential clothes washers manufactured on or after January 1, 2007, be at least as water efficient as commercial clothes washers, and to take certain other related action.

This bill would require the Energy Commission, in consultation with the department, to adopt, to the extent funds are available, by regulation performance standards and labeling requirements for landscape irrigation equipment, including irrigation controllers, moisture sensors, emission devices, and valves to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy or water. The bill would require the Energy Commission to adopt those requirements for landscape irrigation controllers and moisture sensors by January 1, 2010, and, on and after January 1, 2012, would prohibit the sale or installation of an irrigation controller or moisture sensor for landscape use unless the controller or sensor meets those adopted requirements. The bill would require the Energy Commission, on or before January 1, 2010, to prepare and submit to the Legislature a report that sets forth a proposed schedule for adopting performance standards and labeling requirements for emission devices and valves.

(4) Existing law generally requires an urban water supplier to install water meters on all municipal and industrial service connections located within its service area on or before January 1, 2025.

This bill would require a water purveyor as defined, to require as a condition of new retail water service on and after January 1, 2008, the installation of separate water meters to measure the volume of water used exclusively for landscape purposes. The bill would make this requirement applicable to specified service connections.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1353.8 is added to the Civil Code, to read:

1353.8. The architectural guidelines of a common interest development shall not prohibit or include conditions that have the effect of prohibiting the use of low water-using plants as a group.

SEC. 2. Article 10.8 (commencing with Section 65591) of Chapter 3 of Division 1 of Title 7 of the Government Code is repealed.

SEC. 3. Article 10.8 (commencing with Section 65591) is added to Chapter 3 of Division 1 of Title 7 of the Government Code, to read:

#### Article 10.8. Water Conservation in Landscaping

65591. This article shall be known and may be cited as the Water Conservation in Landscaping Act.

65592. Unless the context requires otherwise, the following definitions govern the construction of this article:

(a) "Department" means the Department of Water Resources.

(b) "Local agency" means any city, county, or city and county, including a charter city or charter county.

(c) "Water efficient landscape ordinance" means an ordinance or resolution adopted by a local agency, or prepared by the department, to address the efficient use of water in landscaping.

65593. The Legislature finds and declares all of the following:

(a) The waters of the state are of limited supply and are subject to ever increasing demands.

(b) The continuation of California's economic prosperity is dependent on adequate supplies of water being available for future uses.

(c) It is the policy of the state to promote the conservation and efficient use of water and to prevent the waste of this valuable resource.

(d) Landscapes are essential to the quality of life in California by providing areas for active and passive recreation and as an enhancement to the environment by cleaning air and water, preventing erosion, offering fire protection, and replacing ecosystems lost to development.

(e) Landscape design, installation, maintenance, and management can and should be water efficient.

(f) Section 2 of Article X of the California Constitution specifies that the right to use water is limited to the amount reasonably required for the

beneficial use to be served and the right does not and shall not extend to waste or unreasonable use or unreasonable method of use.

(g) (1) The Legislature, pursuant to Chapter 682 of the Statutes of 2004, requested the California Urban Water Conservation Council to convene a stakeholders work group to develop recommendations for improving the efficiency of water use in urban irrigated landscapes.

(2) The work group report includes a recommendation to update the model water efficient landscape ordinance adopted by the department pursuant to Chapter 1145 of the Statutes of 1990.

(3) It is the intent of the Legislature that the department promote the use of this updated model ordinance.

(h) Notwithstanding Article 13 (commencing with Section 65700), this article addresses a matter that is of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Accordingly, it is the intent of the Legislature that this article, except as provided in Section 65594, apply to all cities and counties, including charter cities and charter counties.

65594. (a) Except as provided in Section 65595, if by January 1, 1993, a local agency did not adopt a water efficient landscape ordinance and did not adopt findings based on climatic, geological, or topographical conditions, or water availability that state that a water efficient landscape ordinance is unnecessary, the model water efficient landscape ordinance adopted by the department pursuant to Chapter 1145 of the Statutes of 1990 shall apply within the jurisdiction of the local agency as of that date, shall be enforced by the local agency, and shall have the same force and effect as if adopted by the local agency.

(b) Notwithstanding subdivision (b) of Section 65592, subdivision (a) does not apply to chartered cities.

(c) This section shall apply only until the department updates the model ordinance.

65595. (a) (1) To the extent funds are appropriated, not later than January 1, 2009, by regulation, the department shall update the model water efficient landscape ordinance adopted pursuant to Chapter 1145 of the Statutes of 1990, after holding one or more public hearings. The updated model ordinance shall be based on the recommendations set forth in the report prepared pursuant to Chapter 682 of the Statutes of 2004 and shall meet the requirements of Section 65596.

(2) Before the adoption of the updated model ordinance pursuant to paragraph (1), the department shall prepare and submit to the Legislature a report relating to both of the following:

(A) The extent to which local agencies have complied with the model water efficient landscape ordinance adopted pursuant to Chapter 1145 of the Statutes of 1990.

(B) The department's recommendations regarding the landscape water budget component of the updated model ordinance described in subdivision (b) of Section 65596.



(b) Not later than January 31, 2009, the department shall distribute the updated model ordinance adopted pursuant to subdivision (a) to all local agencies and other interested parties.

(c) On or before January 1, 2010, a local agency shall adopt one of the following:

(1) A water efficient landscape ordinance that is, based on evidence in the record, at least as effective in conserving water as the updated model ordinance adopted by the department pursuant to subdivision (a).

(2) The updated model ordinance described in paragraph (1).

(d) If the local agency has not adopted, on or before January 1, 2010, a water efficient landscape ordinance pursuant to subdivision (c), the updated model ordinance adopted by the department pursuant to subdivision (a) shall apply within the jurisdiction of the local agency as of that date, shall be enforced by the local agency, and shall have the same force and effect as if adopted by the local agency.

(e) Nothing in this article shall be construed to require the local agency's water efficient landscape ordinance to duplicate, or to conflict with, a water efficiency program or measure implemented by a public water system, as defined in Section 116275 of the Health and Safety Code, within the jurisdictional boundaries of the local agency.

