

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

April 13, 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/PRESENTATIONS/APPOINTMENTS**

**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.

*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.*

### 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 10**

**Items to be pulled \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ for discussion.**

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

|     |  |    |
|-----|--|----|
| 1.  | Approval of Minutes – Special Joint Meeting – 3/23/10 .....  | 1  |
| 2.  | Approval of Minutes – Regular Meeting – 3/23/10 .....  | 10 |
| 3.  | Ordinance No. 1420 – 2 <sup>nd</sup> Reading: An Ordinance of the City Council of the City of Banning, California, Approving Zone Text Amendment No. 09-97506, to Amend Municipal Code section 17.44.010, Pertaining to Table 17.44.010 Review Authority of Tentative Parcel Maps and Amendments to Municipal Code Title 16 Subdivisions .....   | 32 |
| 4.  | Resolution No. 2010-21, Declaring the Intention to Levy and Collect Assessments Within Landscape Maintenance District No. 1, During the Fiscal year 2010/11, Pursuant to the Landscaping and Lighting Act of 1972 for the Maintenance and Servicing of Landscaping, Approving the Engineer's Report, and Setting the Date for the Public Hearing for the Levy of Said Assessment ..... | 42 |
| 5.  | Resolution No. 2010-24, Opposing California State Ballot Proposition 16, New Two-Thirds Vote Requirement for Public Electricity Providers .....  | 50 |
| 6.  | Resolution No. 2010-25, Approving a Parking Easement and Covenant Agreement between Paddy O'Reilly's Owners, Mr. and Mrs. Mehas and the City of Banning for Public Parking Use .....   | 54 |
| 7.  | Notice of Completion for Project No. 2006-07, Construction of the New Banning Police Station .....   | 81 |
| 8.  | Authorization to Fill a Position – Utility Billing Representative. ....  | 86 |
| 9.  | Authorize the City Manager to Review and Approve Filling Positions .....   | 87 |
| 10. | Larry D. Smith Correctional Facility Wastewater Permit Fees .....  | 89 |

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

### IV. ORDINANCES - INTRODUCTION

|    |  |    |
|----|--|----|
| 1. | Ordinance No. 1422 – An Interim Ordinance Establishing a Temporary Moratorium on the Permitting of Tattoo & Piercing, Fortune Telling, Push-cart Vendors, and Hookah (Smoking) Lounge Land Uses Pending the Review and Possible Amendment of Zoning Regulations Applicable to Such Uses. |    |
|    | Staff Report .....   | 93 |

**Mayor asks the City Clerk to read the title of Ordinance No. 1422:**

*"An Interim Urgency Ordinance of the City of Banning,  
Establishing a Temporary Moratorium on the Permitting of  
Tattoo & Piercing, Fortune Telling, Push-Cart Vendors, and  
Hookah (Smoking) Lounge Land Uses Pending the Review and  
Possible Amendment of Zoning Regulations Applicable to Such  
Uses, to Become Effective Immediately.*

**Motion: I move to waive further reading of Ordinance No. 1422**  
(Requires a majority vote of Council)

**Motion: I move that Ordinance No. 1422 be adopted.**

**V. REPORTS OF OFFICERS**

1. David J. Aleshire, City Attorney
  - A. Options for Direct election Versus Appointment of Mayor  
and Mayoral Committee Appointment Procedures:  
Alternatives, Advantages and Disadvantages . . . . . **102**

**VI. ANNOUNCEMENTS/REPORTS (Upcoming Events/Other Items if any)**

- City Council
- City Committee Reports
- Report by City Attorney
- Report by City Manager

**VII. 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 (6/10)
3. Massage Ordinance (ETA 6/8/10)
4. Reporting Guidelines
5. Consider Sister City Relationship with Township in Haiti
6. Grand Jury Report

**VIII. CLOSED SESSION**

1. City Council will meet in closed session in regards to labor relations matters pursuant to Government Code Section 54957.6.
2. City Council will meet in closed session pursuant to Government Code Section 54956.9 regarding one case of potential litigation.
  - A. Opportunity for Public to Address Closed Session Items.
  - B. Convene Closed Session

## **IX. ADJOURNMENT**

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

03/23/10  
SPECIAL MEETING

A special joint meeting of the Banning City Council, Banning Utility Authority and Banning Community Redevelopment Agency was called to order by Mayor Botts and Chairman Robinson on March 23, 2010 at 4:30 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS/BOARDMEMBERS

PRESENT: Councilmember/Boardmember Franklin  
Councilmember/Boardmember Hanna  
Councilmember/Boardmember Machisic  
Councilmember/Chairman Robinson  
Mayor Botts

COUNCIL MEMBERS/BOARDMEMBERS

ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager/Executive Director  
David J. Aleshire, City Attorney/Agency Counsel  
Kirby Warner, Interim Finance Director  
Zai Abu-Bakar, Community Development Director  
Duane Burk, Public Works Director  
Hoyl Belt, Human Resources Director  
Jeff Stowells, Battalion Fire Chief  
Michelle Green, Accounting Manager  
John Jansons, Redevelopment Manager  
Chuck Thurman, Electrical Operations Manager  
Brian Guillot, Assistant Planner  
Marie A. Calderon, City Clerk/Secretary

PUBLIC COMMENTS – On Items Not on the Agenda

There were none.

City Attorney said that staff would like to add a closed session to the agenda concerning labor negotiations and a litigation matter involving Brar to this agenda to be talked about at the end of the agenda for the Council and the Agency and the need to take action arose subsequent to the posting of the agenda. **There was Council consensus to add this to agenda.**

REPORTS OF OFFICERS

1. Fiscal Year 1009/2010 Mid-Year Budget Review  
(Staff Report - Kirby Warner, Interim Finance Director and Michelle Green,

Accounting Manager)

Interim Finance Director said that Accounting Manager Michelle Green will present the mid-year budget review and following that he will give a briefing on some items that have to do with the upcoming budget.

Ms. Green started her power-point presentation and stated that one of the primary purposes of the mid-year budget review is to provide to the Council and Boardmembers updated fund projections in order to assist with fiscal planning going forward. She said as part of the mid-year review process finance reviewed revenues and expenditures city-wide primarily focusing on funds that were projected to have structural deficits for the current fiscal year. A summary of fund projections as found in their analysis as been provided with the staff report labeled as Attachment A. Detailed adjustments that are being requested as of the mid-year analysis are shown as Exhibit A to the various resolutions for the Council, Community Redevelopment Agency and the Banning Utility Authority. Although many funds were reviewed in this process during her presentation she will be highlighting four major funds projected to have structural deficits for the current fiscal year.

Ms. Green said originally the General Fund was projected to have a deficit of \$827,265. Fiscal to date the Council has approved several adjustments totally just over \$73,000. As a result of our mid-year review they are requesting revenue changes totaling just over \$535,000 and expenditure changes totaling just over \$235,000 and this will bring the current fiscal year's structural deficit for the General Fund to \$1,524,349. Earlier this fiscal year the Council approved a plan that would allow for an additional lease payment from the Banning Utility Authority in the amount of \$1,250,000 and this would offset the current year's structural deficit leaving a remaining deficit of \$274,349. Specifically in General Fund revenues property tax projections are decreasing by \$192,400 while sales taxes are decreasing by \$294,000. Investment interest revenue is projected to decrease by \$165,500 and this is due to the continuous reduction in interest rates that the City has been receiving on its investments. In developmental permits and licenses there was a slight projected increase of \$16,750 and a projected increase of \$100,000 to the electric transfer to the General Fund. This is directly related to a projected increase in electric revenues. In General Fund expenditures two adjustments that are being made are in the Animal Control category for \$100,000 and the remainder of the adjustment for \$135,020 is related to increases in various department expenditures net of saving resulting from a reallocation of personnel costs in the Public Works Department. Ms. Green said the Water Fund deficit is projected to increase by \$371,367. Revenue projections are decreasing by 8% or \$610,098 and this is due largely to a number of foreclosures in the city of Banning which is just over 400 which also results in a decreased in billed water revenue. In attempt to offset these reduced revenues the department has also decreased expenditures in Water Fund by \$238,731. In the Electric Fund there is a projected deficit of \$1,065.00 which is considerably lower than the original projection of over \$2.5 million dollars. There was an electric rate increase during the fiscal year however it was not in effect for the entire fiscal year. In fiscal year 2011 with the rate being in effect for the entire year the structural deficit for the Electric Fund is expected to be eliminated. Lastly, the Wastewater Fund during mid-year review the structural deficit is projected to be almost unchanged at \$686,107. While all the funds she has highlighted are still projected to have

structural deficits for the current fiscal year steps are being taken to eliminate or reduce those deficits in current fiscal years.

Interim Finance Director Warner said some of this we have talked about before and this is setting the stage for an anticipated full budget workshop that we are going to have possibly on April 27<sup>th</sup>. As you know we have talked about going back to a two-year budget plan so everything we are going to be doing will be on a two-year basis. The City Manager, himself and the department heads are now going through a process of getting ready to present specific alternatives to the Council to close the budget gap. As of today, department submittals are due and we have been working on the revenue projections for the next couple of years as have the departments as part of this mid-year review. As Michelle pointed out the structural deficit this current fiscal year is for a variety of reasons primarily, the on-going economic recession and the depression that it is having on our property tax revenues, as well as, the sales tax revenues. Those are down and are not looked at to be coming back anytime soon and not in the two-year budget cycle that we are going to be going to be looking at and with that we are now calling the structural deficit at \$1.5 million plus. Again, it depends on what happens with employee negotiations, it depends on what things happen in the coming year with on-going reductions in those property tax revenues. You have also noticed in the city that we have lost some sales tax producers that are permanently gone and some of those were major tax producers. So again, the structural deficit is going to be at that level and probably stagnate and flat for a couple of years and those are the assumptions that we are going to go on to provide the Council with alternatives. He said coming up we will be making recommendation and we have talked about this since he has been here with the TOT election and it was successful and we raised the rate from 6% to 10% and that has been in effect since January. Given the situation we are going into and the structural deficit you will be seeing another recommendation from us, at least as part of the alternative, to raise that from 10% to 12% to try to gain another part of revenue to help offset some of the large part of that structural deficit. The raising of that would bring in another \$100,000 or so per year and certainly would be helpful to offset some of the alternative cuts that may be there. You saw the interest rate reductions that we are doing in the mid-year and fortunately on one side we don't see interest rates raising again anytime soon so that will be another area that is flat. The good news is that when you are looking at a structural deficit it really shouldn't be counting on interest rate revenue as a way to fund your on-going expenditures anyway. We do know that there are a couple of specific increases you are going to have to deal with coming up in this two year plan that is going to potentially make that deficit a little bit worse and one of those is the animal control issue. We have been dealing with the County and we have two members of the Council that are on a subcommittee in regards to that contract and no matter what they come back with he would just say that he doesn't think we are going to do it at the rate we have been doing it at. Secondly, we have already been notified that the City's PERS contracts for the pension obligations are going to go up slightly and we have calculated those into the numbers already and in the General Fund for example there is probably an extra \$100,000 dollars of increase there without anything else that might go on in negotiations or anything else that might happen with other cost increases. Right now the reserves are currently at about \$4 million in the General Fund and we have had conversations in the past about how much the reserves should be and personally he would like to see them higher and he thinks that most cities need to look at that to be able to take care of times when you do go

through economic recessions or you do have emergencies. He said that \$4 million puts you at about at a 25% or so reserve and I would guard that with everything you possible can and that would be his recommendation because once you get into those reserves there is no easy way to get them back. So again, it should be the last resort you go to when you are talking about closing a budget gap or closing any kinds of things you have because he doesn't see anything on the horizon easily that is going to allow you to build that back up if you do use it. You will see that in the proposal. We are not going to be looking at trying to use reserves to balance and in fact, this year we were not talking about doing that but as you just saw even with that one-time lease payment and the way we talked about doing that earlier when Mr. Racadio was here we thought it was going to cover us for this fiscal year and partially into next but as we have seen there have been some things that have occurred even since that time that won't even allow that to happen. We are still talking about a \$275,000 dollar deficit by year end. He has talked to some of the departments and there are some areas that might reduce that and he can't count on it at this point so when you are talking \$275,000 on a \$13.8 million dollar budget that is pretty close and they are hoping that it comes down to zero but again, he doesn't know if that is a fact and won't know that until we are already into the next budget year.

Mr. Warner said he wanted to talk a little bit about the General Fund because there are going to be some very difficult alternatives that the Council is going to have to deal with and he thinks that it is important for the community to know. It should be no surprise when we come back to the Council and to the community there is going to be a lot of positions and a lot of services on the line in order to close a gap of \$1.5 million plus in a \$13.8 million dollar budget. For instance you have personnel costs in the General Fund that are about 62%. Part of those are actually brought in from other funds to help offset some of those so even when we make some personnel changes it affects other funds and we don't get the full net out of those savings. When you get into supplies, services and contracts of the \$5.8 million dollars, \$2.5 million dollars of that is the fire contract both Engine 20 and we all know the situation with that and the agreements that are out there and right now that is a commitment to the City of about \$500,000 and the rest of it is all the rest of the fire services. So to the extent that anyone is looking at contract services a pretty good majority of it is right there. You have about \$3.3 million dollars which encompasses all of the supplies and services that run the rest of the City and that includes about \$800,000 of money that is in the Police Department budget to fund everything they do for all of their folks. There is about \$5.5 million of personnel costs in the Police Department and add to that the \$750,000 and you can see that we are just about half of the budget in the entire General Fund. Again, to reiterate no surprises coming forward when you get the alternatives that includes how you balance the budget by making cuts he doesn't expect to see any significant savings that you are going to get in supplies, services and contracts area. He really believes that you are going to be looking at cost reductions that come primarily in personnel and programs. In the Water and Wastewater area we have a deficit this year anticipated at about \$1.4 million and that is on revenues that are about \$7 million dollars so as you can see it is about 20% light this year on being able to cover that. Wastewater is a similar amount and it is a small fund so it is about \$680,000 dollar deficit anticipated this year. You are going to be getting water and wastewater rate reviews coming up very shortly. At the very least he knows that in order to meet debt requirement and to meet proper operations and keep the water and the wastewater funds running and cover the things



that are necessary there, there will be rate increases anticipated in those areas just to cover that. We have talked in the past that there is a capability of getting additional lease payments from the utilities to the General Fund. In light of the deficits that you are already facing there he will tell you that will probably have to be something that is viewed on a scaled up basis maybe over a longer term plan and maybe as part of a long term recovery over a two to five year recovery plan. Again, we don't have the specifics on it but he is bringing it up because it is one of the alternatives that we are going to need to talk about as one of the offsetting alternatives to all the cut alternatives that you are going to have. It is the only place that we see a revenue opportunity. When you are talking about \$1.5 million dollar deficit sometimes we will be talking about really good ideas that might raise \$10,000 or \$15,000 or \$20,000 or maybe save that same amount of money. We need to look at every single one of those and every single one of them needs to go on the plate but he has kind of a materiality factor that he likes to deal with and that is the fact that we need to keep focused on that forest so until an item that comes up that hits about a \$200,000 dollar item he is going to suggest for purposes of making the tuff decisions that we kind of set them off a side, we explore them all, we come back on every single one of them and we hope to get all of those but then we are going to get right back into how do we solve the big problem and deal with the larger numbers. It is something that you are going to have to do in water and wastewater also although he knows that those two funds have taken hits we've experienced the customer services problems that have occurred as a result of some of those cuts in there. They are a business that runs on their own revenue sources and need to run that way but you will be looking at those somewhat differently than the General Fund and it is going to be hard to keep them separate but they are a completely different and separate funding sources.

Mr. Warner said that he is setting the tone for what he and the City Manager have talked about and they have spoken to this in all the departments and they know it is coming.

Councilmember Hanna asked Mr. Warner to share the changes that have been made to customer service.

Mr. Warner said that they had cut a Customer Service Representative from the budget last year and they immediately saw the lines increase because of the number of folks and some of the economic difficulties. So they have actually hired another one back with Council approval and that person is due to start within a week or so. When they have that it will allow them a bit more time to do two things and that is configure the lines so that folks who are just coming in to pay their bill should do that pretty quickly and folks that have to talk about turnoffs and delinquencies, etc. may have a longer line but that will be structured. The other thing that they are doing is trying to put some focus on getting the phone calls returned and looking at the phone system. Also, they will put in place that all phone calls will get returned within one day. Right now that doesn't happen but with full staffing they think that should happen and they want to be able to provide a better level of customer service.

Mayor Botts said for a little bit of history this Council and previous Councils have talked about difficulties with the phone system for many years and said you have to be able to get to a live person. We in fact authorized the hiring of a person because there was a question from staff, previous city managers that people go on breaks and lunch hours and we need to back

that up so we hired somebody else to back it up. He said he is glad that they will be looking at the phone system and we need to look at it in a broader scale and not just in finance.

Mr. Warner said so there is just no misunderstanding he is not suggesting that they will be looking at the phone system, at least he is not at this point, on a capital project to replace the phone system because that is always a very costly venture. He is looking at it strictly on whether or not the current phone system can be utilized better to do the messaging better and to allow folks to get in. Again, in at least their area they should have full staffing so they want to make that better and get to a live person. On the other hand in some of the other areas when we talk about some of these alternatives we are talking about having less people and so getting to a live person may still be difficult so we might be looking at those areas and trying to expand that to see whether or not we can do something better with the existing phone system.

Councilmember Machisic said he appreciated the presentation and it was pretty grim. We are going from \$18 million one year and we are going to go down to \$12 million and we have already cut 35 full or part time people. The other thing that was very clear in your presentation that the remainder of the money is in people (staff). So that means more staff will be cut at some point unfortunately. One of the things that he has always asked for and he would hope that when he brings the budget back with a recommendation is that you bring back the services that will not be rendered to residents. He thinks that is important because cutting a huge number like this in a couple of years has to reflect in the service that we offer to residents. When you talk about the telephone thing it is going to be rather difficult to have a human answering every call and responding within a day or whatever. He would like to see a list of all the services that are going to be reduced, eliminated, handicapped and he doesn't care how you call it but he thinks that is vital and we need to tell our residents. They have to realize that when you cut people you can't offer the same thing you offered with 40 or 50 more people.

Mr. Warner said he apologizes for being so grim and it is not his intent and since he has been here he has been pretty straightforward and he will give you what he sees and his best advice and then we have to deal with that. Your comment about the personnel is well-founded. He knows that about a year ago when the budget was done there was a memo at that time that outlined some of the anticipated impacts of the cuts that were done last year. He said that staff will, with the City Manager's approval, staff will definitely bring back those anticipated impacts that are going to go along with that plan.

Councilmember Hanna and in regards to the one time lease payment could you explain why that is available and she didn't see it in any of the resolutions where we will formally approve the use of that lease payments.