65596. The updated model ordinance adopted pursuant to Section 65595 shall do all the following in order to reduce water use:

(a) Include provisions for water conservation and the appropriate use and groupings of plants that are well-adapted to particular sites and to particular climatic, soil, or topographic conditions. The model ordinance shall not prohibit or require specific plant species, but it may include conditions for the use of plant species or encourage water conserving plants. However, the model ordinance shall not include conditions that have the effect of prohibiting or requiring specific plant species.

(b) Include a landscape water budget component that establishes the maximum amount of water to be applied through the irrigation system, based on climate, landscape size, irrigation efficiency, and plant needs.

(c) Promote the benefits of consistent local ordinances in neighboring areas.

(d) Encourage the capture and retention of stormwater onsite to improve water use efficiency or water quality.

(e) Include provisions for the use of automatic irrigation systems and irrigation schedules based on climatic conditions, specific terrains and soil types, and other environmental conditions. The model ordinance shall include references to local, state, and federal laws and regulations regarding standards for water-conserving irrigation equipment. The model ordinance may include climate information for irrigation scheduling based on the California Irrigation Management Information System.

(f) Include provisions for onsite soil assessment and soil management plans that include grading and drainage to promote healthy plant growth and to prevent excessive erosion and runoff, and the use of mulches in shrub areas, garden beds, and landscaped areas where appropriate.

(g) Promote the use of recycled water consistent with Article 4 (commencing with Section 13520) of Chapter 7 of Division 7 of the Water Code.

(h) Seek to educate water users on the efficient use of water and the benefits of doing so.

(i) Address regional differences, including fire prevention needs.

(j) Exempt landscaping that is part of a registered historical site.

(k) Encourage the use of economic incentives to promote the efficient use of water.

(l) Include provisions for landscape maintenance practices that foster long-term landscape water conservation. Landscape maintenance practices may include, but are not limited to, performing routine irrigation system repair and adjustments, conducting water audits, and prescribing the amount of water applied per landscaped acre.

(m) Include provisions to minimize landscape irrigation overspray and runoff.

65597. Not later than January 31, 2010, each local agency shall notify the department as to whether the local agency is subject to the department's updated model ordinance adopted pursuant to Section 65595, and if not, shall submit to the department a copy of the water efficient landscape ordinance adopted by the local agency, and a copy of the local agency's findings and evidence in the record that its water efficient landscape ordinance is at least as effective in conserving water as the department's updated model ordinance. Not later than January 31, 2011, the department shall, to the extent funds are appropriated, prepare and submit a report to the Legislature summarizing the status of water efficient landscape ordinances adopted by local agencies.

65598. Any model ordinance adopted pursuant to this article shall exempt cemeteries from all provisions of the ordinance except those set forth in subdivisions (h), (k), and (l) of Section 65596. In adopting language specific to cemeteries, the department shall recognize the special landscape management needs of cemeteries.

65599. Any actions or proceedings to attach, review, set aside, void, or annul the act, decision, or findings of a local agency on the ground of noncompliance with this article shall be brought pursuant to Section 1085 of the Code of Civil Procedure.

SEC. 4. Section 25401.9 is added to the Public Resources Code, to read:

25401.9. (a) To the extent that funds are available, the commission, in consultation with the Department of Water Resources, shall adopt by regulation, after holding one or more public hearings, performance standards and labeling requirements for landscape irrigation equipment, including, but not limited to, irrigation controllers, moisture sensors, emission devices, and valves, for the purpose of reducing the wasteful, uneconomic, inefficient, or unnecessary consumption of energy or water.

(b) For the purposes of complying with subdivision (a), the commission shall do all of the following:

(1) Adopt performance standards and labeling requirements for landscape irrigation controllers and moisture sensors on or before January 1, 2010.

(2) Consider the Irrigation Association's Smart Water Application Technology Program testing protocols when adopting performance standards for landscape irrigation equipment, including, but not limited to, irrigation controllers, moisture sensors, emission devices, and valves.

(3) Prepare and submit a report to the Legislature, on or before January 1, 2010, that sets forth on a proposed schedule for adopting performance standards and labeling requirements for emission devices and valves.

(c) On and after January 1, 2012, an irrigation controller or moisture sensor for landscape irrigation uses may not be sold or installed in the state unless the controller or sensor meets the performance standards and labeling requirements established pursuant to this section.

SEC. 5. Article 4.5 (commencing with Section 535) is added to Chapter 8 of Division 1 of the Water Code, to read:

#### Article 4.5. Irrigated Landscape

535. (a) A water purveyor shall require as a condition of new retail water service on and after January 1, 2008, the installation of separate water meters to measure the volume of water used exclusively for landscape purposes.

(b) Subdivision (a) does not apply to either of the following:

(1) Single-family residential connections.

(2) Connections used to supply water for the commercial production of agricultural crops or livestock.

(c) Subdivision (a) applies only to a service connection for which both of the following apply:

(1) The connection serves property with more than 5,000 square feet of irrigated landscape.

(2) The connection is supplied by a water purveyor that serves 15 or more service connections.

(d) For the purposes of this section, "new retail water service" means the installation of a new water meter where water service has not been previously provided, and does not include applications for new water service submitted before January 1, 2007.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

# Attachment 3

(copy of DWR letter dated October 8, 2009)

**DEPARTMENT OF WATER RESOURCES**

1416 NINTH STREET, P.O. BOX 942836  
SACRAMENTO, CA 94236-0001  
(916) 653-5791



OCT 08 2009

**Cities and Counties:****Adoption of the Updated Model Water Efficient Landscape Ordinance**

Your action is required to conserve water supplies and comply with State law. The Water Conservation in Landscaping Act of 2006 (Assembly Bill 1881, Laird) requires cities and counties, including charter cities and charter counties, to adopt landscape water conservation ordinances by January 1, 2010. In accordance with this law, the Department of Water Resources (DWR) has prepared an updated Model Water Efficient Landscape Ordinance (MWELO) for your use, please see Enclosure 1. Text of the updated MWELO is also posted on DWR's Water Use and Efficiency Branch website at <http://www.water.ca.gov/wateruseefficiency/landscapeordinance/>. All local agencies (cities, counties, cities and counties, charter cities and charter counties) have until January 1, 2010, to adopt DWR's updated MWELO or their own local water efficient landscape ordinance. If a local agency has not adopted its own ordinance on or before January 1, 2010, the updated MWELO shall apply within the jurisdiction of that local agency as of that date.

DWR is working with local agencies and governments to conduct outreach activities including workshops to assist implementation of water efficient landscape ordinances. For October and November workshops, please see Enclosure 2. For questions on the updated MWELO and information on DWR's outreach activities, please e-mail [mweo@water.ca.gov](mailto:mweo@water.ca.gov) or contact us at (877) 693-5610 (877-MWELO10), so that a member of our staff can provide personalized service.

Each local agency has until January 31, 2010, to either notify DWR that it has adopted DWR's updated MWELO; or submit to DWR a copy of its adopted water efficient landscape ordinance, a copy of its findings, and evidence that its water efficient landscape ordinance is at least as effective at conserving water as DWR's updated MWELO. Please submit all notifications and documents to:

Mr. Simon Eching  
California Department of Water Resource  
Water Use and Efficiency Branch  
Post Office Box 942836  
Sacramento, California 94236-0001

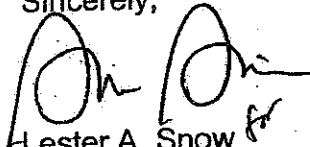
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Cities and Counties  
OCT 08 2009,  
Page 2

In California's warm, dry climate, more than half of urban water supplies may be used for landscape irrigation. Ensuring efficient landscapes in new developments and reducing water waste in existing landscapes are among the most cost-effective ways to stretch our limited water supplies and ensure that we continue to have the water we need. Other benefits include reduced irrigation runoff, reduced pollution of waterways, drought resistance, and less green waste.

Thank you for your help conserving California's water supplies.

Sincerely,

  
Lester A. Snow  
Director

Enclosures

cc: California Urban Water Suppliers

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## CITY COUNCIL

**DATE:** January 26, 2010

**TO:** Honorable Mayor and City Council

**FROM:** Sam Racadio, Interim City Manager

**SUBJECT:** Discussion on Temporary Suspension of Development Impact Fees for Residential and Non-Residential Development

### **RECOMMENDATION:**

That the City Council review and discuss the report on temporary suspension of development impact fees for residential and non-residential development, including consideration for supporting extension of the current incentive program to defer the collection of impact fees at the time of occupancy as opposed to suspending the collection of a certain percentage of the impact fees. Staff recommends the City continue collecting the full development impact fee and extend the current deferral incentive program for another year.

### **BACKGROUND/DISCUSSION:**

On October 27, 2009, the City Council received and filed the report on economic stimulus initiatives that are intended to support the Banning business community during the current economic crisis. As part of the discussion of the report, the City Council directed staff to look into suspending a certain percentage of the development impact fees.

City staff contacted the Western Riverside Council of Governments, the Building Industry Association, and cities in Riverside County to determine which cities have suspended their development impact fees. As of the writing of this staff report, six (6) out of twenty-four (24) cities have adopted resolutions/ordinances suspending their impact fees (see Exhibit "A"). The majority of the cities (in Riverside County) decided not to suspend their impact fees because of the complexity and legality associated with the adoption of the fees and their future changes. What Banning has already done, as well as some cities in the County, is defer the collection of impact fees before occupancy of the development projects as opposed to suspending a certain percentage of the fees.

Currently, the City's general fund is in deficit. The premise of the Mitigation Fee Act is that development pays its own way; therefore, the general fund does not subsidize the cost of development. Since there is still interest from developers to develop future housing and commercial development in the City, suspending the fee may not be in their best interest since they would have to pay higher impact fees in the future in order to fund the public improvements caused by their projects.

On April 28, 2009, the City Council adopted Resolution No. 2009-32 delaying the collection of the City's residential development impact fees until the issuance of a Certificate of Occupancy for one year. This program would expire on April 28, 2010. On June 23, 2009, the City Council adopted Resolution No. 2009-52 temporarily delaying the collection of the City's commercial

and industrial development impact fees until the issuance of a Certificate of Occupancy for one year, which would expire on June 23, 2010.

A development impact fee is a one-time payment that a local agency charges to a developer in connection with approval of a development project for the purpose of defraying the cost of public facilities that are needed to serve a particular development (residential and non-residential). The premise of the development impact fee is that growth pays for itself. Government Code Sections 66000 – 66025 ("AB 1600 - Mitigation Fee Act") governs the adoption of development impact fee program. The fee has to be proportionate and reasonably related (nexus) to the capital facility service demands of new development.

Since the adoption of AB 1600, there have been a number of court rulings challenging the validity of the relationship between the fees imposed and the project in which the fees are being imposed. Establishment of an impact fee program requires a "nexus" study, which is performed by fiscal or economic consultants. The trend in the field of impact fees has been to require more accountability and strong relationship between the fees imposed and the development project that is being considered.

To establish the impact fees, the following data is required:

1. Growth projections for residential and non-residential development in the community at build-out.
2. Identification of the current and projected level of service or demand for each of the public facilities.
3. Identification of any additional facilities or improvements that will be needed to accommodate future growth.
4. Allocating the cost of providing the needed public facilities between the existing versus future growth.

On August 8, 2006, the City of Banning City Council adopted Resolution No. 2006-75 establishing development impact fees for General Facilities, Traffic Control Facilities, Fire Facilities, Police Facilities, and Park Development based on the nexus study conducted by Tischler Bise - Fiscal, Economic, and Planning Consultants (Exhibit "B"). As part of Resolution No. 2006-75, the City Council repealed previous resolutions establishing the fees referred above, which included Resolution Nos. 1992-27 (General Facilities and Traffic Control Fee), 1995-17 (Fire Facilities Fee), 1995-18 (Police Facilities Fee), and 1995-19 (Park Development Fee). Attached in Exhibit "C" is a list the current development impact fees that are being collected.

The establishment of the impact fees is directly and proportionately related to the projected development/growth in the community and the public facilities and their service levels that are needed to accommodate the growth. Fees that are collected are required to be used for a specific purpose. Depending upon the impact of the development, fees that are collected may be small which is often difficult to translate these funds into infrastructure improvements quickly. The improvements would need to wait until such time that there are enough funds collected to construct the improvement, or if there are other funding sources that are available (e.g. grants) to provide supplemental funds to construct the improvements.