Mr. Warner said that it is in one of the resolutions in one of the details where it is changing back and forth. He explained that the Banning Utility Authority was formed to lease and run the water and wastewater and the purpose of doing that was to provide funds from the water and the wastewater to the City in recognition of the assets that they were leasing; legally set up entities to do that. Originally there was a prepayment made of a one-time lease of \$17

million dollars from the Utility Authority to the General Fund subsequently, about the exact same time, the City Council at that time chose to do projects with that thus the capital projects that had been done the police station, the swimming pool, and a few others. Those projects are not virtually complete and there are some of those funds left over. It is legally able to use those funds in three different ways: 1) you can substitute and do more projects with those funds; 2) you could send those funds back and could call bonds and reduce debt service but that would not be a very big amount compared to the overall level of the total bonds outstanding; or 3) when projects are completed it is legal by Federal law to use those left over bond funds to go back and capitalize interest for a one-year period following completion of the projects. So the Brinton Reservoir and the police station are being funded out of over all funds that were taken from those water bonds. Those monies are being brought back used to pay debt service and what is already budgeted in the water system to pay debt service is being brought back over to the General Fund as a one-time lease payment. Again, it was done not lightly because we know that it does have a topic of conversation and one thing that is looked at but given the situation that the City has with the deficit it was viewed as a viable alternative to bring a one-time revenue source in to deal with this year's revenue so the City could move forward in a timely fashion and try to make some strategic moves to balance the budget over a longer two year period.

Mayor Botts said this Council he trusts has been viewed as approaching what we had to do over the last few years in a careful and sensitive way even though the numbers have been rather significant as we simply had to do what others don't do like the State in balancing their budget. And he has said to a number of employees and they have asked and other Council people that we are very sensitive to what is going to happen this coming year and we said to our new City Manager you must balance the budget and we must fix this structural deficit this coming year and it has to get done. In conversations he is very sensitive to one more time of how we do that and the impact you have already said will be with public employees. We would hope that we will balance this budget and then begin to look forward and that once we get through this everyone he thinks could breath a little easier and a sigh of relief and say we have done some tough stuff in the last couple of years but we can look forward and not anticipate what is going to happen next year and do we have to have more layoffs and that kind of thing. Of course there are no guarantees ever.

City Manager Takata said basically the philosophy he has always had is number one you have to take care of the employees that are currently here and if they have to transition out, you have to make sure they have the ability to transition out. Number two is if our budget has declined a certain amount, we really need to make sure that our employees every year are not worried about their jobs and his goal is to make sure that happens that every year they are not worried about their jobs. Because if people worry about their jobs, then you get low moral and therefore you get low production. He said their goal is to make sure that the budget is balanced. He said that one of the things he would like to address and Mr. Warner talked about the Electric Fund a little bit and this is probably for the audience mainly because you know about fund accounting and government accounting is that there are some amounts of money that we cannot use in the General Fund. The majority of our services come from the General Fund and our electric, water and wastewater do not and they come from a special fund. Those monies expect for lease payments or reimbursement to general funds cannot be

used to help put more money into the General Fund. So when you look at doing things in your recreation, your police and all these things there may be some in different funds but the majority of the employees we have are in the General Fund. We do have some issues with water and wastewater and electric but when we talk about the \$1.5 plus million is your General Fund and that is the money that 1) is usually taken by the State; and 2) that is the where sales tax, your property tax those types of things go into. You can use General Fund money for anything you want legally that a City can do but the other funds you can't. So that is kind of the challenges that we have with fund accounting. We are going to hopefully spend time with all the staff to make sure they understand when we talk about fund accounting or governmental accounting so at least there is some understanding why we can't do certain things.

Councilmember Franklin said she wanted to confirm whether or not we have any kind of incentive program for employees for suggestions on cutting costs or helping us.

Mr. Warner said he is not aware of any at this point but he will put that down as a suggestion to look at.

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

**Motion Robinson/Hanna that the City Council adopt Resolution No. 2010-20A, Authorizing Revenue & Expenditure Line Item Adjustments Reflected in the Fiscal Year 2009-10 Mid-Year Review. Motion carried, all in favor.**

**Motion Hanna/Machisic that the Banning Utility Authority of the City of Banning adopt Resolution No. 2010-03UA, Authorizing Revenue and Expenditure Line Item Adjustments in the Water and Wastewater Enterprises as Reflected in the Fiscal Year 2009-10 Mid-Year Budget. Motion carried, all in favor.**

**Motion Machisic/Hanna that the Banning Community Redevelopment Agency of the City of Banning adopt CRA Resolution No. 2010-09, Authorizing Revenue and Expenditure Line Item Adjustments Reflected in the Fiscal year 2009-10 Mid-Year Budget Review. Motion carried, all in favor.**

#### CLOSED SESSION

City Council went into closed session in regards to Conference with Labor Negotiators pursuant to Government Code Section 54957.6. City is represented by City Manager, City Attorney and Human Resources Director. Negotiations are with International Brotherhood of Electrical Workers – Utility Unit; International Brotherhood of Electrical Workers' General Unit; Banning Police Officers Association and City of Banning Association of Managers; and pursuant to Government Code Section 54956.9 (a) regarding pending litigation - Brar vs. City of Banning.

**Meeting went into closed session at 5:12 p.m. and returned to regular session at 5:48 p.m.**



City Attorney said that the Council met in closed session and they discussed the litigation matter regarding involving Brar and the City Council gave direction to its negotiators concerning settlement negotiations. With respect to labor negotiations with all of our bargaining units the Council met with the negotiators and got direction for future negotiations.

ADJOURNMENT

**Motion Machisic/Robinson to adjourn the joint meeting. Motion carried, all in favor.**

Meeting adjourned at 5:49 p.m.

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Marie A. Calderon, City Clerk

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

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

03/23/10  
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Botts on March 23, 2010 at 6:43 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager  
David J. Aleshire, City Attorney  
Kirby Warner, Interim Finance Director  
Zai Abu-Bakar, Community Development Director  
Duane Burk, Public Works Director  
Hoyl Belt, Human Resources Director  
Jeff Stowells, Battalion Fire Chief  
Michelle Green, Accounting Manager  
John Jansons, Redevelopment Manager  
Chuck Thurman, Electrical Operations Manager  
Brian Guillot, Assistant Planner  
Marie A. Calderon, City Clerk

The invocation was given Pastor Steve Byerly. Mayor Botts invited the audience to join him in the Pledge of Allegiance to the Flag.

**PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/  
ANNOUNCEMENTS**

Report by City Attorney - Nothing to report.

Report by City Manager

City Manager thanked the City and the Banning Chamber of Commerce for the welcome reception that was held on Wednesday, March 17<sup>th</sup>. It was a wonderful experience meeting many members of the community and he looks forward to meeting many more.

PUBLIC COMMENTS – *On Items Not on the Agenda*

Ellen Carr, 471 W. George Street representing Tender Loving Critters Animal Rescue and the animals of our community addressed the Council stating that we have no animal shelter. We have no place to put our animals. There are more dogs running the street than ever before. There are more incidents of dogs being lose and attacking other dogs and cats. We are coming into kitten season and where do you think people will leave those kittens because they didn't have their cat spayed. We are the landlords of the shelter and it is our responsibility and these are our animals and we need to do something soon and it has been three months since the shelter was closed. She knows some place there is money and there was money promised in the beginning when this all started. We promised Riverside County that we were going to help them with the shelter and any improvements that have been done down there have been done by Riverside County at their expense. They have done marvels and had a caring staff. Now we have an empty building sitting there useless. She is sick at heart that we are not doing anything or it appears that we are not doing anything.

Mayor Botts said it is important for you to know that staff is working on this problem and that Councilmembers Machisic and Robinson have been appointed to work with the County on this and it is not an easy problem. As you know there has been flooding and there are some significant issues and some very significant cost issues that have come up that the Council was not aware of and they are continuing animal control and animal services. The Council is trying to work on this problem with the County.

Matthew Clarke, 1036 Charles Street addressed the Council stating that he is part of a coalition that will be addressing city council's and county governments all of next month and this consultation is in terms of Jessica's law. If you have read the headlines in the last two months, there are a lot of unfavorable actions taking place in our community. There appears to be a breakdown in our State Probation System in tracking and monitoring registered sex offenders. He would ask that the City approve for our law enforcement to confirm the location and addresses as recorded on the State published website to confirm that those offenders are living at the addresses that they are registered to and that if they are not living and residing at that address, then a memorandum be forwarded to the State's Attorney General.

Chris McCallum, 757 W. Westward addressed the Council thanking the City Manager for expediting the problems at the Department of Motor Vehicles. This was brought to the State level very quickly but unfortunately very quickly is not going to matter if somebody gets hit there crossing that street. It needs to get done and he knows that the City Manager is working real hard on this and he needs our help whether it is all the citizens and the Council to write letters to the State now to get this resolved. It would be nice to say we have success at it but if tomorrow someone gets hit, it won't be a success. These are not only residents of our community that we need to keep safe but a large amount of those people come from out of the area to our community. We have to wait for the tragedy to solve the problem and he is here right now to say Mayor and Council write letters or call people. We need this done now.

## PRESENTATIONS

John Anderson, Lt. in charge of Riverside Cal-ID addressed the Council stating that he was here to recognize the achievement of Banning Police Officer Tammany. Cal-ID is a unique and innovative partnership with all of the cities in Riverside County and it was designed and created to provide services for electronic fingerprint capture and comparison, DNA services and mug shot capture. It takes hard work and determination to recover laden fingerprints from a crime scene. Without those laden fingerprints his examiners wouldn't be able to search the data base and identify suspects. The Golden Bear Award Program was created to recognize employees for their outstanding work in the recover of laden fingerprints from crime scenes. In order to qualify for this award the employee must have at least five hits in a calendar year. A hit is a laden fingerprint that is lifted that leads to suspect identification. Office Tammany achieved 6 hits in 2009 and all six were for burglaries were suspects were identified which more than likely would never have been solved if it had not been for Office Tammany's work. In Riverside County there are thousands of deputy sheriffs, police officers and civilian employees who have the opportunity to search for laden fingerprints at crime scenes and in 2009 there were only 54 in the County who qualified for this award. On behalf of Cal-ID he is proud to present this Golden Bear Award to Office Tammany.

1. WRCOG/Riverside County "Census, It Matters!" Video

Community Development Director Zai said that this video was provided by Western Riverside Council of Governments (WRCOG) and was provided to each of the cities in Western Riverside County.

City Manager Takata said that this video is being shown on the City's website in both English and Spanish and we will have some mail outs in both languages. By counting these individuals it means money to the City and obviously that is very important.

At this time the video was show in both English and Spanish. Mayor Botts reminded everyone as to the importance of completing your census form and that it is confidential information and not shared by with anyone. It is not shared with immigration, welfare or the IRS.

2. Stagecoach Days Update – Presented by Stagecoach Days Committee

Sue Palmer addressed the Council stating that some of the members of the Stagecoach Days Committee and the United Day Way of Caring Committee are here to present the plan for this year's Stagecoach Days event. As you know from the last meeting with the Council the Committee voted to move the date of Stagecoach Days to September 9, 10, 11 and 12. They have a wonderful group of volunteers who have each taken on a task to get completed for this year. She will provide to the Council a list of committee members and this year's budget and if the Council has any questions of any of the events that are discussed tonight you can visit their website at [Banningstagecoachdays.com](http://Banningstagecoachdays.com) or contact anyone of the committee members in charge to get answers to your questions. They have two fundraisers planned to raise money for Stagecoach Days and the first is a three-day Trap Shoot on April 30<sup>th</sup>, May 1<sup>st</sup> and 2<sup>nd</sup>. It will be sponsored and held at the Banning Sportsman's Club range. The second fundraiser is a Motorcycle Poker Run on July 17<sup>th</sup>. The carnival will open on Thursday as usual with more



rides than last year and run through Sunday. Linda Escandel is chairing the parade again this year and the will be held on September 11<sup>th</sup>. All active military, law enforcement and firemen will get into the fairgrounds free all four days to thank them for everything that they do for all of us. Committee Member Matt has a tentative approval for the Marine Corps Bugle Band to play for this year's Stagecoach Days Celebration. This entire event for Stagecoach Days will be very patriotic. Linda Escandel and Lynn Medvedeff have some great events lined up for the four days. Bill Dickson and Sue Barnett are chairing the Beverage Garden again this year. David Wilson and Helen Barnes are chairing the vendor area with some help from Matt Clarke. Bill Lamb will give information on the reenactment camp and the changes in store for this year. They are very proud of the website that Dan Ellison has updated this year and he will speak on his plan for the website and a plan for a Blacksmithing Contest which will be fun and beautify the park. He has also booked a couple of cowboy bands for entertainment. They are looking to book a variety of entertainment for the full four days. Helen Barnes and Cork Irwin are chairing the grounds and clean-up of the park and have a very long list of things that need to be repaired, painted or completely refurbished. The Stagecoach Days Committee will complete as many of these repairs as possible. Heidi Meraz and Jay Cogbill are in charge of the Kid Zone that was introduced last year and was a big success and will be expanded on this year. As you can see there are lots of new and improved plans for this year. At this time some of the Stagecoach Days Committee members gave more information on their plans for events.

Linda Hanley addressed the Council stating that she was here representing United Way of the Inland Valleys and as a Boardmember, Campaign Chair for the Pass Region and also the Regional Cabinet Advisory Board Chair she is very glad that they are able to partner with Stagecoach Days because the United Way Day of Caring is September 11<sup>th</sup> and they will be working directly with Stagecoach Days to try to create projects and things that can happen around Stagecoach Days and in the community. Jeanne Ramirez, Chair of the United Day Way of Caring addressed the Council stating that she is very excited about Day of Caring being part of Stagecoach Days. They have been provided with a list of all the projects that they could help with around Stagecoach Days so they will be reviewing those, as well as, turning to anybody in the community that is in any non-profit organization, the schools, helping some veterans and some seniors in need and things like that. This will take place all that morning of Stagecoach Days.

Sue Palmer said as you have heard the Stagecoach Days Committee has made several big changes from last year's event to make this event to remember for September 11<sup>th</sup>. It is a very, very special date and they don't want to forget anything for September 11<sup>th</sup>. The Committee is working very hard to make the necessary improvements so that the Council and the community can be proud of their Stagecoach Days Celebration. In order to make the improvements to the park and put on a quality event the Committee is asking for a commitment from the Council for \$15,000 for this year's Stagecoach Days Celebration. She thanked the Council for the time to make this presentation for what they think will be a very patriotic, fun-filled four days.

There was some discussion and questions in regards to events, who to contact to volunteer, parade participation, arena events, and Pass Has Talent.

Sue Palmer said that people can go on line to [banningstagecoachdays.com](http://banningstagecoachdays.com) or email her at [suepalmer1@msn.com](mailto:suepalmer1@msn.com) or call her at 951-906-1153 for further information. They would love to link with the City in regards to Stagecoach Days and the need for new people to get involved.

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

Councilmember Franklin –

- She thanked the community for participating in the Pass Supporting Soldiers with the packing day last week and they were able to send 40 boxes to troops serving overseas.
- Attended Workforce Development meeting last week and a question was asked at the last Council meeting in regards to unemployment here in Banning. The good thing is that we are not the highest in unemployment but the bad part is that we are pretty high at 17%. She gave the information to the City Clerk.
- April 2<sup>nd</sup> there will be two Easter Egg Hunts with one at 10 a.m. at Sylvan Park and one at 12 Noon at Repplier.
- April 7<sup>th</sup> and April 10<sup>th</sup> from 10 a.m. to 4 p.m. at Praise Tabernacle Church located at 1525 W. Nicolet will have free tax preparation for anyone who is income qualified and taxes will be done on site at that time.
- April 17<sup>th</sup> Citibank is sponsoring a day for anyone who wants to shred papers and will have a truck on site from 9 a.m. to 2 p.m. to shred papers.
- At the last Council Meeting she had a concern about the recycled water pipeline and her only concern had to do with using Redevelopment dollars for it and because of that concern she did do some research to help cover the cost and she found out that through the American Reinvestment and Recovery Act this kind of project could potentially comply with the requirements to be able to get money. The money is available here in Riverside County and she has asked staff to look more into it.
- April 24<sup>th</sup> the 5<sup>th</sup> Annual City Sponsored Disaster Preparedness Exposition will be held at the Community Center from 10 a.m. to 2 p.m. There will be least 28 displays inside and approximately 10 outside. It is important that each household is prepared. There will be free giveaways and drawing prizes.

Councilmember Machisic –

- Friday night he went to the San Bernardino Museum and they were opening a display of baskets made by the Morongo Tribe. Also in attendance was Councilmember Franklin. Some of the baskets were quite old and they had four or five people out front who were actually making the baskets. There were about 125 people in attendance. On Saturday he went to the art gallery on San Geronio and a new artist was displaying her work plus other materials and Sunday he attended an art show in Sun Lakes. It is great for the community that we have that kind of cultural experiences and he thinks it needs to be expanded because there is a certain part of our population that appreciates that.
- He attended a Redevelopment Conference with Councilmember Robinson and Mayor Botts and there were many people and many ideas. There were about 200 pages in handouts and he did leave it for the Council to review. Some things that they discussed for instance on water conservation they said that there are many landscapers and

gardeners who are not aware of dealing with greenscaping or water systems and he thought maybe our Water Department ought to offer some kind of in-service to the people that actually service sprinkler systems and so on. Another thing that he thought was quite appealing was that they had some projects for low income but they including preschool and a nursery involved in the low incoming housing project. He received this book called Public Power that talks about all the municipal agencies in the United States and in looking through it he saw a face that he recognized and that hasn't happened in the five years that he has been reading this book and it was Fred Mason who heads up our Electricity Department and also Chuck Thurman and they are talking about rebates in the city and it is a great article. He wished that Sue Palmer hadn't left because down on the bottom of the article they have Stagecoach Days attracts visitors from Southern California to Banning for a first rate experience.

Mayor Pro Tem Hanna –

- At the last Council Meeting she and Councilmember Franklin both raised the concern about Haiti and about creating a friendship relationship with a township in Haiti. The idea would be not so much to do fundraising although that certainly could be a part of what ends up happening but to actually develop relationships with people in a specific town in Haiti. Tomorrow at 4 p.m. she and Debbie will have an initial meeting about what direction we might take. She invited anyone who might be interested to attend this meeting or future meetings and they are looking for representatives from different parts of the community for example, the school district is sending the principal of an elementary school and that school could potentially develop a relationship with an elementary school in the town that we might choose to be a friend with and so forth. We could have the hospital, we could have churches, and we could have arts groups. There are all kinds of possibilities of developing this relationship. It is really to go beyond ourselves and see a town in a country that has suffered greatly and that perhaps by our support we might be able to help them in this difficult time.
- The United Methodist Women are having their Annual Salad Luncheon on April 16<sup>th</sup> from 11 a.m. to 1:30 p.m. at the Banning United Methodist Church and tickets are \$7.50.
- The Banning Chamber of Commerce is having their Third Cinco De Mayor Golf Tournament at Saboba Springs.

Councilmember Robinson –

- Last night the Council attending the League of California Cities Riverside Division Meeting in Indio and there was a lot of talk about Metrolink growth. There has only been a 2% loss in ridership in Riverside County on Metrolink this past year. It is something that is going to continue to grow and they predict that it will come through the valley someday and he hopes that we plan for it.
- May 1<sup>st</sup> is the Art Hop and Recycling Fair and we can learn some things about water and water recycling and enjoy all the artists that come to the Art Hop.
- At the CRA Convention he made it his goal to find everybody that was involved in affordable housing and he has had two email responses already trying to set up times to come out to look and see what is available in Banning for affordable housing.

- He would like to close out this meeting in the memory of Jack Holden who was the Executive Director of the Banning Chamber of Commerce who struggled with cancer for the last five years and he moved the city forward as best he could for five years.

### CONSENT ITEMS

Mayor Botts said that staff asked that Consent Item No. 3 be pulled.

1. Approval of Minutes – Regular Meeting – 3/09/10

Recommendation: That the minutes of the Regular Meeting of March 9, 2010 be approved.

2. Authorization to Fill Positions – Seasonal Employees in the Community Services Department.

Recommendation: That the City Council authorizes staff to fill the seasonal staff positions the Community Services Department – Pool Manager, Assistant Pool Manager, Lifeguards and Cashiers.

3. Notice of Completion for Project 2006-07, Construction of the New Banning Police Station.

*This item was pulled from the agenda at the request of staff.*

4. Notice of Completion for Project No. 2009-01, Airport Drainage Improvements and Lincoln Street Improvements.

Recommendation: That the City Council accept Project No. 2009-01, Airport Drainage Improvements and Lincoln Street Improvements as complete and directs the City Clerk to records the Notice of Completion.

5. Accept Right-of-Way Dedications from Assessor's Parcel Numbers: 419-081-001, 419-101-012, 419-101-011, 419-101-010, and 419,101,008 in Order to Construct Proposed Street Improvements at Various Locations.

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) 419,081-001; 2) 419-101-012, 3) 419-101-011; 4) 419-101-010; and 5) 419-101-008.

6. First Amendment to Consultant Services Agreement with Michael Brandman and Associates for an Amount Not to Exceed \$11,800.00 to Complete the Preparation of an Environmental Document (Mitigated Negative Declaration) for the O'Donnell Business Park Project.

Recommendation: That the City Council approve an amendment to Consultant Services Agreement with Michael Brandman and Associates for the amount not to exceed \$11,800.00 to complete the preparation of an environmental document (Mitigated Negative Declaration) for the O'Donnell Business Park project.

7. Resolution No. 2010-18, Approving the Cooperative Agreement with Riverside County for the Sunset Avenue Grade Separation Improvements.

Recommendation: That the City Council adopt Resolution No. 2010-18, Approving the Cooperative Agreement with Riverside County for Sunset Avenue Grade Separation Improvements and authorize the Mayor to execute the Cooperative Agreement with Riverside County for Sunset Avenue Grade Separation Improvements.

**Motion Machisic/Franklin to approve Consent Items 1, 2, 4, 5, 6 and 7.**

City Attorney said that in regards to Consent Item No. 7 staff would like that approval to be subject to some final changes in the agreement approved by the City Attorney.

**Motion carried, all in favor.**

#### PUBLIC HEARINGS

1. Resolution No. 2010-13, Request to Vacate a Portion of Val Monte Street and Adjacent Alleys.  
(Staff Report – Duane Burk, Public Works Director)

Mr. Burk gave the staff report as contained in the agenda packet and also displayed a view of Val Monte Street in its current condition and a design of the project.

Councilmember Robinson asked if he addressed the issue of drainage and where it will drain off on that asphalt street. Mr. Burk said that as part of the conditions the proponent will provide a grading plan and those will be further addressed as the project moves forward. But in today's element with WQMP (Water Quality Management Plan) and retaining the current water on their property it will be far superior to what they currently have now. They will be required to do a hydrology study of how the water runs off and how they are going to hold and collect that water per the ordinances that the Council has adopted.

Mayor Pro Tem Hanna said it seems to her that the homes on the east side of Val Monte are so close to the road. Mr. Burt asked Brian Guillot to come up and explain the widths of the road.

Brian Guillot addressed the Council stating that he believes the homes are closer than what we usually require for our front yard setback but the pictures don't really do it justice. The home that fronts on Ramsey Street is probably closer than the home on Val Monte but remember the purpose of that new zone is at some point those would be converted but in the meantime they are what we call legal nonconforming and they can stay that way as long as the occupants want to do that. The width of the private drive is 25 feet of right-of-way. He said that they went out and

measured the gravel drive as it exists right now and that gravel area was about 25 feet wide so we are really not cutting down on anything in fact, it will be paved with asphalt and engineered so it will be quite an improvement for them. Again, the private drive for the proposed clinic is 24 feet wide and that is the City's zoning code requirement so we are trying to stay consistent to that zone.

Mayor Pro Tem Hanna said it said that there shall be landscaping so it looks like the road, the fence and then there should be landscaping but it is not green so she is curious whether that is going to be landscaped. Also is this a one story building.

Mr. Guillot said that there will be landscaping on the east side of that building and 25 feet of landscaping is what is required in the code. We designed it so that five feet of landscaping will actually be on the outside of that wall and remember that landscaping is drought tolerant type so it is not the big, thick lush type of landscaping. Also this building will be single story and there was a proposal in the future to perhaps add a second story but if and when that takes place, they will need to amend their condition use permit which means coming back before Planning Commission.

Councilmember Franklin said that one of the principles is actually here and some of the staff, Dr. Lindsay who knows about the project. She said that she actually had a chance to go to the clinic in San Bernardino and she would encourage anybody that has any questions about what kind of service they offer that they actually go see the clinic that is there and it is very impressive.

Mayor Botts opened the public hearing for comments from the public.

Matthew Clarke, 1036 Charles Street addressed the Council stating that upon further review and seeing the services that this facility provides to the residents in east Banning is a very welcomed opportunity. He said that there has always been a continual problem with drainage on this property and exhibited by all the erosion that you see in the Caltrans right-of-way and the asphalt in its condition but there is no maintained storm drain system on the down slop side of this property. Currently this property owner and builder would have to retain what is called their Sheet Flow or their 100 year flood upon their property. Without a storm drain system to exhaust this collected water to and without a network of dry well systems you are looking at a detention/retention basin system which would take up valuable parking space on this property and he doesn't see that in this design. Having a capture basin or retention system on the property would then alter this traffic flow in the ingress and egress into the property. He just wanted to bring this to the City's attention that prior to final approval that this drainage issue be resolved because it will affect the ultimate design.

Johnny Schoonover, 1160 E. Ramsey Street addressed the Council stating that he met with Brian and Duane and as a property owner he has lived there all his life and a couple of key words have popped up such as non-conforming and he is just a resident. He said that he just inherited the house and it has been in his family for years and with a paved road it becomes the responsibility of the homeowner now that it is a private drive. He said he has four children and he can barely afford his electric and these are the long term things that will affect the family. He feels that it is

a public street and he doesn't want a private drive by his house and the street has never been maintained once in the 39 years that he has lived there so it doesn't matter if it stays dirt or paved to him. He is looking forward to the improvements that it will make to the area. He still has a lot of worries about this and he is nervous about change and it is the unknown that they don't know exactly what is going to go on and exactly what is going to happen to the property that has been the same way all his life and he has tried to beautify it as much as he can and he doesn't know what else to do at this point and he is really confused about this and he feels that he is in danger of certain things happening.

John Oh, 68 Val Monte addressed the Council stating that he is the new property owner and he has been there since August 8, 2008 and he is not only a resident there but a business owner and he has some issues concerning the development. Mr. Oh said everyone here in the community, as well as us, the neighbors are not in any shape or form opposed to the development. As a matter of fact, they welcome the development. However, the opposition that they have is the street of Val Monte was not addressed properly until the first week of March 2010 and from what he understands the developer is planning to decrease and make a significant alteration from the original 50 feet from left to right width. He thinks that is where they have an issue and concern because that will limit them significantly in terms of traffic going in and out. He said that they are willing to compromise but unfortunately the developer, from what he understands, is unwilling to compromise and they insist on allowing them only the 25 feet from left to right width. That is the only issue they have and not the development itself. He wishes that something can be worked out that is mutual and beneficial because from the 25 feet that they are cutting into he believes it is a safety hazard. They are definitely against the street of Val Monte being private because he doesn't see any significant benefit. He said he consulted with Brian concerning that and from what he understands according to what he informed them that they have to maintain the street once it becomes private. He can only speak for himself but to maintain it at what cost that is indefinite as long as they own the property. Hypothetically if it cost \$10,000 or \$20,000 dollars to maintain every four or five years that is something mutually they have to come to some kind of compromise and if one of them decides for some kind of financial reason unable to compromise, then what. There are some other legal issues that he believes that they are perhaps unable to mediate. What they are opposing is not the development itself but the street becoming the 25 feet width from left to right is where they have an issues. From the information that he obtained from the County of Riverside Transportation Public Works they allow 8 ft. per each, left and right and then 10 feet for the incoming and outgoing traffic which timed twice would be a total of 36 feet and would be considered safe. If there is anyway that they can compromise to do that from an existing 50 feet he doesn't see any reason why they would oppose that. Currently right now allowing the 25 feet to be the width of Val Monte and turning into a private street is a disservice to them as well as another neighbor.

Councilmember Machisic said that in the transmittal it said that in a search of the business license data base fails to show any business license issued to 68 Val Monte Street. Do you have a business license? When did you move here?

Mr. Oh said not here in the City of Banning and that he is trying to establish that and he moved here August 8, 2008 and since then he has been busy fixing up the business location.

Councilmember Machisic said that a search of the utility data base reveals that the location has maintained residential utility rates since 1973 and continues to do so and is that true and does he pay residential rates. Mr. Oh said he believes so, yes.

Don Smith resident of Banning addressed the Council stating that he thinks a clinic of this type will be a great addition to the City. So in that regard he certainly supports this project and it is in the right zoning. We are basically vacating the entire street and half of it will no longer be used for ingress or egress because it is going to be landscaped pursuant to your own rules of how wide the landscaping has to be leaving a 25 foot thing. He is going to call it a driveway because the reason they are turning it into a private driveway if it doesn't meet the requirements of a city street so the City is not willing to accept responsibility for it because it doesn't meet the requirements. He said he has a suggestion that the developer will probably not like and one possibility would be to at least offer the requirement that there be a lot line adjustment so that this private drive and maintenance becomes the responsibility of the developer rather than these individuals.

Mayor Botts closed the public hearing on this item.

Councilmember Franklin said going back to the requirement that it doesn't meet the requirements for a public street can we have a public street at 25 feet or we can't. What is the minimum size that a public street can be?

Brian Guillot said our local street standard is 60 feet of right of way. However, it is possible to get a narrower street with a specific plan and the accompanying environmental and traffic studies for that. An alley is 20 feet and there are times we have easements of various widths of 15 feet for maintenance of sewer, underground water, etc.

Councilmember Franklin asked if it were considered an alley, who would have to maintain it? Mr. Guillot said it depends if that was a public or a privately held piece of property. If it were a public alley at 20 feet, then the City would be responsible for maintaining it.

Mayor Pro Tem Hanna said maybe it would be appropriate to hear from the developer. She is curious if it is a private alley maybe is there some legal instrument where they could take full responsibility for the maintenance of the driveway.

Ed Bonadiman, Joseph E. and Bonadiman Associates of San Bernardino addressed the Council stating that they are the project engineer on this project and stated that they are all very good and appropriate questions. As it is, it is a public street that dead ends and it is in pretty bad shape and it serves three residential parcels non-conforming. What this project will do for it will actually get a new street and with the number of trips on a dead end street it will take a long time for it to break down. He said that they do take care of the drainage on site with underground basins so they are actually decreasing the amount of water getting on to Val Monte. It is a 25 foot wide pavement and actually wider. He said that their facility does not gain access off Val Monte so the only traffic is basically for two residences. The only reason that they would ever use it is for an emergency.



City Attorney said he would like to make some comments about the legal issue with the street. If you look at the centerline of where that street is and if he is correct that it is in the middle of that cul-de-sac, what happens is when we vacate the street everything to the right of that line he presumes is a portion of the property of the people who are contesting this. Everything on the left hand side was a piece of the property of the health center. So when you vacate our street what happens is that the private right-of-way rights belong solely to these two property owners who are protesting. What happens is that we have an easement and our easement is vacated so the centerline is there so that street way cannot be created. The private right-of-way on behalf of the health center cannot be created over that 20 ft. area unless the two private owners created an easement to give that right. Once we vacate this if there are no private easement rights which are given to the health center, the health center will have no exist rights over this area. We have drawn on a sheet of paper that there is a street way there but there isn't a legal right once we vacate our right-of-way because of the way it is drawn and that is point one. Point two, the health center is receiving a very major economic benefit because of this. What they are receiving is the right to develop this property which was in the street and now it is a part of their project and that is an economically useful right. Although it is true that if you install a new street there, it is going to be a long time before there is any kind of a problem with it and public works directors will tell you that all street surfaces eventually deteriorate and there would be a need to maintain and take care of that street segment. So the complaining parties concern that someday, if there was a private street there, if there is anything that goes wrong with it, it is going to be their responsibility and that is true and actually the way it is laid out since it is solely on their property the health center wouldn't have any responsibility except for maintaining the piece of it that is the cul-de-sac. So if it is kind of approved in the way it is guised tonight given that these property owners don't seem very enthusiastic about this if they don't create that private right-of-way that we think is going to exist there, they kind of have veto over the project. He is going into this because he thinks that there are some legal issues that the Council is not fully aware of in terms of where it sits. It seems to him the proper solution when you really think about it is that the private right-of-way makes sense. If there was a private right of way that was created but the health center was solely responsible for the maintenance of that private right-of-way until such time as the property across the street develops and when it does develop for other than the existing non-conforming uses, at that point there should be a joint responsibility of the two properties and basically an easement. There are two ways to deal with that and one would be to do a lot line adjustment as suggested where you move that lot line over and you could move it all the way in which case the street will always be the responsibility of this property owner or you could put it down the center or leave it where it is and have an easement agreement that creates a private easement that says the maintenance responsibility will be that of the health center until the adjacent property develops. When the adjacent property develops then it should be a joint responsibility.

There was some further discussion in regards to this issue of a private easement.

Mayor Botts reopened the public hearing at this time.

Don Smith addressed the Council stating that he thinks the Council has a lot of options. One of them isn't vacating the street and assuming the half that you leave remains having an easement because these people once you vacate the street have no obligation to give nobody an easement

including the people behind them so that all has to be worked out as part of this deal. If they are willing to do the lot line adjustment so that they are not responsible at all, that seems the easiest. He said maybe there is a possibility of only vacating half of the street and leaving the City's rights on the other half and maintaining it as an alley. He has never seen only half a street vacated and he doesn't know if that is legally possible or not but maybe the City Attorney does.

John Oh said he understands all of the arguments but lets keep in mind the diagram that you see is not the original Val Monte Street width. His question is why do we have to deviate from that and why can't we keep the Val Monte Street as it was original intended. He understands the excuse that the I-10 Freeway did not exist at the time and therefore there is no need for Val Monte Street in a current platform to be as wide as it was intended. So what he is saying is that they can compromise to be less than the 50 feet but the diagram that you see there is their interpretation of 25 feet assuming it is adequate for himself, his neighbor Johnny and others. They are opposing that the street is just too narrow for their usage.

Mayor Botts said if the street were wider, would you accept responsibility for maintenance?

Mr. Oh said no. They would like it to be a public street as it was originally intended to be. He doesn't understand why it is so important except the disadvantage that we as a property owner having to maintain it from originally a public street to a private street; that comes with liability and responsibility financially indefinitely. Perhaps he may be able financially to handle his portion of the property but what about others if they are unable to do that. Who is going to decide at what point where the other neighbor's responsibility lies in regards to the property and it is going to become a legal argument and if not now, in the future especially if a new property owner decides to move in.

Mayor Botts said he understands what he is saying and the Council is trying to weigh all sides of this and one of the issues is a non-conforming use. Obviously the whole world changed when we built a freeway and it became a short sheet and is there a philosophy that we are dealing with here that it doesn't make sense to have a dead end street into the freeway and obviously we have a number of them. The overriding reason to simply not make it a street and/or driven by the developer who needs the right of way to accomplish a project.

Brian Guillot addressed the Council stating that he could only address the technical side of this. He said that you will notice that the proposed development has generated parking for more than 60 vehicles and they generate traffic based on the size of their building. The requirement for such a project is only a 24 foot wide drive and so checking with the Fire Marshall they decided since it is only serving three parcels (one vacant and 2 with homes) that the minimum widths could be utilized and that is where the thought came. The minimum for fire department access is 20 feet and so that is what it was reduced to to utilize the space in its highest and best use.

Councilmember Robinson asked where do the homeowners turn around now assuming a car is 20 feet long and can they do down to the end of that gravel driveway and turnaround now and make a safe entrance onto Ramsey Street or do they have to back out onto Ramsey Street as it stands.

Mr. Guillot said in looking at the picture there is room for them to go around and turn on the dirt and come back out and that is almost exactly what is provided but it will be paved.

There was further Council and staff discussion regarding the new issue that has come up and the vacation of this street.

City Manager suggested that the Council close the public hearing and then staff will sit down and talk with the developer and see what they can come back with at the next meeting.

Mayor Botts closed the public hearing for further comments.

There were some further Council comments in regards to the benefits of this street and the improvement to the area.

City Manager said that the Council could go ahead and approve it and until it is recorded nothing happens.

**Motion Machisic/Botts that the City Council adopt Resolution No. 2010-13, Vacating a portion of Val Monte Street from Ramsey Street to Interstate 10 and adjacent alleys.**

City Attorney said that there is a fundamental question which is who is responsible for the long term maintenance. If you are willing to accept the long term maintenance, then it should remain an alley and we vacated it to that level. If you think one of these other parties should be responsible, then it is a vacation of the entire right of way.

Mayor Botts asked City Manager if he misunderstood what he said. City Manager said his suggestion was that we work out the details whether it is going to be a private alley, if staff is given the flexibility, or an alley that we maintain. Obviously he is not going to be crazy about maintaining anything the way our fiscal condition is but we need to work with the developer and this doesn't get recorded until we record it.

City Attorney said that you have a resolution that has a legal description as to what is being vacated. He understands the City Manager's suggestion and he was trying to work this detail out but you have a resolution that has a legal description attached to it as to what you are vacating.