The following are examples of development impact fees collected for residential and commercial development based on a 1,500 square foot home and a 10,000 square foot commercial building,



respectively. For a 1,500 square foot home, the amount of development impact fees collected is \$16,591.00. For a 10,000 square foot commercial development, the amount of fees collected is \$26,583.00. Please note that these examples exclude other City fees. Based on the permits issued for 2009, the total amount of development impact fees collected for residential and non-residential development are \$18,579.00 and \$3,831.00, respectively. These amounts are not significant.

Since the development impact fees do not provide adequate funds to construct the improvements quickly, suspending/reducing the impact fees by a certain percentage would reduce the amount of fees collected to provide for the needed facilities. The suspension or reduction of the fees could result in significantly less money available to fund public improvements, which would result in:

1. The improvements would be further delayed and their benefits would be realized much later than expected; or
2. The City will have to absorb the cost of constructing public improvements using the general fund; or
3. The development impact fees would have to be reassessed in the future, which could lead to future developers paying higher development impact fees.

Extension of the current incentives by deferring the collection of impact fees until occupancy of the project is the preferable alternative to suspending the collection of the development impact fees. This is because the City's general fund would not have to subsidize the costs of the improvements. Most likely future developers would not have to pay higher impact fees because there would be fewer units to pay for the fixed cost of public improvements. Due to the legality and complexity of calculating the impact fees, a nexus fee study may be required to be completed by a financial consultant. Staff recommends that the City Council continue the collection of the impact fees and extends the current fee deferral incentive program for another year.

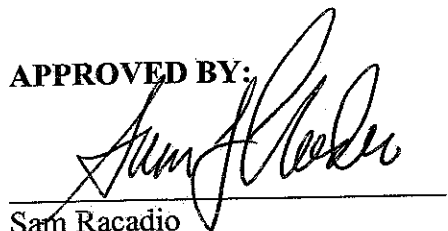
#### **CONCLUSION:**

The suspension of the development impact fees would mean that there will be fewer funds available to construct the required infrastructure. If the building permits are issued during this temporary one-year suspension period, the City would have to absorb the costs but more likely future developers would have to pay higher impact fees.

#### **FISCAL DATA:**

Exhibit "B" provides a listing of current development impact fees for residential and non-residential development. Any suspension or reduction in the fees would reduce the funds available to construct the necessary public improvements to serve a particular development or the improvements would be delayed until funds are available to pay for the improvements. The General Fund would have to be used to fund the gap for the improvements or future developers would have to pay higher development impact fees.

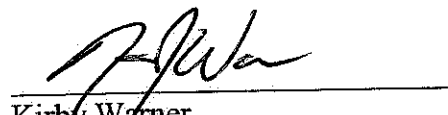
**APPROVED BY:**

  
Sam Racadio  
Interim City Manager


**PREPARED BY:**

  
Zai Abu Bakar  
Community Development Director

**REVIEWED BY:**

  
Kirby Warner  
Interim Finance Director

**REVIEWED BY:**

  
Duane Burk  
Public Works Director

Attachments:

1. Exhibit "A" – List of Cities in Riverside County that adopted Development Impact Fees Suspension
2. Exhibit "B" – Current Development Impact Fees Collected by the City

***CITIES IN RIVERSIDE  
COUNTY THAT HAVE  
ADOPTED IMPACT FEE  
SUSPENSION***

**EXHIBIT “A”**

# 2009 DIF Reductions

Jurisdiction	Adoption Date	Percent Reduced	Terms of Reduction
City of Beaumont	02/17/2009	32%	Full reduction is in place for 16 months. Fees go back to 2009 levels over a three year phase in period ending in 2012.
City of Corona	05/06/2009	40%	Full reduction is in place for two years with an optional third year.
City of Menifee	05/20/2009	50%	Reduction ends on June 30, 2010 OR after 500 permits are issued, which ever comes first.
City of Perris	06/30/2009	50%	Reduction is in place for 1 year. After that, there will be a 25% reduction for 6 months
County of Riverside	07/14/2009	50%	One year reduction ending August 20, 2010
Moreno Valley	09/21/2009	50%	One year reduction ending 09/22/2010

***CURRENT FEE  
SCHEDULE***

**EXHIBIT “B”**

## (IMPACT FEES)

### FIRE FACILITIES:

Residential (per Housing Unit)	
Single Family Detached	1,335.00*
Townhouse/Duplex	1,335.00*
Multi-Family	1,335.00*
Mobile Home	1,335.00*
Nonresidential	
Com/Shopping Ctr 50,000 SF or less	579.00**
Com/Shopping Ctr 50,001-100,000 SF	506.00**
Com/Shopping Ctr 100,001-200,000 SF	450.00**
Com/Shopping Ctr over 200,001 SF	405.00**
Office/Inst 25,000 SF or less	841.00**
Office/Inst 25,001-50,000 SF	792.00**
Office/Inst 50,001-100,000 SF	748.00**
Medical-Dental Office	821.00**
Hospital	685.00**
Business Park	640.00**
Light Industrial	468.00**
Manufacturing	363.00**
Warehousing	259.00**
Elementary School	186.00**
Other Nonresidential	
Lodging (per room)	144.00**
Day Care (per student)	32.00**
Nursing Home (per bed)	73.00**

### POLICE FACILITIES:

Residential (per Housing Unit)	
Single Family Detached	823.00
Townhouse/Duplex	626.00
Multi-Family	913.00
Mobile Home	500.00
Nonresidential (per 1,000 SF)	
Com/Shopping Ctr 50,000 SF or less	472.00
Com/Shopping Ctr 50,001-100,000 SF	413.00
Com/Shopping Ctr 100,001-200,000 SF	358.00
Com/Shopping Ctr over 200,001 SF	307.00

\*A \$5 Disaster Planning Fee is also levied

\*\*A \$25 Disaster Planning Fee is also levied

\*Environmental fees will vary based upon scope of project

**POLICE FACILITIES (cont'd):**

## Nonresidential (per 1,000 SF) (cont'd)

Office/Inst 25,000 SF or less	192.00
Office/Inst 25,001-50,000 SF	164.00
Office/Inst 50,001-100,000 SF	140.00
Medical-Dental Office	379.00
Hospital	184.00
Business Park	134.00
Light Industrial	73.00
Manufacturing	40.00
Warehousing	52.00
Elementary School	152.00
Other Nonresidential	
Lodging (per room)	95.00
Day Care (per student)	47.00
Nursing Home (per bed)	24.00