Mayor Botts said that he doesn't understand why we are dealing with this issue when it was approved by the Planning Commission and why these issues are coming up. We need to deal with this in another forum and this is totally unacceptable to have this worked out in advance. He said he would defer to the City Manager.

Mayor Pro Tem Hanna asked if they were vacating it to an alley in which case the staff will have to determine the legal description of it. Are you vacating it to a public alley?

Councilmember Machisic said that he is proposing that we are vacating this street and if the staff works out some details about the alley that is fine. He is interested in vacating the street and moving ahead.

**Motion carried, with Council Member Hanna voting no.**

2. Revised Ordinance No. 1420, Approving Zone Text Amendment No. 09-97506 to Amend the Municipal Code Section 17.44.010 Pertaining to Table 17.44.101 Review Authority for Tentative Parcel Maps and Amendment to the Municipal Code Title 16 Subdivisions.  
(Staff Report - Zai Abu Bakar, Community Development Director)

Zai gave the staff report as contained in the agenda packet. This project is to amend the zoning ordinance to change the review authority of tentative parcel maps for four lots or less from the Community Development Director to the Planning Commission as the recommending body with the City Council as the final authority for approval. The ordinance was also revised to include a new chapter to address public hearing and noticing requirements. Staff is asking the Council to re-introduce the ordinance based on the revisions.

Mayor Botts opened the public hearing for comments from the public.

Matthew Clarke, 1036 Charles Street addressed the Council stating that he had a couple of advisories in terms of this change. As part of this it makes mention of a potential of removing and dealing with CEQA (California Environmental Quality Act) and that is a very slippery slope. The statement is made on page 2 of the ordinance where it states, "...guidelines which provide that CEQA only applies to projects that have the potential for causing a significant effect on the environment." But further down on the page it states quoting the act and the specific language that states, "Where, as here, it can be seen with certainty that there is no possibility that the activity in question may have significant effect on the environment;..." He said those two statements mean totally different things so in writing of this some of the intent of the State law has been deluded. When they said "there is no certainty of a possibility" that means "you are absolutely certain that there is not even a possibility". But however, it has been deluded in to saying "applies to projects that only have a potential of causing" and that delusion of the meaning of State law affects the community and whom in the City, whom on the Council, whom on staff is going to make the determination that beyond a certainty that there is no possibility. Who is going to make that determination that we are not going to apply CEQA ordinance or State regulations. The other is that as part of the process on page 3 asking for some of that language to be refined because again this opens the door. Under No. 2, Findings of Fact, second line, it states, "The amendment will consolidate the review procedures for all tentative maps both Tentative Parcel Maps (subdivisions creating four or fewer lots) and Tentative Tract Maps (subdivisions creating five or more lots)." Is it intent for four or less lots or is it the intention of this ordinance to apply to all tentative maps? So in essence are we removing the CEQA requirements for all tentative maps? He believes the language needs to be rewritten to protect us. Further into the review process this will go to the Planning Commission and they will have all the rights of review, etc. so at what point do we start involving City expects into the process for review. As it stands there seems to be a negative declaration by the city engineer. If the city engineer doesn't issue a letter, then it is considered approved. We all know the fallacies of human nature; a letter gets lost, a letter gets misfiled and all of sudden the city engineer's letter didn't get filed therefore it is approved. This is on page 7, the last sentence under Report of city

engineer, Section 16.14.020. He thinks that sentence needs to be stricken. There is another reason for the city engineer to be involved at that point of the project because if there are preliminary issues that can be identified that early, there is a cost savings to both the City and the developer in getting those resolved before it goes to final approval. Really a minor issue has become a major issue because it didn't show up in a previous review. On page 8, amendment Section 16.16.270, Examination and endorsement by the city engineer. There is no mechanism in this paragraph that states what is to happen if the city engineer does not approve it. Does he approve or disapprove in its entirety? If he finds an elevation wrong or a percent grade change that he does not feel comfortable with, does he disapprove the entire map and go back to the beginning or can he disapprove an element and let the process go further and in doing that it saves us the taxpayers money by not having to do the whole process over again and just fix the one element. That needs to be fixed. Mr. Clarke reiterated the importance of CEQA and his recommendation to the Council is that this should be referred back to staff for further refinement to cover some of these loopholes and some of the gray zones and make it more direct.

Community Development Director Zai said in regards to the CEQA issue there are two components of CEQA and one of them relates to the code amendment. The other issue that Mr. Clarke is referring to is when the project comes in. For instance someone is proposing a four lot subdivision in the city of Banning that person would have to go through the CEQA process because it depends on the environment that it is in so CEQA requires that you valuate that new project that is coming in to look at air, traffic and the impacts to the environment. So the CEQA that is referenced here is just for the purpose of this zoning ordinance and the municipal code text amendment. The issue that he addressed in the ordinance she has reviewed with the City Engineer and also with the Assistant City Attorney and she didn't receive any comments. She said that she can't speak to the engineering part of it because she is not qualified to do that but they did go through the review process with the City Engineer.

Mayor Pro Tem Hanna said that she would like a response and she doesn't know whether there is a staff person here capable to responding to the issue of this approval of some portion of a development that Mr. Clarke referred to.

Zai said that she will try to address all of them. On page 3, under the Findings of Fact for Item No. 2 basically the current process for a tentative tract map is that it comes to the City Council and one of the items that the City Council considers is the renaming and naming of the streets which the Council has final authority. The reason that they are having the tentative maps come before the City Council is to make sure that they check the street names and everything to make it consistent and that is the reference in those findings of fact. On page 7, under Section 16.14.020 – Report of the city engineer, the last sentence that says, "Failure to so report shall be deemed approval on the part of the city engineer only" the City has a process where all staff members review these maps and staff would not move forward and as a project manager, the planner is typically the project manager, we would go to each one of the reviewing staff members and consult with them. She said unless the Council feels that this sentence is not necessary she would take it out.

Councilmember Franklin said that in looking at this there are two places where the city engineer looks at it. They look at the project originally which is on page 7, under Section 16.14.020 and

then on page 8, it says after everybody is done, everything then the city engineer is going to look at the project one more time to make sure everything is right. Zai said that was correct.

Mayor Pro Tem Hanna said frankly she has had no confidence in staff's review of projects in the past and she would suggest that we delete that last sentence in Section 16.14.020 where it states, "Failure to so report shall be deemed approval on the part of the city engineer only." She said that no action should not indicate support.

Mayor Botts said that was one Council Member's suggestion.

Zai said she is not the City Engineer here and she is not qualified because the map is actually the engineering function. She personally doesn't have a problem with that.

Duane Burk, Public Works Director said that he believes that the review process was just an internal process as it relates as the Subdivision Map Act goes through. As it relates to that last sentence in Section 16.14.020 if the city engineer doesn't comment on it, everything is okay. However, if you are saying that we take it out and change the language that we should comment every time negatively or not, then we can amend that and simple enough. **There was Council consensus to go with the amendment.**

Councilmember Franklin asked Mr. Burk to address Mr. Clarke's comment in regards to page 8, where he talked about if there was one element of the project that there was a disagreement with that the rest of the project could move forward. Is that something that is possible to add?

City Attorney said the language there says that the city engineer looks at the correctness of the survey data, the mathematical data, the computations and all these other matters and what the objection of the citizen was that is doesn't say that if he finds something wrong what he is supposed to do. That is within the reasonable discretion of the city engineer. If it is something that is fatal, it could mess up the whole map but it depends on what they are talking about. If it is something that is correctable, what happens is that the city engineer returns it to the applicant telling them what correction needs to be and the applicant makes the correction. What is being envisioned is some big problem and you can't tell a city engineer everything he is supposed to do. He is just supposed to correct it. In the final map that gets recorded there can't be any little mistakes.

Mr. Burk said that the city engineer is not designing that project and so we are taking suggestions of a map coming in that has probably been through a half a dozen plan checks and then you get out in the field and something is just not right. If you noticed in some of the recordation tonight as the map went forward, it was in 1930 and some of that information is not always up to date. One reason why the Subdivision Map Act requires the bonding for monumentation is to work through these issues and that is why you have field inspections, etc. But to say that the city engineer is going to be the final approval and that is the final project a city engineer wouldn't want to take that responsibility and neither would the City want to take the liability of that. It would be a joint effort between the developer and/or the city engineer saying that this is as reasonable as the information that is available now.

Mayor Pro Tem Hanna said in that sentence, "If the final map is found to be in correct form and the matters shown thereon are sufficient, the city engineer shall endorse his approval thereon and transmit it to the city council" change "If" to "When". She would think that the Council would want the city engineer to say yes, this is approved.

City Attorney said that he thinks that Mr. Burk misspoke. The final map does not go down for recordation until the city engineer approves it. The applicant submits but it can't take the next step and can't go for recordation until the city engineer approves it. The city engineer does have final authority. You can change it to "When" and he thinks it doesn't change anything in the sentence. If it is final and it is found to be correct, then it is submitted for recordation. You can change it to "When" but it would mean the same thing to him.

Mayor Botts said that they would leave the wording to "If".

Mayor Botts asked the City Clerk to read the title of Ordinance No. 1420. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Approving Zone Text Amendment No. 09-97506, to Amend Municipal Code Section 17.44.01, Pertaining to Table 17.44.010 Review Authority of Tentative Parcel Maps and Amendments to Municipal Code Title 16 Subdivisions.

Mayor Pro Tem Hanna added deleting the last sentence of 16.14.020.

**Motion Hanna/Robinson to waive further reading of Ordinance No. 1420. Motion carried, all in favor.**

**Motion Hanna/Robinson that Ordinance No. 1420 pass its first reading as amended to delete the last sentence in Section 16.14.020.**

3. Temporary Suspension of Development Impact Fees for Residential and Non-Residential Development.  
(Staff Report - Zai Abu Bakar, Community Development Director)

Community Development Director gave the staff report as contained in the agenda packet. She said BIA representatives Mark Knorrington and Bill Blankenship are in attendance this evening. She highlighted the rationale as to how they came up with that recommendation.

Councilmember Franklin asked Zai to share the dollar amounts. Zai said that currently the five impacts fees that we are talking about are traffic, police, fire, general facilities and parks. Based on a 1,500-square foot home, the full impact fees for 150 permits is \$1,452,300. The 50% reduction for 150 permits is \$726,150.00. These funds do not go into the General Fund.

Mayor Botts opened the public hearing for comments from the public.

Inge Schuler resident of Banning addressed the Council stating that on page 145 of the agenda packet in the background discussion it states, "...a recommendation that is palatable to the building industry." She finds that language odious, obnoxious, and insulting to the public of

Banning. Since when does the Building Industry have to be appeased? She thinks that is a very unfortunate choice of words. She asked in regards to the permits are they by unit in a development or by map as a total because it is not quite clear although it says it is half of the 303 development of the houses in the Fiesta Development. On page, 262 the justification is given that other communities are doing this. This is analogous to a teenager's argument to convince the parents because other parents give permission to something that his parents should do the same. We don't have to go by other communities in what they do. Especially troublesome is the three quarters of a million dollars potentially to be absorbed through the General Fund which is on page 146 and occurs in the packet later on. We are already in serious shortfall. We can't rely on having somebody pay additional fees or raise the fees later on. The first one in line to pay for this is the General Fund; we can't afford that. She said what fees are involved that are not listed on page 146. This needs to be thoroughly examined before we go into this.

Matthew Clarke addressed the Council stating that he is a member of the BIA Desert Chapter for seven years and his business has been as well. He has always been a strong supporter of BIA and he thinks they interact well with municipal governments and the wealth of information they bring to an issue. However, he is a taxpayer and he has seen in the past how we offer these nice giveaway programs with no consequences. He is all in favor of a 50% reduction. Just a reminder our rates currently rate in the lower 50% category without a discount compared to other cities. But some form of triggering mechanism to protect us, the taxpayer, that if we grant this 50% reduction and the developer does not follow through with their project, then it is withdrawn. Something to protect us so that we don't get a project that starts and gets half way through.

Don Smith addressed the Council stating that he understands the urge to try to do anything that you can think of to try to spur development activity in town to start bringing that life and vitality to Banning. We have master plans for each of these five categories in which at some point in time we had a wish list that when the town builds out here is what we need in parks, in fire, etc. and somebody came up the list of what we need and here is how much it costs to build it and they penciled it all out with all of the costs and by what date. If the money is not in those funds that you have set a side, there is only one other place you are going to get it from and it is the General Fund. It is a weighing scale that you are doing here because what you are really saying is that if I give these houses at a 50% discount, then in the future I am going to have to raise them 10% and then you will hear the BIA tell you those are too high and you can't raise them back up that high in order to make up this difference. He said if he were in their position, he would be telling the Council the same thing because they are trying to up come with a business model that actually allows them to go forward in doing their job. He doesn't know how long it has been since we have done the study on those five things; perhaps now is the time to do them again. He said if we were building right now, he knows building costs are down and he is sure that we will hear that argument and therefore we don't need as much money as we've planned for. But that doesn't mean that if we were building this fire station for ten years from now that is going to be true. We have to be assuming what that fire station is going to cost then. If you do this, what you are really saying is that in the future the General Fund is going to pay for some of this and he just wants the Council to know that when they are voting for this.



Mark Knorrington, Chief Executive Officer of the Riverside County Chapter of the Building Industry Association of Southern California addressed the Council. He stated that this is all about jobs and it was all about jobs when they were here the first time and it has been all about jobs for the past year because unfortunately as Councilmember Franklin said earlier your unemployment rate is 17.1%. Certainly it is not the highest in the County but a pretty good number and he believes the Council wants to do something about that. They were here once before and the item was continued and they had an opportunity on February 25<sup>th</sup> to meet with staff and they had a very good meeting with good ideas and they collaborated and the result of that collaboration is what you see before you. He said he wanted to be clear that this is intended to attempt to get more economic activity occurring in the city of Banning by inducing people to build a few more houses and hopefully that will happen. These are not development projects but actually permitted homes or permitted apartments or permitted businesses. This is not a development proposition because the fees are only paid at the permit issuance or at the final inspection or certificate of occupancy. This is intended to have an immediate impact and it does have a definite life which is a year and also has another cap which is 150 permits. He is hopeful that this will work.

Councilmember Franklin said he mentioned that his was an incentive for the building industry. For the cities that have actually have done this as compared to cities that have not are you able to tell or do you know how many housing permits have actually been done in the cities that have it versus the cities that have not.

Mr. Knorrington said that he doesn't have those numbers but can that compared year on year the cities that have reduced their fees, the City of Menifee, the City of Perris, the City of Moreno Valley and the unincorporated counties have all had increases year on year. He believes the program is working but frankly because most of them enacted later on it is a little bit early to tell.

Mayor Botts closed the public hearing.

There was Council discussion on this item in regards this being an inducement to build, stimulate development, and a suggestion of doing this for six months and then re-evaluate it.

**Motion Robinson/Machisic that the City Council adopt Resolution No. 2010-20, Approving a Temporary Fifty Percent (50%) Reduction of Development Impact Fees for Residential and Non-Residential Development for Up to 150 Permits or for the Time Period of One Year, Whichever Comes First.**

There was some further Council and staff discussion in regards to timing and partial development.

Councilmember Franklin asked if the motion include that if the project is not completed; that it reverts back to the full amount.

Councilmember Robinson said that he did not include that in his motion. Councilmember Franklin asked him if he was willing to. He said yes.

Mayor Botts asked what kind of language do you need because he thinks their intent would be if we forgive the fees we want the houses in place.

City Attorney said that there is language in the resolution in Section 2 on page 149 that says if the reduced fees are paid at issuance of building permits and either the development application or the building permit expires subsequent to the building permit application, then the same parcel shall be subject to the full fee unless the temporary suspension is extended. So it really captures your concern.

Mayor Pro Tem Hanna said since it is both for residential and non-residential any one permit the amount of the fees could be much more than it would be for a 1500 square foot home so you could have 30 permits that equaled a million dollars so are you comfortable with saying 150 permits no matter what amount of money that ends up being. Staff was trying to get some kind of hold on how much money we are talking so they used the example of a 1500 square foot house.

Zai said if you put a certain threshold on this it would be very difficult to track and administer at the counter because the house could be 1500, 2000 or 3000 square feet depending upon the builders.

There was some discussion.

**Motion carried with Council Members Hanna and Franklin voting no.**

#### ITEMS FOR FUTURE AGENDAS

##### New Items –

Mayor Botts said that at one time we had a joint meeting with the Planning Commission and he doesn't know if they have ever done that with the Parks Commission and with the Economic Development Committee. But we could either meet all together or maybe at different times. We sort of know what they do but there may be some benefit with coming together and over time we can try to have those meetings.

Councilmember Machisic said we have Council reports and we list all kinds of meetings and functions that are coming up and he would propose to the Council that each Councilmember who has these dates, telephone numbers, costs, etc. put them on a list to the City Manager and put them out on the table rather than taking Council time to read them.

Mayor Botts said he would concur and if we could provide these to the City Manager or Daniele on a Thursday and publish a list that would be available at our meetings and also put it on Channel 10. City Manager said that they could display it on the screens when nothing is being shown.

Councilmember Franklin said she did talk to some people about this and she does report a lot of things and some things she finds out about very quickly and she may not know about it on the week before but also what was brought up to her was that there are people who want to hear it in the Council meeting in addition to showing it because they may not have access to it through the website or other means. She does try to make them shorter but at least having it being reported out to those that are listening so that they are getting that same information.

Mayor Botts said that if it came in after Friday before the Council meeting certainly we would be open to having it announced but if we have it on a list available in the Council Chambers, everyone could get it.

There was more discussion in regards to announcements.

Pending Items –

1. Schedule Meetings with Our State and County Elected Officials
2. Set New Date for Joint Meeting with Banning School Board (6/10)
3. Massage Ordinance (ETA 4/27/10)
4. Information of rotation of mayor position and also direction election of the mayor. (ETA 4/13/10)
5. Look at Council Assignments for a set term (ETA 4/13/10)
6. Reporting Guidelines (ETA 4/13/10)
7. Consider Sister City Relationship with Township in Haiti
8. Grand Jury Report

CLOSED SESSION

City Attorney said that the Council would go into closed session to confer with its attorney regarding threat of litigation pursuant to Government Code Section 54956.9.

Meeting went into closed session at 9:50 p.m. and returned to regular session 10:10 p.m.

City Attorney said that the City Council met in closed session concerning the threat of litigation under Government Code Section 54956.9 and a report was given on the matter and no action was taken.

ADJOURNMENT

Meeting adjourned at 10:12 p.m. in memory of Jack Holden.