**TRAFFIC CONTROL FACILITIES:**

Residential (per Housing Unit)	250.00
Single Family Detached	153.00
Townhouse/Duplex	172.00
Multi-Family	130.00
Mobile Home	
Nonresidential (per 1,000 SF)	
Com/Shopping Ctr 50,000 SF or less	1,176.00
Com/Shopping Ctr 50,001-100,000 SF	1,029.00
Com/Shopping Ctr 100,001-200,000 SF	891.00
Com/Shopping Ctr over 200,001 SF	764.00
Office/Inst 25,000 SF or less	479.00
Office/Inst 25,001-50,000 SF	409.00
Office/Inst 50,001-100,000 SF	349.00
Medical-Dental Office	944.00
Hospital	459.00
Business Park	333.00
Light Industrial	182.00
Warehousing	130.00
Elementary School	379.00
Other Nonresidential	
Lodging (per room)	238.00
Day Care (per student)	117.00
Nursing Home (per bed)	62.00

**GENERAL PLAN:**

Residential, per unit	75.00
Commercial, per sq. ft.	.10

\*Environmental fees will vary based upon scope of project.

**PARK LAND:**

Residential (per Housing Unit)	
Single Family Detached	1,955.00
Townhouse/Duplex	1,485.00
Multi-Family	2,168.00
Mobile Home	1,187.00
Commercial / Industrial, per acre	1,233.00

**GENERAL CITY FACILITIES:**

Residential (per Housing Unit)	
Single Family Detached	478.00
Townhouse/Duplex	363.00
Multi-Family	530.00
Mobile Home	290.00
Nonresidential (per 1,000 SF)	
Com/Shopping Ctr 50,000 SF or less	208.00
Com/Shopping Ctr 50,001-100,000 SF	182.00
Com/Shopping Ctr 100,001-200,000 SF	162.00
Com/Shopping Ctr over 200,001 SF	146.00
Office/Inst 25,000 SF or less	302.00
Office/Inst 25,001-50,000 SF	285.00
Office/Inst 50,001-100,000 SF	269.00
Medical-Dental Office	295.00
Hospital	246.00
Business Park	230.00
Light Industrial	168.00
Manufacturing	130.00
Warehousing	93.00
Elementary School	67.00
Other Nonresidential	
Lodging (per room)	52.00
Day Care (per student)	12.00
Nursing Home (per bed)	26.00

**ENERGY CONSERVATION:**

Residential	45.00
Commercial	60.00

**NEW ELECTRIC SERVICE:**

Residential, per unit	1,400.00
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**WATER CONNECTION:**

Residential, per Dwelling Unit	7,232.00
Plus frontage fee of 25.00 per foot	
Commercial, depends on project	

\*Environmental fees will vary based upon scope of project



**SEWER/WASTEWATER COLLECTION:**

Residential, per Dwelling Unit	2,786.00
Plus frontage fee of 27.50 per foot	
Commercial, depends on project	

**SCHOOL FEES (Paid to the school district)****Banning Unified School District**

Residential, per sq. ft.	2.97
Residential Room Addition	2.97
Commercial/Industrial, per sq. ft.	.47

**Beaumont Unified School District**

Residential, per sq. ft.	2.97
Commercial/Industrial/Senior Housing	.47

**T.U.M.F.:**

Residential, per unit	9,812.00
Multi-Family, per unit	6,890.00
Industrial, per sq.ft.	1.84
Commercial-Retail, per sq.ft.	9.99
Commercial-Service, per sq.ft.	5.71
Class A & B Office, per sq.ft.	2.19

**M.S.H.C.P.:**

Residential, <8.0 DU per acre, per unit	1,938.00
Residential, 8.1 – 14.0 DU per acre, per unit	1,241.00
Residential, > 14.1 DU per acre, per unit	968.00
Commercial, per acre	6,597.00
Industrial, per acre	6,597.00

**CITY COUNCIL  
PUBLIC HEARING**

**Date:** January 26, 2010

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

**FROM:** Zai Abu Bakar, Community Development Director

**SUBJECT:** **Adoption of Ordinance No. 1419 To Extend Urgency Ordinance No. 1406:**  
Adoption of Ordinance No. 1419 to Extend Urgency Ordinance No.1406 for an Additional 10 months and 15 days for Interim Sign Regulations for the Development and Placement of Freeway-Oriented Freestanding Signage Located Along the Interstate (I-10) freeway in the City of Banning.

**RECOMMENDATION:**

Staff recommends the City Council Adopt Ordinance No. 1419 (Attachment 1) to extend Urgency Ordinance No. 1406 for an additional 10 months and 15 days and continue to implement the existing interim sign regulations for the development and placement of freeway-oriented freestanding signage located along the Interstate (I-10) freeway in the city of Banning.

**BACKGROUND/ANALYSIS:**

On March 24, 2009, the City Council adopted Urgency Ordinance No. 1406 extending urgency ordinance No. 1402 for an additional 10 months and 15 days and continue the interim development sign regulations for the placement of freestanding freeway oriented signs declaring a moratorium on the development of freeway oriented sign districts. 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. Adoption of Ordinance No. 1406 also "suspended" the existing "sign district" regulations for freeway-oriented signs for the same corridor.

The City Council also directed staff to develop comprehensive and appropriate revisions to the City's Sign Ordinance including, but not limited to, development of a process for existing businesses to request sign permits for the placement of freeway-oriented signage along the I-10 freeway. In compliance with state law, the Planning Division prepared a report on the measures taken to alleviate the conditions that led to the adoption of Urgency Ordinance No. 1406. This report is required to be completed and made available for public review (as requested) at least 10 days prior to the public hearing extending the urgency ordinance. Staff completed this report and has provided a copy of it for Council consideration (Attachment 2). A summary of these items is provided as follows:

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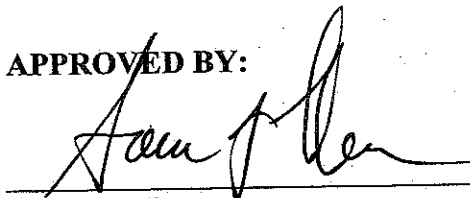
- Assessment of whether there are additional state, federal or local funding sources available to subsidize the development and implementation of sign districts; and
- Analysis of whether based upon the current economic conditions within the City, the continued implementation of sign districts unduly restricts or hampers business development, or has a significant negative impact on current businesses operating within the City.
- Initiated a survey of cities within the surrounding area that currently have existing freeway oriented sign districts to determine the effectiveness of sign districts in clearing up "sign blight", and as a business development tool; and
- Initiated internal discussions regarding any pending applications for freeway oriented signage to determine if additional regulatory requirements are necessary prior to implementing sign districts.
- Initiated an inventory of vacant parcels along I-10 freeway and inventory of existing freeway oriented signs currently located along the corridor.

Staff is continuing to gather information from various planning sources to address the sign regulations. Extensive review and consideration of the information is required and a comprehensive analysis could not be completed within the time frame outlined in Ordinance No. 1406 due to budget constraints and reduced staffing. Therefore, staff is recommending that the City Council adopt Ordinance No. 1419 to extend Urgency Ordinance No. 1406 for an additional 10 months and 15 days in compliance with state law. The extension will provide staff time to fully address this issue.

**FISCAL DATA:**

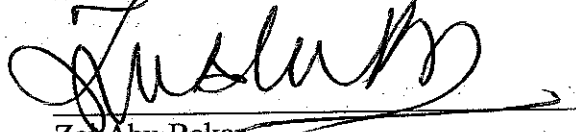
The proposed Urgency Ordinance will not result in any fiscal impacts.

**APPROVED BY:**



Sam Racadio  
Interim City Manager

**PREPARED BY:**



Zaf Abu Bakar  
Community Development Director

**CC Attachments:**

1. Urgency Ordinance No. 1419 Extension
2. Urgency Ordinance Status Report (dated January 14, 2010)

# **ATTACHMENT 1**

**Urgency Ordinance No. 1419 Extension**

**ORDINANCE NO. 1419**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, EXTENDING URGENCY ORDINANCE NO. 1406 FOR AN ADDITIONAL 10 MONTHS AND 15 DAYS AND EXTENDING THE INTERIM DEVELOPMENT SIGN REGULATIONS FOR THE PLACEMENT OF FREESTANDING FREEWAY ORIENTED 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 ordinance 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 establish 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 precluded 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/or businesses operating within 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, its citizens and businesses 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 approved and adopted Interim Urgency Ordinance 1402 on February 10, 2009, and Ordinance No. 1406 in response to growing concerns by the Council about the economic viability of creating "sign districts", and their potential negative impact on the financial welfare of citizens and businesses in the current economy; 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 that are applicable to freeway oriented signage, until updated regulations are adopted; and

**WHEREAS**, Government Code section 65050 allows the City Council to extend Interim Urgency Ordinance No. 1406 adopted on March 24, 2009; and

**WHEREAS**, on January 15, 2010, the City published a public hearing notice for Ordinance No. 1419 to extend Interim Urgency Ordinance No. 1406 in the Record Gazette newspaper in compliance with state law and Section 17.68 of the Banning Zoning Ordinance; and

**WHEREAS**, on January 26, 2010, the City Council held the a noticed public hearing at which time interested persons had an opportunity to testify in support of, or opposition to the adoption of Ordinance No. 1419 to extend Interim Urgency Ordinance No. 1406 for an additional 10 months and 15 days; and

**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. Ordinance No. 1419 to extend Interim Urgency Ordinance No. 1406 is hereby extended for an additional ten (10) months and fifteen (15) days from and after the date of adoption of Ordinance No. 1419, pursuant to the authority conferred upon the City Council by Government Code section 65858 and in accordance with the provisions of Government Code section 65090.

**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 continue to undertake a comprehensive study and analysis of development standards to be applied to freeway-oriented signage, identification of 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 Ordinance No. 1419 extending Interim Urgency Ordinance No. 1406, the City Council finds and determines that the extension of Interim Urgency Ordinance No. 1406 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 extending 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 adoption of Ordinance No. 1419 extending Interim Urgency Ordinance No. 1406, and 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 Ordinance No. 1419 extending Interim Urgency Ordinance No. 1406 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.** Adoption of Ordinance No. 1419 extending Interim Urgency Ordinance No. 1406, 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 25, 2007. This Interim Urgency Ordinance and extension thereof, 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 Ordinance No. 1419 to extend Interim Urgency Ordinance No. 1406 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 URGENCY ORDINANCE** this 26th day of January, 2010.

\_\_\_\_\_  
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  
City of Banning

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1419 to extend Interim Urgency Ordinance No. 1406 was duly adopted at a regular meeting of the City Council of the City of Banning, held on the 26th day of January, 2010, 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**

## **Urgency Ordinance Status Report**

**REPORT ON MEASURES TAKEN TO ALLEVIATE THE CONDITIONS  
THAT LED TO THE ADOPTION OF URGENCY ORDINANCE NO. 1406**

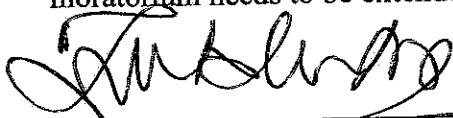
**January 14, 2010**

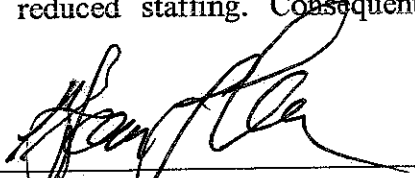
On March 24, 2009, the City Council adopted Urgency Ordinance No. 1406 extending urgency ordinance No. 1402 for an additional 10 months and 15 days and extending the interim development sign regulations for the placement of freestanding freeway oriented signs declaring a moratorium on the development of freeway oriented sign districts. 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.

Upon adoption of Urgency Ordinance No. 1406, and in order to address the existing conditions that led to the adoption of the Ordinance, the Planning Division has initiated the following efforts:

- Assessment of whether there are additional state, federal or local funding sources available to subsidize the development and implementation of sign districts; and
- Analysis of whether based upon the current economic conditions within the City, the continued implementation of sign districts unduly restricts or hampers business development, or has a significant negative impact on current businesses operating within the City.
- Initiated a survey of cities within the surrounding area that currently have existing freeway oriented sign districts to determine the effectiveness of sign districts in clearing up "sign blight", and as a business development tool; and
- Initiated internal discussions regarding any pending applications for freeway oriented signage to determine if additional regulatory requirements are necessary prior to implementing sign districts.
- Initiated a parcel by parcel survey of existing vacant parcels and number of freeway oriented signs currently existing in the community.