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Marie A. Calderon, City Clerk

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

*2nd Read.*

**ORDINANCE NO. 1420**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING ZONE TEXT AMENDMENT NO. 09-97506, TO AMEND MUNICIPAL CODE SECTION 17.44.010, PERTAINING TO TABLE 17.44.010 *REVIEW AUTHORITY OF TENTATIVE PARCEL MAPS AND AMENDMENTS TO MUNICIPAL CODE TITLE 16 SUBDIVISIONS.***

**WHEREAS**, the Zoning Code Chapter 17.116 allows for Zone Text Amendments consistent with the goals and policies of the General Plan; and

**WHEREAS**, on the 5<sup>th</sup> day of January, 2010, the Planning Commission held a 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 and heard public comments on the Zone Text Amendment; and

**WHEREAS**, on the 5<sup>th</sup> day of January, 2010, the Planning Commission recommended approval of Zone Text Amendment No. 09-97506 to the City Council as stipulated in Planning Commission Resolution No. 2010-02, and

**WHEREAS**, the Municipal Code Section 1.04.040 allows amendments to the Code that may be designated as an addition or amendment to, or repeal of, "The Code of the City of Banning"; and,

**WHEREAS**, on the 29<sup>th</sup> day of January, 2010, the City also gave public notice by advertising in the Record Gazette newspaper of the holding of a public hearing at which the amendment to the Municipal Code would be considered; and

**WHEREAS**, on the 9<sup>th</sup> day of February, 2010, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, Zone Text Amendment No. 09-97506. The City Council adopted Ordinance No. 1420. Subsequently, the proposed amendments to Title 16 were altered to clarify the notice and hearing requirements for tentative maps.

**WHEREAS**, on the 12<sup>th</sup> day of March 2010, the City also gave public notice by advertising in the Record Gazette newspaper of the holding of a public hearing at which the amendment to the Municipal Code and re-introduction of Ordinance No. 1420 would be considered; and

**WHEREAS**, on the 23<sup>rd</sup> day of March, 2010, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, Zone Text Amendment No. 09-97506 to amend Municipal Code Section

17.44.010, pertaining to Table 17.44.010 *Review Authority* of Tentative Parcel Maps and amendments to Municipal Code Title 16 *Subdivisions* and at which time the City Council considered the amendments to the Municipal Code; and

**WHEREAS**, at this public hearing on the 23<sup>rd</sup> day of March, 2010 the City Council re-introduced the first reading of Ordinance No. 1420 regarding Zone Text Amendment No. 09-97506, and considered and heard public comments on the Municipal Code amendments; and

**WHEREAS**, the City Council has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment.

**NOW THEREFORE BE IT HEREBY ORDAINED**, that the City Council of the City of Banning does hereby find, determine, and ordain 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 Planning Commission Resolution No. 2010-02, 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:

### **1. California Environmental Quality Act (CEQA):**

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 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, as here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA. The amendments to the Municipal Code do not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to this resolution will trigger individual analysis and documentation related to CEQA. Therefore, it can be seen with certainty that there is no possibility that this ordinance may have a significant adverse effect on the environment, and therefore the adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

2. Multiple Species Habitat Conservation Plan (MSHCP).

Amendments to the Municipal Code do not relate to any one physical project and are not subject to the MSHCP. Further, projects subject to this ordinance will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

**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*". Subdivision of land is fundamental to a well planned community and providing the Planning Commission with the opportunity to review and recommend approval of Tentative Parcel Maps is consistent with that goal.

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 consolidate the review procedures for all tentative maps both Tentative Parcel Maps (subdivisions creating four or fewer lots) and Tentative Tract Maps (subdivisions creating five or more lots).

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 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, as here, it can be seen with certainty that there is no possibility that the

activity in question may have a significant effect on the environment; the activity is not subject to CEQA. The amendments to the Municipal Code do not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to this ordinance will trigger individual analysis and documentation related to CEQA. Therefore, it can be seen with certainty that there is no possibility that this ordinance may have a significant adverse effect on the environment, and therefore the adoption of this resolution is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

### SECTION 3. CITY COUNCIL ACTIONS

The City Council hereby takes the following actions:

1. The City Council hereby approves Zone Text Amendment No. 09-97506 to amend Municipal Code Section 17.44.010, pertaining to Table 17.44.010 *Review Authority* of Tentative Parcel Maps and amendments to Municipal Code Title 16 *Subdivisions* as follows:

**a) Amend Section 17.44.010 of the Municipal Code more specifically Table 17.44.010 Review Authority as follows:**

**Table 17.44.010  
Review Authority**

|   | <b>Community<br/>Development<br/>Director</b> | <b>Planning<br/>Commission</b> | <b>City<br/>Council</b> |
|---|---|--------------------------------|-------------------------|
| <b>Home Occupation Permits</b>            | X   |                                |                         |
| <b>Interpretations (Zoning Ordinance)</b> | X   |                                |                         |
| <b>Interpretations (General Plan)</b>     |   |                                |                         |
| <b>Temporary Use Permits</b>              | X   |                                |                         |
| <b>Minor Modifications</b>                | X   |                                |                         |
| <b>Minor Exceptions</b>                   | X   |                                |                         |
| <b>Variances</b>                          |   | X                              |                         |
|   |   |                                |                         |
| <b>Design Review</b>                      |   |                                |                         |
| <b>Residential:</b>                       |   |                                |                         |
| 1-4 Dwelling Units                        | X   |                                |                         |
| 5 or more Units                           |   | X                              |                         |

|  |   |    |     |
|--|---|----|-----|
| <b>Commercial:</b>                         |   |    |     |
| Occupancy Permit                           | X |    |     |
| Tenant Improvements                        | X |    |     |
| All other Improvements                     |   | X  |     |
| <b>Industrial:</b>                         |   |    |     |
| Occupancy Permit                           | X |    |     |
| Tenant Improvements                        | X |    |     |
| All other Improvements                     |   | X  |     |
| <b>Public Facilities &amp; Open Space:</b> |   |    |     |
| Occupancy Permit                           | X |    |     |
| Tenant Improvements                        | X |    |     |
| <b>All other Improvements</b>              |   | X  |     |
| <b>Miscellaneous:</b>                      |   |    |     |
| Antennae                                   |   | X  |     |
| Fences and Walls                           | X |    |     |
|  |   |    |     |
| <b>Conditional Use Permits</b>             |   | X  |     |
| <b>Lot Line or Boundary Adjustment</b>     | X |    |     |
| <b>Reversions to Acreage</b>               |   | X  |     |
| <i>Tentative Parcel Maps</i>               |   | X* | X ← |
| <b>Tentative Tract Maps</b>                |   | X* | X   |
| <b>Final Maps</b>                          |   |    | X ← |
| <b>Specific Plans</b>                      |   | X* | X   |
| <b>General Plan Amendments</b>             |   | X* | X   |
| <b>Zoning Ordinance Amendments</b>         |   | X* | X   |
| <b>Development Agreements</b>              |   | X* | X   |
| <b>Landscape Plans</b>                     | X |    |     |
| <b>Surface Mining and Land Reclamation</b> |   | X* | X   |
| <b>Sign Permits/Program</b>                | X |    |     |



Note: When an item indicates more than one permitting entity, the determination as to which authority (entity) is used, is based upon the intensity of the proposed use.

\* Planning Commission recommends to the City Council for final determination.

**b) Amend section 16.04.020, Chapter 16.08 Tentative Map – Four Lots or Less, Chapter 16.12 Tentative Map – Five Lots or More; Add a new Chapter 16.14 Reports and Hearings; Amend Section 16.16.010 Preparation Generally, and Amend Section 16.16.270 Examination and endorsement by the city engineer of the Subdivisions Code to correspond with the change in review authority as follows:**

*i) Amend Section 16.04.020 as follows:*

**16.04.020 Advisory agency designated--Powers and duties generally.**

The planning commission is hereby designated as the "advisory agency" referred to in the Subdivision Map Act and is charged with the duty of making investigations and reports on the design and improvement of proposed subdivisions; and, is hereby authorized to recommend the approval, conditional approval, or disapproval of tentative maps for subdivisions prepared and filed according with this Code and the Subdivision Map Act; to recommend the kinds, nature and extent of the improvements required to be installed in subdivisions and to report to the city council the action taken on tentative maps for subdivisions.

*ii) Section 16.08.030 shall be deleted and replaced with the following to read in its entirety as follows:*

**16.08.030 Hearing requirement.**

An application for a tentative map shall be processed and set for a public hearing in accordance with Chapter 16.14 of this Title.

*iii) Section 16.12.080 shall be deleted and replaced with the following to read in its entirety as follows:*

**16.12.080 Hearing requirement.**

An application for a tentative map shall be processed set for a public hearing in accordance with Chapter 16.14 of this Title.

*iv) Sections 16.12.090 and 16.12.100 shall be deleted.*

*v) Add a new Chapter 16.14 Reports and Hearings to read in its entirety as follows:*

**CHAPTER 16.14 REPORTS AND HEARINGS**

- 16.14.010 General requirements.**
- 16.14.020 Report of city engineer.**
- 16.14.030 Hearing and report of Planning Commission.**
- 16.14.040 Service of written reports.**
- 16.14.050 Hearing and action of the City Council.**

**16.14.010 General requirements.**

A. Any hearing required in this Title 16, Subdivisions, shall be set, and notice of the public hearing of the planning commission and of the city council shall be given, in a manner consistent with Chapter 17.68.

B. The time periods set forth in this section shall commence after certification of the environmental impact report, adoption of a negative declaration, or a determination by the city that the project is exempt from the requirements of the California Environmental Quality Act.

**16.14.020 Report of city engineer.**

Prior to the consideration by the planning commission of a tentative map, the city engineer shall make a report in writing to the planning commission as to any recommendations in connection with the tentative map and its bearing on particular functions. The city engineer shall determine whether the proposed subdivision of land is in conformity with law and subdivisions code; and, whether all the proposed lots will have adequate access to public streets, sanitary sewer lines, water mains, fire hydrants, drainage structures and utilities. The community development director shall determine whether the size of the proposed lots is in conformance with the zoning code.

**16.14.030 Hearing and report of Planning Commission.**

The planning commission shall hold a public hearing on a tentative map application. After a hearing on a tentative map, the planning commission shall make a written report recommending approval, conditional approval, or disapproval of a tentative map. Said recommendation shall be made within fifty days of the map being filed with the secretary of the commission, unless an extension of time is mutually agreed upon by the planning commission and the subdivider.

#### **16.14.040 Service of written reports.**

Any written report required in this section shall be served in accordance with section 66452.3 of the Government Code.

#### **16.14.050 Hearing and action of the City Council.**

A. At the next regular meeting of the city council following the filing of the planning commission's report, the city council shall fix the meeting date at which the tentative map will be considered by it, which date shall be within thirty days thereafter. After a public hearing, the city council shall approve, conditionally approve, or disapprove the tentative map within that thirty day period.

B. Upon conclusion of the hearing, the City Council shall, within ten days, declare its findings. Any action taken by the City Council shall be supported by the findings required by Sections 66427.1, 66473.5, 66474, 66474.1 and 66474.6 of the California Government Code and Section 21100 of the California Public Resources Code.

*vi) Amend Section 16.16.010 as follows:*

#### **16.16.010 Preparation generally.**

After approval of the tentative map of a subdivision and approval of the final map or parcel map by the city council, the subdivider may cause a final map or parcel map to be prepared in accordance with a completed survey of the subdivision and in substantial compliance with the approved tentative map, and in full compliance with the Subdivision Map Act and the subdivisions code.

*vii) Amend Section 16.16.270 as follows:*

#### **16.16.270 Examination and endorsement by the city engineer.**

After receiving copies of the final map of a subdivision, the city engineer shall examine or have examined the map as to sufficiency of affidavits and acknowledgments, correctness of surveying data, mathematical data and computations and such other matters as required, checking to insure compliance with the provisions of the Subdivision Map Act, and of this chapter. If the final map is found to be in correct form and the matters shown thereon are sufficient, the city engineer shall endorse his approval thereon and transmit it to the city council.

### **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 second reading in accordance with California law.

**PASSED, APPROVED, AND ADOPTED** this 13<sup>th</sup> day of April, 2010.

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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

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1420 was duly re-introduced at a regular meeting of the City Council of the City of Banning, held on the 23<sup>rd</sup> day of March, 2010, and was duly adopted at a regular meeting of said City Council on the 13<sup>th</sup> day of April, 2010, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

## CITY COUNCIL AGENDA

**DATE:** April 13, 2010

**TO:** Honorable Mayor and City Council

**FROM:** Kahono Oei, City Engineer 

**SUBJECT:** Resolution No. 2010-21, "Declaring the Intention to Levy and Collect Assessments, Approving the Engineer's Report and Setting the Date for the Public Hearing for Landscape Maintenance District No. 1"

**RECOMMENDATION:** The City Council adopt Resolution No. 2010-21, declaring the intention to levy and collect assessments within Landscape Maintenance District No. 1 (LMD No. 1) during the Fiscal Year 2010/11, pursuant to the "Landscaping and Lighting Act of 1972"; approving the Engineer's Report; and giving notice of the public hearing for renewal of said maintenance District.

**JUSTIFICATION:** It is essential to assess the property owners located within LMD No. 1 to provide for the funding required to maintain landscape areas located within the public right-of-way directly benefiting said property owners.

**BACKGROUND:** The City Council authorized the formation of LMD No. 1 with the adoption of Resolution No. 1990-59 on August 14, 1990. An additional five tracts and three tentative tracts were annexed (Annexation No. 1) into LMD No. 1 when the City Council approved Resolution No. 2005-36 on May 10, 2005. A map displaying the District is attached herewith as Exhibit "A." Additionally, the City Council approved Resolution No. 2010-01, initiating proceedings for the fiscal year update of the District on January 12, 2010.

The proposed resolution basically accomplishes three goals for the fiscal year update and renewal of LMD No. 1. First, it provides the resolution of intention to levy and collect assessments; second, it permits the City Council to review and approve the Engineer's Report; and third, it sets the date and time for a public hearing. Subsequent to the approval of Resolution No. 2010-21, the City Council will be requested to confirm the assessments for Fiscal Year 2010/11.

The Engineer's Report, reflecting the detail of proposed assessments, was forwarded to the City Council under a separate cover and is available at the Engineering counter as well as the City Clerk's office for public review. Upon approval of this resolution, the public hearing will be held at the regularly scheduled City Council meeting on May 25, 2010, at 6:30 p.m., as shown in attached Exhibit "B." A detailed list of tracts in LMD No. 1 and their respective assessments is shown as attached Exhibit "C." The Engineer's Report reflects an increase of 1.12% on the assessments based upon the average Consumer Price Index (CPI) increase over the last fiscal year for the Los Angeles-Riverside-Orange County area, as reported by the U.S. Department of Labor.

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**FISCAL DATA:** Based on the proposed assessments, the estimated revenue for Fiscal Year 2010/11 for Landscape Maintenance District No. 1 will be about \$130,528.00. The current annual assessment for a single-family dwelling ranges from \$93.49 to \$189.47 and if approved, the annual assessment would now range from \$94.54 to \$191.59, and approximate 1.1% increase. It should be noted that LMD No. 1 is managed in house by Public Works Department staff and this year the District will be able to balance its' revenue and expenditures without additional funding from the Gas Tax or Street Department accounts.

**RECOMMENDED BY:**



Duane Burk  
Director of Public Works

**REVIEWED BY:**



Kirby Warner  
Interim Director of Finance

**APPROVED BY:**

  
Andy Takata  
City Manager

**RESOLUTION NO. 2010-21**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DECLARING THE INTENTION TO LEVY AND COLLECT ASSESSMENTS WITHIN LANDSCAPE MAINTENANCE DISTRICT NO. 1, DURING THE FISCAL YEAR 2010/11, PURSUANT TO THE LANDSCAPING AND LIGHTING ACT OF 1972 FOR THE MAINTENANCE AND SERVICING OF LANDSCAPING, APPROVING THE ENGINEER'S REPORT, AND SETTING THE DATE FOR THE PUBLIC HEARING FOR THE LEVY OF SAID ASSESSMENT**

**WHEREAS**, at its regularly scheduled meeting on August 14, 1990, the City Council adopted Resolution No. 1990-59, authorizing the formation of Landscape Maintenance District No. 1 (LMD No. 1); and

**WHEREAS**, at its regularly scheduled meeting on May 10, 2005, the City Council of the City of Banning adopted Resolution No. 2005-36, ordering the annexation of an additional five tracts and three tentative tracts to the City's LMD No. 1; and

**WHEREAS**, at its regularly scheduled meeting on January 12, 2010, the City Council of the City of Banning adopted Resolution No. 2010-01, initiating proceedings for the fiscal year renewal of Landscape Maintenance District No. 1 pursuant to the "Landscaping and Lighting Act of 1972," Part 2 (commencing with Sec. 22500) of Division 15 of the Streets and Highways code, for the maintenance and servicing of landscape medians, parkways, perimeter strips and slopes adjacent to sidewalks, flood detention or retention basins, and the irrigation of the above facilities; and

**WHEREAS**, by said Resolution the City Council ordered the City Engineer to prepare and file a report with the City Clerk in accordance with Article 4 (commencing with Sec. 22565) of Chapter 1 of Part 2 of Division 15 of the Streets and Highways code; and

**WHEREAS**, the City Engineer has filed such report with the City Clerk, and such report has been presented to and considered by the City Council; and

**WHEREAS**, it is essential that the City Council adopt Resolution No. 2010-21, so that the City may assess and collect assessments from the property owners located within LMD No. 1; and

**WHEREAS**, the City Council hereby finds that the funding for LMD No. 1 is available through a special assessment of property owners located within the District.



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

**Section 1.** That the City Council hereby declares its intention to levy and collect assessments within Landscape Maintenance District No. 1 for the Fiscal Year 2010/11 pursuant to the "Landscaping and Lighting Act of 1972." The area to be assessed is located in the City of Banning, Riverside County. The boundaries of Landscape Maintenance District No. 1 are described in Exhibit "A," and are on file in the Office of the City Clerk.

**Section 2.** That the purpose of Landscape Maintenance District No. 1 is for the maintenance and servicing of landscape medians and parkways, perimeter strips and backup walls, landscaped hillsides with high visibility, side slopes adjacent to sidewalks, flood detention or retention basins, and the irrigation of the above facilities.

**Section 3.** That the Engineer's Report, which is on file with the City Clerk and considered by the City Council at the meeting at which this Resolution has been adopted, is hereby approved. All interested persons are referred to that report for a full and detailed description of the work, the boundaries of the proposed assessment district, and the proposed assessments upon assessable lots and parcels of land within Landscape Maintenance District No. 1.

**Section 4.** That the City Clerk shall give notice of the time and place of said hearing by advertising a copy of the resolution once in the Record Gazette local newspaper and provide a posted notice not less than ten (10) days before the date of the hearing.

**Section 5.** That on Tuesday, May 25, 2010, at the hour of 6:30 p.m., during the course of its regularly scheduled meeting, the City Council will conduct a public hearing on the question of the levy of the proposed annual assessment. The hearing will be held at Banning City Hall, 99 E. Ramsey Street, Banning, California.

**PASSED, ADOPTED AND APPROVED** this 13th day of April, 2010.

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Robert E. Botts, Mayor

**ATTEST**

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

**APPROVED AS TO FORM  
AND LEGAL CONTENT**

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

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2010-21 was adopted by the City Council of the City of Banning at the Regular Meeting thereof held on the 13th day of April, 2010.

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

**EXHIBIT “A”**

**LANDSCAPE MAINTENANCE DISTRICT NO. 1  
FOR  
FISCAL YEAR 2010/11**

## EXHIBIT "B"

### TENTATIVE SCHEDULE UPDATING LANDSCAPE MAINTENANCE DISTRICT NO. 1

| <u>Item</u>   | <u>Council Meeting</u> |
|---|------------------------|
| Resolution Initiating Update                          | January 12, 2010       |
| Resolution of Intention and Approve Engineer's Report | April 13, 2010         |
| Public Hearing and Resolution Confirming Assessment   | May 25, 2010           |

## EXHIBIT "C"

### LANDSCAPE MAINTENANCE DISTRICT NO. 1 TRACTS AND ASSESSMENTS FISCAL YEAR 2010/11

| Tract No.    | No. of AU   | Zone | Proposed Cost/AU<br>(FY 2010/11) |
|--------------|-------------|------|----------------------------------|
| 22810        | 43          | A    | \$104.09                         |
| 22811        | 39          | A    | \$104.09                         |
| 22913        | 9           | A    | \$104.09                         |
| 21882        | 134         | B    | \$108.30                         |
| 23446        | 138         | B    | \$108.30                         |
| 29721        | 21          | B    | \$108.30                         |
| 30186        | 107         | B    | \$108.30                         |
| 30222        | 121         | B    | \$108.30                         |
| 32109        | 38          | B    | \$108.30                         |
| 23598        | 97          | C    | \$94.54                          |
| 30642        | (53)        | C    | \$94.54                          |
| 32429        | (44)        | C    | \$94.54                          |
| 28252        | 70          | D    | \$191.59                         |
| 30793        | 43          | D    | \$191.59                         |
| 31833        | 17          | D    | \$191.59                         |
| 31834        | 18          | D    | \$191.59                         |
| 31835        | 33          | D    | \$191.59                         |
| 30906*       | 87          | D    | \$191.59                         |
| <b>Total</b> | <b>1015</b> |      | <b>\$130,528.39</b>              |

(#) = Tracts not completed yet or tracts that will not be accepted into the Landscape Maintenance District during the upcoming Fiscal Year.

\*Tract No. 30906 has a total of 303 Assessment Units; therefore, a total of 216 remain.

## CITY COUNCIL AGENDA

**Date:** April 13, 2010

**TO:** Honorable Mayor and City Council

**FROM:** Fred Mason, Electric Utility Director

**SUBJECT:** Resolution 2010-24 Opposition to California State Ballot Proposition 16, "New Two-Thirds Vote Requirement for Public Electricity Providers"

**RECOMMENDATION:** The City Council take an oppose position on California State Ballot Proposition 16, the "New Two-Thirds Vote Requirement for Public Electricity Providers – Initiative Constitutional Amendment".

**JUSTIFICATION:** Based on legal analysis performed by the Southern California Public Power Authority ("SCPPA") and the California Municipal Utilities Association ("CMUA"), if implemented, Proposition 16 will have a direct and negative impact to the ongoing operation of the Banning Electric Utility.

**BACKGROUND:** On June 1, 2009, California State Ballot Petition 09-0015, the "New Two-Thirds Vote Requirement for Public Electricity Providers" ("Proposition 16") was filed with the California State Attorney General for the June 2010 statewide ballot. The proposed initiative is being funded solely by Pacific Gas & Electric ("PG&E") an investor owned utility, and if passed would impact the ability of publicly-owned electric utilities to expand electricity service beyond their current boundaries and existing customer base. Proposition 16 would also impact the ability of cities and counties to engage in community choice aggregation. To date, PG&E has spent nearly \$30M dollars promoting Proposition 16, and it is estimated that it will ultimately spend over \$50M prior to the election in June 2010.

Proposition 16 states that "no local government shall, at any time, incur any bonded or other indebtedness or liability in any manner or use any public funds for the construction or acquisition of facilities, works, goods, commodities, products or services to establish or expand electric delivery service, or to implement a plan to become an aggregate electricity provider, without the assent of two-thirds of the voters within the jurisdiction of the local government".

There is an exception provided, "Expanded electric delivery service' does not include (1) electric delivery service within the existing jurisdictional boundaries of a local government that is the sole electric delivery service provider within those boundaries". However, most publicly owned utilities, including the City of Banning, have a number of utility accounts that are within their boundaries that are served by a different electric utility provider. Therefore, they are not the "sole electric delivery service provider" and the exception does not apply.

Proposition 16 would have a devastating effect on the ability of the Banning Electric Utility to operate, and a chilling effect on the ability of the City to grow through the addition of new residential and commercial developments or any other type of expansion that involved electricity.

By law, the City Council and staff of the City of Banning may not advocate on behalf of or against Proposition 16, if public funds or public resources are in anyway involved. However, local governing boards may adopt a resolution that officially supports or opposes a ballot initiative during an open meeting.

At this time most of the SCPPA members have passed similar resolutions opposing Proposition 16. In addition, CMUA and a number of publicly owned utilities have recently filed a lawsuit against the Proposition.

Therefore staff requests that the City Council take a position to oppose Proposition 16, the "New Two-Thirds Requirement for Local Public Electricity Providers" ballot initiative.

**FISCAL DATA:** The total fiscal impact of Proposition 16 on the City of Banning is unknown at this time. However, there would be the cost of multiple elections to authorize the ongoing expansion of the City's electric delivery service. Additionally, there would be the lost revenue if the City was not able to get the two-thirds voter approval, and the new development could not go forward. Ultimately the lost revenue to the City could be significant and could potentially be in the millions.

**RECOMMENDED BY:**



Fred Mason  
Electric Utility Director

**APPROVED BY:**



Andrew J. Takata  
City Manager

**RESOLUTION NO. 2010-24**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING OPPOSING CALIFORNIA STATE BALLOT PROPOSITION 16, "NEW TWO-THIRDS VOTE REQUIREMENT FOR PUBLIC ELECTRICITY PROVIDERS"**

**WHEREAS**, the City of Banning owns and operates its Municipal Electric Utility; and

**WHEREAS**, Proposition 16 the "New Two-Thirds Vote Requirement for Public Electricity Providers" has qualified as an initiative constitutional amendment on the State of California's June ballot; and

**WHEREAS**, Proposition 16 would require publicly owned electric utilities, like the City of Banning, to obtain a two-thirds approval from the voters in its jurisdiction prior to expanding electric service or providing electric service to any new customers; and

**WHEREAS**, Proposition 16, if passed, would have a significant and negative impact on the operation of the City's Municipal Electric Utility and may result in significant revenue loss to the City;

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

1. Adopt Resolution No. 2010-24 opposing Proposition 16 the "New Two-Thirds Vote Requirement for Public Electricity Providers" initiative constitutional amendment on the June 2010 statewide general election ballot.
2. Authorize the Mayor to execute Resolution No. 2010-24. Said authorization shall become void if not executed within 30 days of the effective date of this resolution.

**PASSED, APPROVED, AND ADOPTED** this 13<sup>th</sup> day of April 2010.

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Robert E. Botts, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT:

---

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



ATTEST:

Marie A. Calderon, City Clerk

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-24 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of April, 2010, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** April 13, 2010

**TO:** Honorable Mayor and City Council

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

**SUBJECT:** Resolution No. 2010-25, "Approving a Parking Easement and Covenant Agreement between Paddy O'Reilly's Owners, Mr. and Mrs. Mehas, and the City of Banning for Public Parking Use"

**RECOMMENDATION:** Adopt Resolution No. 2010-25, "Approving a Parking Easement and Covenant Agreement between Paddy O'Reilly's owners, Mr. and Mrs. Mehas, and the City of Banning for Public Parking Use."

**JUSTIFICATION:** A Parking Easement and Covenant Agreement with the City is necessary to utilize the parking lot north of Paddy O'Reilly's, located at 41 W. Ramsey Street, for public parking use.

**BACKGROUND:** In an effort to effectively utilize downtown parking, increase parking spaces, and beautify the downtown area, plans and specifications were prepared and completed for Project No. 2009-04, "Street Improvements and Sidewalk Improvements at Various Locations".

On January 12, 2010, City Council and the Community Redevelopment Agency adopted Resolution No. 2010-03 and No. 2010-01, respectively, "Awarding the Construction Contract for Project No. 2009-04, 'Street Improvements and Sidewalk Improvements at Various Locations'". The contract includes the construction of a new parking lot for the Paddy O'Reilly's property. In return for these improvements, the owners of Paddy O'Reilly's have agreed to share its parking lot with the City of Banning to provide public parking. In order for the City to ensure that the parking lot at Paddy O'Reilly's can be utilized for public purposes, the City needs to enter into a Parking Easement Agreement, as attached herein as Attachment "A". In addition to a Parking Easement, the Agreement also contains an easement for an electric conduit duct bank for future transformers and a for a trash enclosure that will house trash receptacles to be used by adjacent businesses. The Parking Easement and Utility Easement are shown in Exhibit "B1" and Exhibit "B2", respectively, of the Attachment "A".

The Parking Easement and Covenant Agreement was discussed with the Paddy O'Reilly's owners, Mr. and Mrs. Mehas, and they have agreed with the terms of the Parking Easement and Covenant Agreement as shown herein as Attachment "A".

The project is anticipated to be completed by July, 2010.

**FISCAL DATA:** Per the contract awarded to Larry Jacinto Construction Inc. for Project 2009-04 "Street Improvements and Sidewalk Improvements at Various Locations", the parking lot at Paddy O'Reilly's will be constructed for an amount equal to \$90,359.90 and will be funded by 2007 CRA Bond Proceeds.

**RECOMMENDED BY:**



Duane Burk  
Director of Public Works

**APPROVED BY:**



Andy Takata  
City Manager

**REVIEWED BY:**



Kirby Warner  
Interim Finance Director

**RESOLUTION NO. 2010-25**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA, APPROVING A PARKING EASEMENT AND COVENANT  
AGREEMENT BETWEEN PADDY O'REILLY'S OWNERS, MR. AND MRS. MEHAS,  
AND THE CITY OF BANNING FOR PUBLIC PARKING USE**

**WHEREAS**, in an effort to effectively utilize downtown parking, increase parking spaces, and beautify the downtown area, plans and specifications were prepared and completed for Project No. 2009-04, "Street Improvements and Sidewalk Improvements at Various Locations"; and

**WHEREAS**, on January 12, 2010, the City Council awarded the above mentioned construction contract to Larry Jacinto Construction, Inc. to perform the improvements, which includes construction of a new parking lot within the Paddy O'Reilly's property, located at 41 West Ramsey Street, and in return the owners of Paddy O'Reilly's have agreed to share the parking lot with the City of Banning to provide public parking; and

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

**WHEREAS**, in addition to a Parking Easement, the Agreement also contains and easement for an electric conduit duct bank and for a trash enclosure that will house trash receptacles to be used by adjacent businesses; and

**WHEREAS**, the Parking Easement and Covenant Agreement was discussed with the Paddy O'Reilly's owners, Mr. and Mrs. Mehas, and the owners have agreed with the terms of the Parking Easement and Covenant Agreement, due to the fact that the City of Banning is constructing the parking lot improvements.

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

**Section I.** Approve the Parking Easement and Covenant Agreement between Paddy O'Reilly's Owners, Mr. and Mrs. Mehas, for public parking use within the parking lot at 41 W. Ramsey Street.

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

**PASSED, ADOPTED AND APPROVED** this 13<sup>th</sup> day of April, 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, California, do hereby certify that the foregoing Resolution No. 2010-25, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of April, 2010.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

## **Attachment "A"**

**PAKING EASEMENT AND COVENANT AGREEMENT BETWEEN PADDY O'REILLY'S  
OWNERS, MR. AND MRS. MEHAS, AND THE CITY OF BANNING**

**RECORDING REQUESTED BY:**

**WHEN RECORDED, MAIL TO:**

City of Banning  
P.O. Box 998  
Banning, California 92220  
Attention: City Clerk

(Space Above For Recorder's Use)

Exempt from recording fees per Gov Code Section 27383

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

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

**APN: 540-168-019, 540-168-002**

**Site Address: 41 W. Ramsey Street, Banning, CA 92220**

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

**RECITALS**

- A. Grantor owns in fee that certain approximately .51 acre parcel of real property located in the City of Banning, Riverside County, California, commonly known as 41 W. Ramsey Street and 540-168-002 and further described in the "Legal Description of Property" attached hereto as Exhibit A (herein the "Property") and incorporated herein by this reference. Pursuant to this Agreement, Grantor is conveying to City a 10-year parking easement over that portion of the Property legally described as the "Parking Easement Area" in the "Legal Description of Easements" attached hereto as Exhibit "B." Grantor is also conveying to City permanent easements (subject the right of relocation) for utilities, access and trash storage, also legally described as the "Utility Easements" in Exhibit "B." The easements created hereunder are collectively referred to as the "Easements." The Property and Easements are shown in the "Map of Proposed

Improvements" shown in Exhibit "C" attached hereto and incorporated herein by this reference. Grantor owns and operates a restaurant on the Property known as Paddy O'Reilly Grill & Pub.

- B. As consideration for the City and the Redevelopment Agency of the City of Banning causing to be constructed certain parking improvements estimated to cost \$90,000, Grantor has agreed to record this on the Property Agreement creating the Easements.
- C. The City has fee or easement interests in various streets, sidewalks and other property within the City and is responsible for the planning and development of land within the City in such a manner as to provide for the health, safety and welfare of the residents of the City. That portion of the City's interest in real property most directly affected by this Agreement is, shown in Exhibit "C" attached hereto and incorporated herein by reference.
- D. Grantor and the City intend that in exchange for the City's approving the project to construct the improvements in the Easement Areas by the City ("City Approval"), the Grantor shall hold, sell, and convey the Property subject to the covenants, conditions, restrictions, reservations and easements set forth in this Agreement and that the City shall have the right and power to enforce the covenants, conditions, restrictions, reservations or easements as provided herein.

NOW, THEREFORE, the Grantor declares, covenants and agrees, by and for itself, its heirs, executors and assigns, and all persons claiming under or through it that the Property shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the covenants and restrictions hereinafter set forth, which covenants are established expressly and exclusively for the use and benefit of the City and the Public Parcel.

## AGREEMENT

### ARTICLE I

#### GRANT AND USE OF EASEMENTS

1.1. Grant of Parking Easement. Grantor hereby grants to the City for the benefit of the general public a permanent easement for the period of ten (10) years from the date of recordation of this Agreement for the installation, operation, maintenance and use of public parking facilities, signage, public utilities and all public purposes related thereto in the area of the Property designated as the "Parking Easement Area" as described in Exhibit "B" and shown in Exhibit "B1" and Exhibit "B2" of this Agreement.

- (a) With respect to the Parking Area, the easement rights granted herein shall expire and be of no further force and effect ten (10) years following the recordation of this Agreement, unless the Parking Easement is extended in writing by the parties.
- (b) Notwithstanding the foregoing, Grantor shall have the right to buy out the City's easement rights by reimbursing the City by one tenth of the price of the improvements (the "Buyout Price") for each year which Grantor



wishes to shorten the term of the Agreement. As an example with a price of Ninety Thousand Dollars (\$90,000), if Grantor wished to buy out the easements after Five (5) years, the Buyout Price would be \$45,000  $(\$90,000/10=\$9,000; \$9,000 \times 5=\$45,000)$ . Grantor shall pay a full 1/10th share for any portion of a year in which the buyout is exercised. Grantor shall exercise the buyout by giving City written notice of the intent to exercise (the "Notice of Termination") and specifying the termination date, being a date not less than 60 days from the date of the written notice. The Buyout Price shall be included with the Notice and shall be in the form of a cashier's check.

- (c) Grantor may redesign and reconstruct the Parking Area, including in connection with a building project on the Property, provided that Grantor provides City with 12 parking spaces meeting the requirements of the Banning Municipal Code ("BMC").

1.2. Grant of Utility Easements. Grantor hereby grants to the City permanent easements for the following purposes: (i) a 5' wide access easement for public utilities, (ii) a 540 sq. ft. easement for trash storage, and (iii) a 10' wide access easement to access the foregoing easements, herein collectively referred to as the "Utility Easements." The Utility Easements shall survive in perpetuity of the Parking Easement, but are subject to relocation by Grantor at such time as Grantor determines to redevelop the Property. City shall pay the cost of relocation so long as Grantor has described the project to reasonably minimize City's expense.

1.3. Limitation on Grantor's Use of Parking Easement Area. Grantor may not take any actions to, or otherwise attempt to, reserve any of the parking spaces in the Parking Easement Area for employees, customers or invitees of the Property without the express written consent of the City, which consent may be withheld by the City in its sole discretion. The driveways and traffic aisles on the Property shall be kept clear and unobstructed at all times. No vehicles or other obstruction shall project into any such driveways or traffic aisles.

1.4. Parking Spaces to be Attributed to the Property. Notwithstanding the provisions of this Article I, the City agrees that all parking spaces created and available for public use in the Parking Easement Area will be attributed to the Property for the purposes of satisfying any parking requirements of the City for the Property and that this Agreement satisfied the requirement of BMC Section 17.28.040.

1.5. Nondiscrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any part thereof, nor shall Grantor, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property, or any part thereof.

## **ARTICLE II**

### **MAINTENANCE OF PROPERTY**

2.1 Maintenance Agreement. The City agrees to perform such extraordinary repairs and maintenance as may be required to maintain the Parking Easement Area in a condition similar to the overall condition of San Gorgonio Street and the other public parking located on such street, including but not limited to striping, surfacing, paving, and patching. Grantor, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Property and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, signs and walls in a good condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction

#### 2.2 Compliance With Ordinances.

- (a) Grantor shall comply with all ordinances, regulations and standards of the City applicable to the Property.
- (b) Grantor shall provide any proposed tenants of any portion of the Property with a copy of this Agreement and shall, prior to entering into any lease agreement, have the proposed tenant execute an affidavit agreeing to comply with the provisions of this Agreement and acknowledging that no parking spaces are reserved to such tenants within the Parking Area Easements. All lease agreements shall be in writing and shall contain provisions that make compliance with the conditions of this Agreement and the requirements of the City express covenants of the Lease.

## **ARTICLE III**

### **INDEMNIFICATION**

3.1 Indemnification. Each Party agrees to indemnify the other Party, their officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent acts or omissions of Indemnifying Party, its agents, employees, subcontractors, or invitees hereunder, excluding such claims or liabilities arising from the negligence or willful misconduct of the Indemnified Party, their officers, agents or employees.