The gathering of information and analysis of data to determine the best way to regulate the freeway-oriented signs is on-going. Extensive review and consideration of the information is required and a comprehensive analysis could not be completed within the time frame outlined in Ordinance No. 1406 due to budget constraints and reduced staffing. Consequently, the moratorium needs to be extended.

  
\_\_\_\_\_  
Zai Abu Bakar  
Community Development Director

  
\_\_\_\_\_  
Sam Racadio  
Interim City Manager

**CITY COUNCIL AGENDA  
REPORT OF OFFICERS**

**DATE:** January 26, 2010

**TO:** Honorable Mayor and City Council

**FROM:** Sam Racadio, Interim City Manager

**SUBJECT:** Appointment of Economic Development Committee Members to Staggered Terms

**RECOMMENDATION:**

That the City Council assign a staggered term to each of the five recently appointed members of the Economic Development Committee pursuant to Ordinance No. 1411 and as recommended in this report.

**JUSTIFICATION:**

Ordinance No. 1411, Section 2.36.030 requires that the City Council assign staggered terms to each member of the Economic Development Committee. The appointed members representing community organizations automatically are appointed to a two (2) year term pursuant to Ordinance 1411.

**BACKGROUND:**

On January 12, 2010, the City Council appointed five new members (resident at Large positions) to the Economic Development Committee. The five appointees were: Krista Baird, Eugene Kadow, David Kealy, Lois Kinder-Preston and Hal Taylor.

**DISCUSSION:**

Ordinance No. 1411, which governs the EDC, requires that the City Council assign a staggered term to each of the resident at-large members. In Section 2.36.030 of Ordinance No. 1411 it states, "...three (3) members shall serve for an initial four-year term and two (2) members shall serve two year terms ....as designated by the Council....".

Members appointed representing community organizations, are automatically appointed to a two (2) year term pursuant to Section 2.36.030 of Ordinance 1411.

**FISCAL DATA:**

There is no fiscal impact with assigning staggered terms to the members of the EDC.

**CONCLUSION:**

That the City Council assign three (3) members of the EDC to a four (4) year term to and assign two (2) members of the EDC to a two (2) year term pursuant to Ordinance No. 1411.


**APPROVED BY:**

  
\_\_\_\_\_  
Sam Racadio  
Interim City Manager

**RECOMMENDED BY:**

  
\_\_\_\_\_  
Zai Abu Bakar  
Community Development Director

**PREPARED BY:**

  
\_\_\_\_\_  
John Jansons, Redevelopment Manager

**Attachments:**

1. Ordinance No. 1411
2. Summary of Council Action 1-12-10

# **ATTACHMENT 1**

**ORDINANCE NO. 1411**

ORDINANCE NO. 1411

AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF BANNING, CALIFORNIA, AMENDING  
CHAPTER 2.36 OF THE BANNING MUNICIPAL  
CODE REGARDING ESTABLISHMENT OF THE  
BANNING ECONOMIC DEVELOPMENT  
COMMITTEE

WHEREAS, The Economic Development Committee was originally established in 1965 to advise the City Council and Board of the Redevelopment Agency concerning economic development activities in the City.

WHEREAS, over the last two years the Committee has been inactive and a number of the committee offices are currently vacant.

WHEREAS, the City Council intends to reconstitute the Committee and expand its representation to better advise the Council with respect to economic development.

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

SECTION 1. Title 2, Chapter 2.36 ("Economic Development Committee") of the Banning Municipal Code is hereby amended by amending Chapter 2.36 to read, in its entirety, as follows:

"Sec. 2.36.10. Committee Established.

An economic development committee is established in the city. The purpose of this committee is to establish a coordinating entity between the City, its staff and other commissions and committees, and the private sector for the purpose of recruiting and retention of business development and tourism. The committee is charged with the following responsibilities and duties:

A. Participate in the implementation of the city's economic strategic/implementation plan as approved by the city council.

B. Review and advise the city council on proposed economic development projects within the city.

C. Advise the city council on economic development trends and/or programs that may impact the city fiscally or economically.



D. Assist the city council and staff in economic development matters including:

1. recruitment of new retail, commercial and industrial businesses to the city;
2. development of programs and activities to assist in the expansion of existing retail, commercial and industrial companies;
3. development of programs and activities directed toward the retention of existing retail, commercial and industrial businesses;
4. review and research of economic development issues to provide recommendations to the city council relating to such things as tax revenue generating activities including educational outreach to the community;
5. support of the Banning Cultural Alliance's Downtown Revitalization Committee and the related five year strategic plan;
6. provision of advice and counseling with regard to business recruitment and development;
7. coordination of tourism between the city and private sector organizations including assistance in developing a tourism plan to be recommended to the city council for adoption; and
8. serving, when called upon by the city council, as members of a business recruitment team as well as a "red team" for business retention.

**Sec. 2.36.020. Membership – voting members.**

A. The economic development committee shall be comprised of nine voting members, five appointed by the City Council and four representing designated organizations.

B. Five (5) members of the economic development committee shall be appointed by the city council from the community at-large and shall have a demonstrated interest and experience in business and economic development issues and shall live within the City of Banning.

C. There shall be four (4) members of the economic development committee known as the "organization members" including (i) one representative from the Banning Unified School District, (ii) one representative from the Mount San Jacinto College District, (iii) one representative from the Morongo Band of Mission Indians, and (iv) one representative from the Pass Area Economic Development Association. These members shall be recommended by their respective organizations and appointed by the city council.

**Sec. 2.36.030 Terms of office.**

A. Upon the effective date of this ordinance, the terms of office of any member of an existing economic development committee shall terminate and the terms of office set forth in this ordinance shall apply to those appointed to serve under the provisions set forth herein.

B. Except as provided in Section 2.36.060 and subsection (C) of this section, terms of office of voting members of the economic development committee after reestablishment of the economic development committee as provided in this ordinance, shall be four (4) years or until a successor is appointed as provided herein.

C. The initial appointment of the members of the economic development committee other than the four organization members under this ordinance shall include three (3) members who shall serve for an initial term of four (4) years and two (2) members who shall serve for an initial term of two years to assure continuity on the committee by the staggering of terms of office. The Council shall designate who serves for which terms.