3.2 Liability to Business Invitees. Each Party shall indemnify and hold and save harmless the other Party from claims or liabilities that may be asserted by any business invitee who is using the portion of the Property for which the party is responsible hereunder. Grantor shall be responsible for any claim or liability for any person using Grantor's business establishment and City shall be responsible for any person using the Parking Easement Area for any purpose other than in connection with the use of Grantor's business establishment.

#### **ARTICLE IV** **ENFORCEMENT**

4.1 Termination. No breach of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement, or excuse the performance of such Party's obligations hereunder; provided that, however, this limitation shall not affect in any manner any other rights or remedies which the parties may have by reason of such breach.

4.2 Remedies. Notwithstanding anything contained herein to the contrary, in the event of any violation or threatened violation of any of the terms, covenants, restrictions, conditions and easements contained herein, in addition to the other remedies herein provided, the Parties hereto shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

4.3 No Waiver. No delay or omission in the exercise of any right or remedy by a non-defaulting party to this Agreement on any default shall impair such right or remedy or be construed as a waiver. A Party's consent to or approval of any act by the other Party requiring the Party's consent or approval shall not be deemed to waive or render unnecessary the other Party's consent to, or approval of, any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### **ARTICLE V** **COVENANTS TO RUN WITH THE LAND**

5.1 Covenants Running With the Land. This Agreement is designed to create equitable servitudes and covenants appurtenant to the Public Parcel and running with the Property. Grantor hereby declares that all of the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the covenants, conditions, restrictions, equitable servitudes and easements, all of which are for the purposes of uniformly enhancing or protecting the value, attractiveness and desirability of the Property and the Public Parcel. The covenants, conditions, restrictions, reservations, equitable servitudes, liens, charges and easements set forth herein shall run with the Property and shall be binding upon all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of every portion of the Public Parcel and any interest therein; shall inure to the benefit of the city and its successors and assigns and successors in interest; shall be binding upon Grantor, its successors and assigns; and may be enforced by the City.

City and Grantor hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land because Grantor's legal interest in the Property is rendered less valuable thereby. City and Grantor hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by the citizens of the City and by furthering the health, safety and welfare of the residents of the City.

5.2 Agreement Among Grantor and City. In exchange for the City's granting of City Approval, the Grantor hereby agrees to hold, sell, and convey the Property subject to the covenants, conditions, restrictions, reservations and easements contained in this Agreement. Grantor also grants to the City the right and power to enforce the covenants, conditions, restrictions, reservations and easements contained in this Agreement against the Grantor and all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns

## **ARTICLE VI**

### **TERM**

Except as otherwise provided herein, the covenants, conditions and restrictions contained in this Agreement shall remain in effect for a period of forty (10) years from the date this Agreement was executed; provided that, however, the covenants contained in Section 1.2 shall remain in effect in perpetuity. At the expiration of said forty (10) year period, the term of this Agreement shall be automatically renewed for successive five (5) year periods, unless one party to this Agreement provides the other party written notice of its intent not to extend the term within one hundred twenty (120) days prior to the expiration of the initial term or any extended term

## **ARTICLE VII**

### **MISCELLANEOUS**

7.1 Modification. This Agreement may not be modified, terminated or rescinded, in whole or in part, except by a written instrument duly executed and acknowledged by the Parties hereto, their successors or assigns and duly recorded in the Office of the County Recorder, County of Riverside.

7.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

7.3 Severability. The invalidity or unenforceability of any provision of this Agreement with respect to a particular party or set of circumstances shall not in any way affect the validity and enforceability of any other provision hereof, or the same provision when implied to another party or to a different set of circumstances.

7.4 Notices. Any notice to be given under this Agreement shall be given by personal delivery or by depositing the same in the United States Mail, certified or registered, postage prepaid, at the following address:

City: City of Banning  
99 East Ramsey Street  
Banning, CA 92220  
Attn: City Manager

With Copy to: Aleshire, Wynder, LLP  
18881 Von Karman Ave., Ste. 400  
Irvine, CA 92612  
Attn: David J. Aleshire, Esq.

Declarant: Tom and Billie Mehas  
345 Indian School Lane  
Banning, CA 92220

Any notice delivered personally shall be effective upon delivery. Any notice given by mail as above provided shall be effective forty-eight (48) hours after deposit in the mails. Any party may change address for notice by giving written notice of such change to the other party.

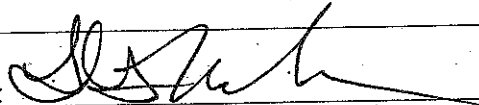
7.5 Attorneys' Fees. In any action between the Parties seeking enforcement of any of the terms and provisions of this Agreement, the prevailing party in such action shall be awarded, in addition to any damages, injunctive or other relief, its reasonable costs and expenses, including attorneys' fees.

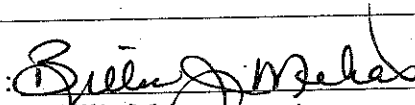
7.6 Counterparts. This Agreement may be executed in any number of counterparts each of which shall be an original but all of which shall constitute one and the same document.

[SIGNATURES ON FOLLOWING PAGE]

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

**GRANTOR:**

By:   
Name: Tom Mehas  
Title: Owner

By:   
Name: Billie Mehas  
Title: Owner

**CITY OF BANNING,**  
a California municipal corporation and general  
law city

By: Andy J. Takata, City Manager

ATTEST:

By: Marie Calderon, City Clerk

APPROVED AS TO FORM:

By:   
David J. Aleshire, City Attorney

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

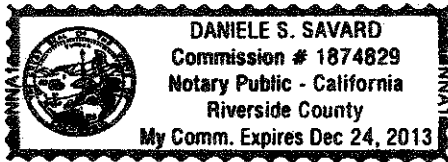
State of California

County of Riverside

On 03/17/10 before me, Danièle S. Savard, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Thomas Alexander mehas and Billie Jean mehas, husband and wife,  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



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

WITNESS my hand and official seal.

Signature: [Signature]

Signature of Notary Public

Place Notary Seal and/or Stamp Above

## OPTIONAL

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

### Description of Attached Document

Title or Type of Document: Parking easement and covenant Agreement

Document Date: Signed 3/17/10

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Thomas Alexander mehas Signer's Name: Billie Jean mehas

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☒ Other: owner

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☒ Other: owner

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOTS 1, 2, 3 AND 4, BLOCK 205 OF THE AMENDED MAP OF THE BANNING AND COMPANY, RECORDED IN MAP BOOK 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY STATE OF CALIFORNIA

EXCEPTING THEREFROM THE NORTH 10.00 FEET OF SAID LOT 4.

THE PROPERTY IS SHOWN IN EXHIBIT "A1" TITLED "MAP OF PROPERTY" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

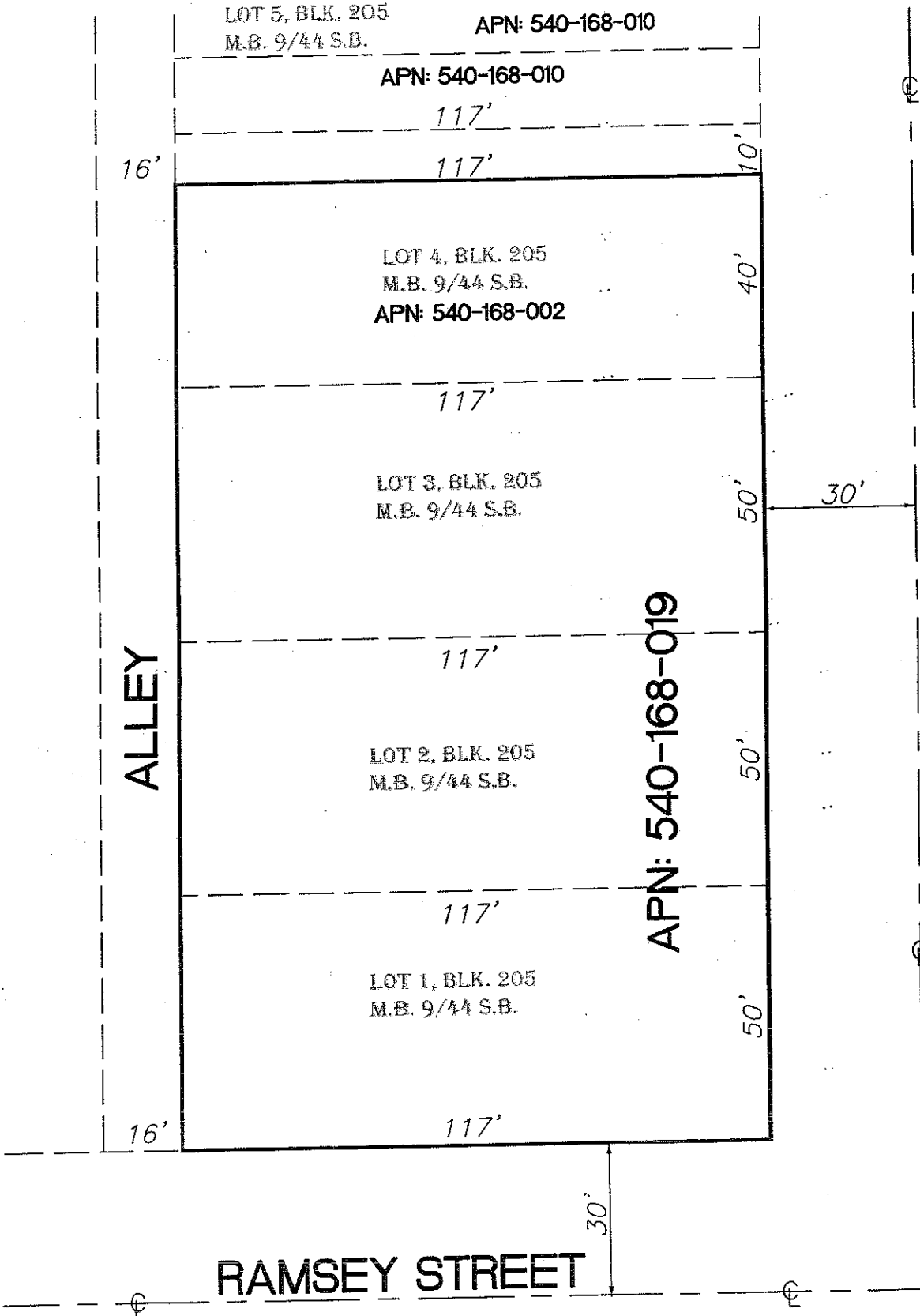


# EXHIBIT "A1"

(MAP OF PROPERTY)



SCALE: 1"=30'



MAP OF PROPERTY

DRAWN BY:

CHECKED BY:

APPROVED BY:

DATE:

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**EXHIBIT B**

**LEGAL DESCRIPTION OF EASEMENTS**

**LEGAL DESCRIPTION OF PARKING EASEMENT**

LOTS 3 AND 4, BLOCK 205 OF THE AMENDED MAP OF THE BANNING AND COMPANY, RECORDED IN MAP BOOK 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY STATE OF CALIFORNIA

EXCEPTING THEREFROM THE NORTH 10.00 FEET OF SAID LOT 4.

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LOT 3, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 3; THENCE NORTH ALONG THE WEST LINE THEREOF, A DISTANCE OF 12 FEET; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 3, A DISTANCE OF 22.86 FEET; THENCE SOUTHEASTERLY, A DISTANCE OF 25.79 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 3, SAID POINT BEING 45.63 FEET EAST OF THE SOUTHWEST CORNER THEREOF; THENCE WEST ALONG SAID SOUTH LINE OF LOT 3, A DISTANCE OF 45.63 FEET TO THE POINT OF BEGINNING.

**LEGAL DESCRIPTION OF PUBLIC UTILITY EASEMENT**

THE SOUTH 5.00 FEET OF THE NORTH 18.00 FEET OF LOT 4, BLOCK 205 OF THE AMENDED MAP OF THE BANNING LAND COMPANY, RECORDED IN MAP 9, PAGE 44, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA.

TOGETHER WITH THE SOUTH 14.00 .00 FEET OF THE NORTH 32.00 FEET OF THE WEST 27.00 FEET OF SAID LOT 4.

ALSO TOGETHER WITH THE SOUTH 3.00 FEET OF THE NORTH 13.00 FEET OF THE WEST 9.00 FEET OF SAID LOT 4.

THE PARKING AND INGRESS/ENGRESS EASEMENT IS SHOWN ON EXHIBIT B1 AND THE PUBLIC UTILITY EASEMENT IS SHOWN ON EXHIBIT B2 ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE

# EXHIBIT "B1"

(PARKING, INGRESS/EGRESS EASEMENT)



SCALE: 1"=30'

LOT 5, BLK. 205  
M.E. 9/44 S.E.

APN: 540-168-010

LOT 4, BLK. 205  
M.E. 9/44 S.E.  
APN: 540-168-002

LOT 3, BLK. 205  
M.E. 9/44 S.E.

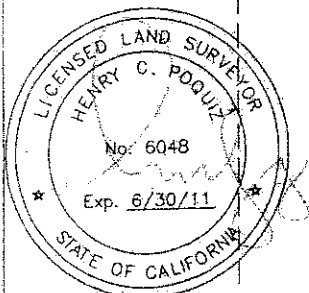
LOT 2, BLK. 205  
M.E. 9/44 S.E.

LOT 1, BLK. 205  
M.E. 9/44 S.E.

ALLEY

SAN GORGONIO AVENUE

APN: 540-168-019



RAMSEY STREET

CITY OF BANNING, CALIFORNIA  
DEED PLAT  
PARKING, INGRESS/EGRESS EASEMENT

DRAWN BY: HCP  
CHECKED BY: \_\_\_\_\_  
APPROVED BY: \_\_\_\_\_  
DATE: MARCH 9, 2010

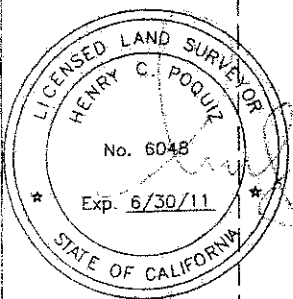
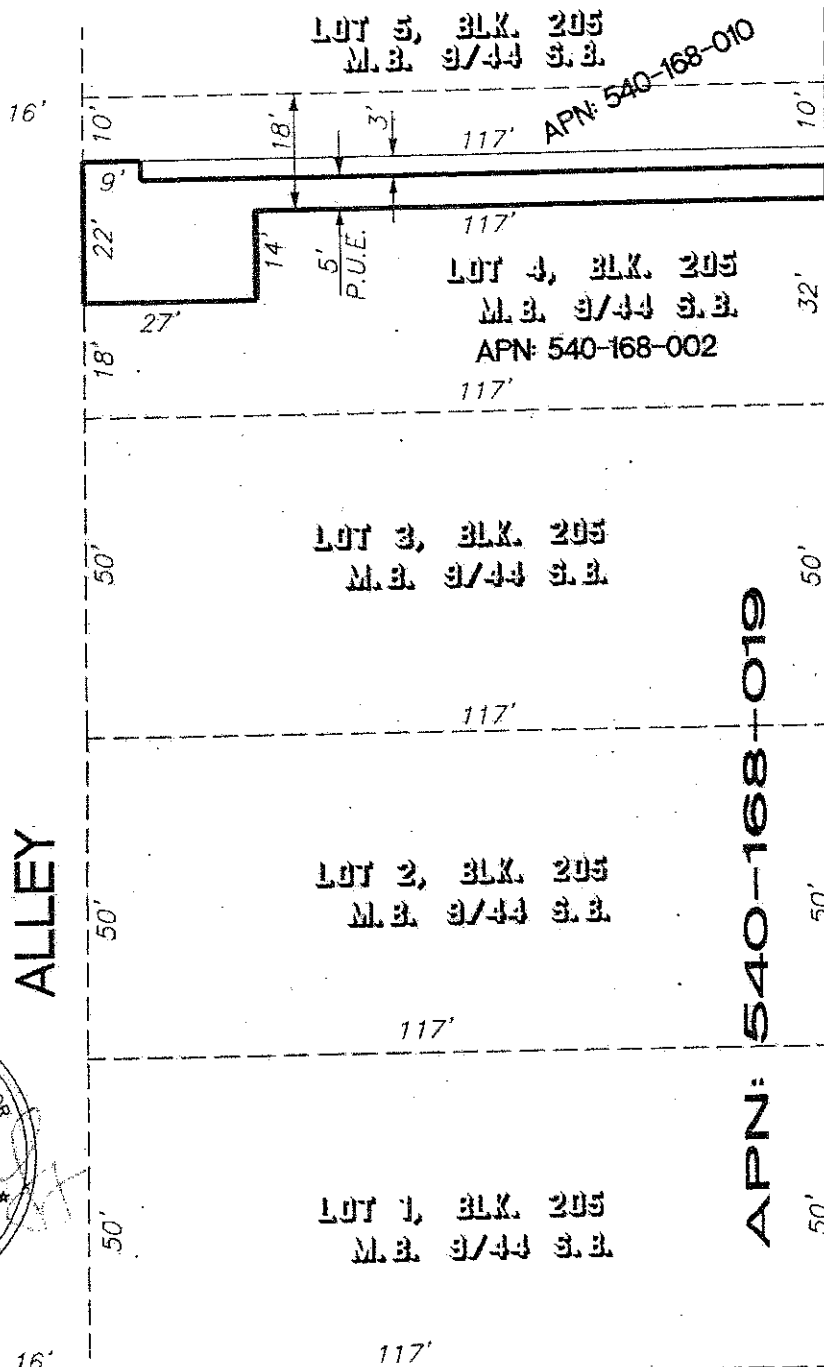
71

# EXHIBIT "B2"

## (PUBLIC UTILITY EASEMENT)



SCALE: 1"=30'