D. Terms of office of the organization members shall be two years.

**Sec. 2.36.040. Officers.**

The members of the economic development committee shall elect a Chairperson and Vice Chairperson at the initial meeting of the committee under this ordinance and at the first meeting in February of all subsequent years. Both the Chairperson and Vice Chairperson must be residents of or own a business in Banning.

**Sec. 2.36.050. Quorum.**

A majority of the members shall constitute a quorum and a majority of a quorum or of the full committee if the full committee is present shall be required for action.

**Sec. 2.36.060. Absences and removal.**

A. All members of the economic development committee shall serve at the pleasure of the city council and may be removed from office by a four-fifths (4/5ths) vote of the city council at any time with or without cause.

B. Three (3) unexcused absences in any fiscal year shall constitute an automatic resignation of the absent member. Absences may be excused at the discretion of the Chair.

**Sec. 2.36.070. Staff Support for Committee.**

The Executive Director of the Redevelopment Agency shall serve as the official secretary of the economic development committee and shall provide staff support as needed to the committee.

**Sec. 2.36.080. Meetings and Bylaws.**

A. The economic development committee shall meet once monthly on the third Thursday at 6:00 p.m. in the City Council Chambers.

B. The economic development committee shall adopt such rules, regulations and bylaws for the conduct of its business as it deems appropriate consistent with the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et seq.) and other applicable law."

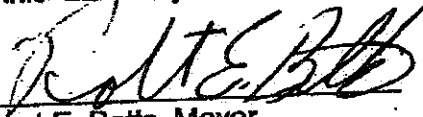
**SECTION 3.** Ordinance 1371 previously adopted by the City Council on June 12, 2007 concerning the Economic Development Committee is hereby repealed in its entirety, and is superseded by this Ordinance.

**SECTION 4. SEVERABILITY.** If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall take effect thirty (30) days after its enactment in accord with California law.

**SECTION 6. 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 22<sup>nd</sup> day of September, 2009.

  
Robert E. Botts, Mayor

**ATTEST:**

  
Marie Calderon, City Clerk

**APPROVED AS TO FORM:**

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

# **ATTACHMENT 2**

## **SUMMARY OF COUNCIL ACTION 1/12/10**

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

January 12, 2010  
6:44 p.m.

Banning Civic Center  
Council Chambers  
99 E. Ramsey St.

**SUMMARY OF ACTION TAKEN BY THE CITY COUNCIL**

**I. CALL TO ORDER**

- Invocation – *Interim City Manager Sam Racadio*
- Pledge of Allegiance – *Mayor Botts*
- Roll Call – Council Members Franklin, Hanna, Machisic, Robinson, Mayor Botts

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

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

*Bill Dickson – spoke on behalf of Hispanic Chamber of Commerce and their 7th Annual Toy Distribution that was held in December. He thanked the Council for their support.*

*Fred Sakurai - 4985 Bermuda Dunes addressed the Council to thank the Banning Police Department on their quick work in arresting the suspects in regards to the recent vandalism. He also encouraged people to volunteer to work at the Banning Police Department and also said there are other place where people can volunteer to help the City.*

*Charlene Sakurai – 4985 Bermuda Dunes addressed the Council in regards to some events Happening: Jan. 16<sup>th</sup> from 2-5 p.m. there will be an artist reception for Bridgette Adams Greb. This will be held at the Banning Center for the Arts – 130 N. San Geronio. On Feb. 13<sup>th</sup> there will be a women's luncheon in regards to women's heart health at the Banning Cultural Alliance (Banning Womens Club) from 11:30 a.m. to 1:30 p.m. Cost is \$12.00. Can register by calling 922-4911. Also a Passcom meeting was held today and they voted to Support the League of California Cities to get a measure on the ballot.*

*Anita Worthing, 182 Salt Creek, Beaumont addressed the Council in regards to Pass Area Supporting Service-members. They will have a free Veterans and Family Workshop on Saturday, Jan. 30<sup>th</sup> from 9 a.m. to Noon at the Beaumont Civic Center. There will be people there to answer questions about VA benefits and other things.*

*Another lady spoke about a black history program that the Fountain of Life Church will be having the last week of February. It is a good educations program. They would also like to possibly in the future have a Black History Parade in the community.*

*Amy Herr, 964 Dorothy Anna addressed the Council in regards to the animal shelter and their adoption of an animal. She gave kudos to the shelter and it was a wonderful experience. Also the Boys & Girls Clubs of the San Geronimo Pass will be having the 2<sup>nd</sup> Annual Martin Luther King Jr. Day of Service with a neighborhood clean-up at Roosevelt Williams Park on January 18<sup>th</sup> from 10 a.m. to 1 p.m.*

#### **VIII. CLOSED SESSION**

1. The City Council will meet in Closed Session pursuant to Government Code Section 54957 with regard to the following personnel issue: Final Selection of City Manager

*City Council went into closed session at 7 p.m. and returned to regular session at 7:05 p.m. with no reportable action.*

#### **IX. CONSENT ITEM**

1. Authorizing Mayor to Execute the Contract with the New City Manager ..... 284

*Approved contract with new City Manager Andrew (Andy) Takata (M/H) 5/0*

##### Report by City Attorney

*Reported that there is a public contract with the new city manager.*

##### Report by City Manager

*Announced that there will be a Jt. Meeting with the Morongo Band of Mission Indians on Jan. 20<sup>th</sup> starting at 11:30 a.m. the Casiono Morongo Resort and Spa. Also there is some pressing issues in regards to the contract with the County of Riverside in regards to the animal shelter and the need to form an ad hoc committee to address those issues. Mayor Botts appointed Councilmembers Robinson and Machisic.*

**CORRESPONDENCE:** *None*

**ANNOUNCEMENTS/COUNCIL REPORTS:** *(Upcoming Events/Other Items and Report if any Various reports were given.*

##### **APPOINTMENTS:**

1. Appointment to Parks & Recreation Advisory Committee ..... 1  
*Appointed Timothy Smith*
2. Appointment to the Economic Development Committee. .... 9  
*Appointed: Gene Kadow, Krista Bairdf, Lois Kinder-Preston, David Kealy, and Hal Taylor. The Council also appointed the organization appointments: Kelly Daly, BUSD; Dennis Anderson, MSJC; Bill Landon, Morongo Indians; And Brandon Contreras, Pass EDA.*

**Addendum:** *Council Assignments were made.*