CITY OF BANNING, CALIFORNIA  
DEED PLAT  
PUBLIC UTILITY EASEMENT

DRAWN BY: HCP  
CHECKED BY: \_\_\_\_\_  
APPROVED BY: \_\_\_\_\_  
DATE: MARCH 9, 2010

72

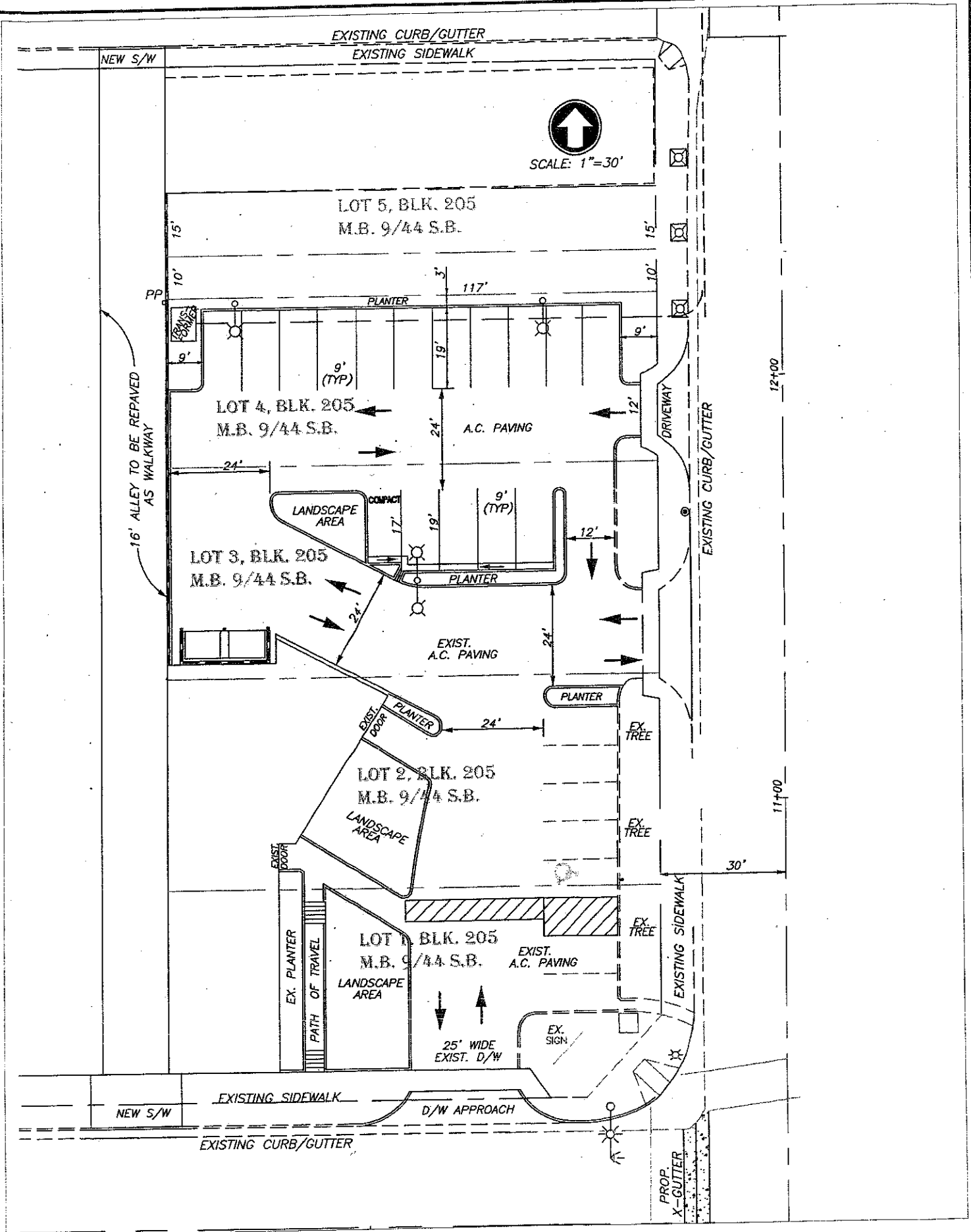


EXHIBIT "C"  
MAP OF PROPOSED IMPROVEMENTS

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## EXHIBIT D

### DESCRIPTION OF INSURANCE REQUIREMENTS

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

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

2. Minimum Limits of Insurance. Grantor shall maintain limits of insurance in an amount not less than \$1,000,000 general liability aggregate for bodily injury, personal injury and property damage.

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

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

2. General Liability Coverages.

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

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

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

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

C. Other Requirements. Grantor agrees to deposit with City, at or before the Effective Date of this contract, certificates of insurance necessary to satisfy City that Grantor has

complied with the insurance provisions. The City may require that Grantor furnish City with copies of original endorsements effecting coverage. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

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

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

D. Insurance Requirements. All insurance coverages and policies shall comply with the following requirements:

1. Such insurance shall name City and its employees, officials and officers as additional insureds with respect to this Agreement and the obligations hereunder. All such policies shall be endorsed to add City and its employees, officials, officers and agents as additional insureds, and to provide that such coverage shall be primary and that any insurance maintained by City shall be excess insurance only. This insurance shall act for each insured, as though a separate policy had been written for each. However, this shall not act to increase the limit of liability of the insuring company. Such coverage shall be endorsed to waive the insurer's rights of subrogation against City.

2. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California unless waived, in writing, by City, and such carrier(s) shall have an A.M. BEST rating of no less than an A/V. In addition, any deductibles or self-insured retention must be declared by such carrier(s) and such deductibles and retention shall have the prior consent, in writing, from City and, at the election of City, such carriers shall be notified in writing and shall either: (1) reduce or eliminate such deductibles or self-insured retention relating to City and its officers, employees and agents or (2) procure a bond that guarantees payment of losses and related investigations, claim(s) administration, and defense expenses and costs. If no written notice is received from City within ten (10) days of the acceptance of agreement, then such deductibles or self-insured retention shall be deemed acceptable.

3. Grantor shall cause its insurance carrier(s) to provide City with either (1) properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein, or (2) if requested to do so in writing by City, provide original certified copies of policies including all endorsements and any and all attachments thereto, showing that such insurance is in full force and effect, and City and its employees, officials and officers are named as additional insureds with respect to this Agreement and the obligations of Grantor hereunder. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be

given to the City prior to any modification, cancellation, expiration or reduction in coverage of such insurance.

4. It shall be understood and agreed to by the parties hereto, and the insurance company(ies), certificate(s) of insurance and policies shall so covenant and shall be construed as primary, and City's insurance and/or deductibles and/or self-insured retention or self-insured programs shall not be construed as contributory.

5. City reserves the right to adjust the monetary limits of insurance coverage during the term of this Agreement or any extension thereof if, in the reasonable judgment of City, the amount or type of insurance typically carried by Grantor is inadequate, and City shall have the right to require Grantor to increase the amount and/or change the types of insurance required in this paragraph.

6. City shall notify Grantor in writing of changes in insurance requirements and company(s) and, if Grantor does not deposit certificates evidencing acceptable insurance policies/company(ies) with City that incorporate such changes within sixty (60) calendar days of receipt of such notice, Grantor shall be in default under this Agreement without the requirement of further notice to Grantor, and City shall be entitled to exercise all legal remedies.

7. If Grantor fails or refuses to maintain insurance as required hereunder, or fails to provide proof of insurance, City shall have the right to declare this Agreement in default, and City shall be entitled to exercise all of its legal remedies for breach of this Agreement.

8. The procuring of such required policies of insurance shall not be construed to limit Grantor's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said insurance policies, Grantor shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement or with the use or occupancy of the Property, improvements to the Property, and the Property.



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_ personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

☐

INDIVIDUAL

☐

CORPORATE OFFICER

\_\_\_\_\_  
TITLE(S)

☐

PARTNER(S)

☐

LIMITED

☐

GENERAL

☐

ATTORNEY-IN-FACT

☐

TRUSTEE(S)

☐

GUARDIAN/CONSERVATOR

☐

OTHER \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_ personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

☐  
☐

INDIVIDUAL  
CORPORATE OFFICER

\_\_\_\_\_  
TITLE(S)

☐

PARTNER(S) ☐ LIMITED  
☐ GENERAL

☐

ATTORNEY-IN-FACT

☐

TRUSTEE(S)

☐

GUARDIAN/CONSERVATOR

☐

OTHER \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:


(NAME OF PERSON(S) OR ENTITY(IES))

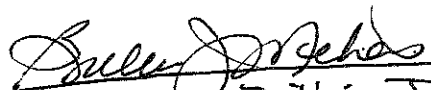
\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

# CERTIFICATE OF ACCEPTANCE

(Government Code section 27281)

This is to certify that the interest in real property conveyed by that certain Parking Easement Agreement dated Effective Upon Recordation 2010 from:

  
Owner THOMAS MEHAS  
03/17/2010

  
owner BILLIE J. MEHAS  
03/17/2010

to the **CITY OF BANNING**, is hereby accepted by order of the Banning City Council on \_\_\_\_\_, and the City hereby consents to recordation by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_, City Manager

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

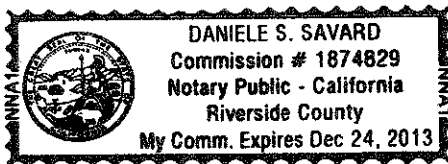
State of California

County of Riverside

On 03/17/10 before me, Danièle S. Savard, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared Thomas Alexander Mehas and Billie Jean Mehas, husband and wife,  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



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

WITNESS my hand and official seal.

Signature: [Signature]

Signature of Notary Public

Place Notary Seal and/or Stamp Above

## OPTIONAL

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

### Description of Attached Document

Title or Type of Document: certificate of Acceptance

Document Date: 03/17/10 Number of Pages: 1

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Thomas Alexander Mehas Signer's Name: Billie Jean Mehas

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☒ Other: owner

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☒ Other: owner

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

## CITY COUNCIL AGENDA

**DATE:** April 13, 2010

**TO:** City Council

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

**SUBJECT:** Notice of Completion for Project No. 2006-07, "Construction of the New Banning Police Station"

**RECOMMENDATION:** That the City Council accept Project No. 2006-07, "Construction of the New Banning Police Station," as complete and direct the City Clerk to record the Notice of Completion.

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

**BACKGROUND:** On June 24, 2008 the City Council adopted Resolution No. 2008-55 awarding the Construction Contract for Project No. 2006-07, "Construction of the New Banning Police Station" to Oakview Constructors, Inc. of Calimesa, California in the amount of \$11,089,836.00.


The scope of work for Project No. 2006-07 included the construction of a new 30,000 square foot, masonry, steel and wood frame two story Police Department building. The project also included the installation of utility infrastructure to support the new building as well as site improvements such as a secured employee parking lot and a public parking lot, landscaping, sidewalks, a trash enclosure and site masonry walls.

**FISCAL DATA:** The original contract amount for this project was \$11,089,836.00. An additional \$890,000.00 was added for contingency purposes, resulting in a total project appropriation of \$11,979,836.00. Due to unforeseen conditions, two change orders were approved by the Public Works Department in the amount of \$581,760.05. The final contract amount is \$11,671,596.05, approximately 5.25% of an increase over the original contract amount, resulting in a balance of \$308,239.95 from the total appropriation. The project was funded by a lease payment from the Banning Utility Authority (BUA) bond proceeds, Account No. 470-2200-413.90-12.

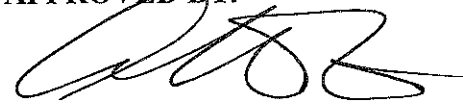
**RECOMMENDED BY:**

  
Duane Burk  
Director of Public Works

**REVIEWED BY:**

  
Kirby Warner  
Interim Director of Finance

**APPROVED BY:**

  
Andy Takata  
City Manager

1 WHEN RECORDED MAIL TO:

2  
3 The Office of the City Clerk  
4 of the City of Banning  
5 P.O. Box 998  
6 Banning, California 92220  
7

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

---

12  
13 NOTICE OF COMPLETION  
14 CONSTRUCTION OF THE NEW BANNING POLICE STATION  
15 PROJECT NO. 2006-07  
16

17 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the  
18 City of Banning, a municipal corporation, pursuant to the provisions of Section 3093 of  
19 the Civil Code of the State of California, and is hereby accepted by the City of Banning,  
20 pursuant to authority conferred by the City Council this April 13, 2010, and the grantees  
21 consent to recordation thereof by its duly authorized agent.  
22

23 That the OWNER, the City of Banning, and Oakview Constructors, Inc. of Calimesa,  
24 Calif., the vendee, entered into an agreement dated June 25, 2008, for Construction of  
25 Project No. 2006-07, "Construction of the New Police Station". The scope of work for  
26 this project included the construction of a new 30,000 square foot, masonry, steel and  
27 wood frame two story Police Department building. The project also included the  
28 installation of utility infrastructure to support the new building as well as site  
29 improvements such as a secured employee parking lot and a public parking lot,  
30 landscaping, sidewalks, a trash enclosure and site masonry walls.  
31  
32  
33  
34

1 (1) That the work of improvement was completed on March 12, 2010, for  
2 Project No. 2006-07, "Construction of the New Banning Police Station."

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

6 (3) That the said work of improvement was performed at 125 East Ramsey  
7 Street, Banning, California, 92220.

8 (4) That the original contractor for said improvement was Oakview  
9 Constructors, Inc., State Contractor's License No. 462847.

10 (5) That Performance and Payment bonds were required for this project.  
11

12 Dated: April 13, 2010

13 CITY OF BANNING  
14 A Municipal Corporation  
15  
16  
17

18 By \_\_\_\_\_  
19 Duane Burk  
20 Director of Public Works  
21

22 APPROVED AS TO FORM:  
23  
24  
25

26 \_\_\_\_\_  
27 David J. Aleshire, Aleshire & Wynder, LLP  
28 Agency Counsel  
29  
30  
31  
32  
33  
34

**JURAT**

State of California  
County of Riverside

Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by \_\_\_\_\_ proved to me on this basis of satisfactory evidence to be the person(s) who appeared before me.

(Seal)

\_\_\_\_\_  
Notary Public in and for said County  
and State

STATE OF CALIFORNIA)

) ss

COUNTY OF RIVERSIDE)

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

That I am the City Clerk of the City of Banning, which City caused the work to be performed on the real property hereinabove described, and is authorized to execute this Notice of Completion on behalf of said City; that I have read the foregoing Notice and know the contents thereof, and that the facts stated therein are true based upon information available to the City of Banning, and that I make this verification on behalf of said City of Banning. I declare under perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2010 at Banning, California.

\_\_\_\_\_  
City Clerk of the City of Banning

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# Police Station Funding Recap

## Allocated Funding Sources

|  |                             |
|--|-----------------------------|
| Development Impact Fees                                | \$ 538,312                  |
| BUA Lease Payment from Bond Proceeds                   | \$ 14,000,000               |
| Interest earned on the \$14 million through April 2009 | \$ 1,900,419                |
| <b>Total allocated funding</b>                         | <b><u>\$ 16,438,731</u></b> |

## Costs/Contracts Prior to June 24, 2008

|                            |             |
|----------------------------|-------------|
| Holt Architects            | \$ 627,067  |
| Utility Work               | \$ 338,491  |
| Relocation expenses        | \$ 627,781  |
| Demolition                 | \$ 42,510   |
| Miscellaneous Expenses     | \$ 94,043   |
| Less Verizon reimbursement | \$ (60,530) |

**Costs incurred prior to construction contracts** **\$ 1,669,362**

## Council approved construction budget on June 24, 2008

|  |                |
|--|----------------|
| Construction Management Contract (previously approved) | \$ 578,750     |
| Site Survey-HP Engineering                             | \$ 40,730      |
| Geotechnical-Landmark                                  | \$ 114,813     |
| General Construction-Oakview                           | \$ 11,089,836  |
| Inspections, etc.                                      | \$ 228,791     |
| Furniture, fixtures and equipment                      | \$ 971,772 (2) |

## Contingency used to date (1)

|                             |            |
|-----------------------------|------------|
| Increase in rent            | \$ 42,380  |
| Increase in Holt Architects | \$ 147,422 |
| ComSerCo                    | \$ 45,514  |
| Dell Computers              | \$ 40,132  |
| Misc Expenditures           | \$ 22,502  |
| Increase in Oakview         | \$ 581,760 |

**Remaining Contingency** **\$ 10,290 (1)**  
**\$ 13,914,692**

**Total Approved costs to date** **\$ 15,584,054**

**Remaining Unallocated Funding** **\$ 854,677**

## Other anticipated costs (not included above):

|  |                          |
|--|--------------------------|
| Continued rent for 18 months (3)                     | \$ 166,500               |
| Scotsman Rental @ 640 per month for 18 months        | \$ 11,520                |
| Mobile mini Storage unit @75 per month for 18 months | \$ 1,350                 |
|  | <b><u>\$ 179,370</u></b> |

**Remaining Funding after all costs** **\$ 675,307**

(1) To date, \$879,710 project contingency has been spent (increased rent, Holt an HP Eng., etc.) balance \$10,290.

(2) On June 24th \$917,844 was shown in the project budget for this line item  
 On August 12th Council approved \$998,000, only \$971,772 spent

(3) Rent increased from \$5,500 to \$10,000 per month in October 2008

Updated 04/01/10

85

## CITY COUNCIL AGENDA

**DATE:** April 13, 2010

**TO:** Mayor and City Council

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

**SUBJECT:** Authorization to Fill a Position – Utility Billing Representative

**Recommendation:** That the City Council authorizes staff to fill the vacant position of Utility Billing Representative created by an in-house promotion of Jennifer Harrell to Financial Services Specialist.

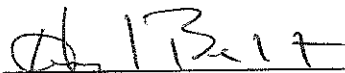
**Justification:** The City Council approved new supplemental budget policies to control and define the decision making process during the next eighteen months. The policies were designed to encourage the balancing of the structural deficit that exists in the General Fund. The supplemental policy that 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 full-time Utility Billing Representative position.

**Background:** This position will have a significant impact on the Finance Department and to the public if it is not filled immediately. This position is responsible for assisting customers with payment of utility bills and requests for services. This position became vacant due to the recent promotion of a Utility Billing Representative employee in filling the vacant position of Financial Services Specialist.

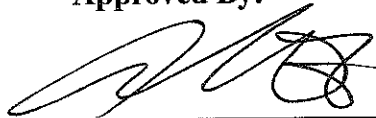
**Fiscal Data:** The filling of this position will not cause a fiscal impact. This position is currently budget for FY 2009-2010.

**Prepared By:**



Hoyl Belt  
Human Resources Director

**Approved By:**



Andy Takata  
City Manager



## CITY COUNCIL AGENDA

**DATE:** April 13, 2010  
**TO:** Honorable Mayor and City Council  
**FROM:** Hoyl E. Belt, Human Resources Director  
**SUBJECT:** Authorize the City Manager to Review and Approve Filling Positions

### RECOMMENDATION:

That City Council:

- 1) Rescind Policy 4 from the Supplemental Policies Statements Pertaining to Budget Activity previously approved.
- 2) Authorize the City Manager to review and approve hiring requests.

### BACKGROUND:

On January 12, 2010, the Interim Finance Director recommended, and City Council adopted five (5) Policy statements pertaining to budget activity as follows:

**Policy 1** Beginning in Fiscal Year 11/12 the General Fund shall be balanced without using reserves. Appropriations for ongoing expenditures will be less than ongoing revenue sources.

**Policy 2** Beginning with the Fiscal Year 10/11 budget process the City will reinstitute development of a two year budget. The budget for FY 10/11 will be adopted by the City Council, FY 11/12 will be a projection, subject to evaluation and adjustment prior to formal adoption in June 2011. The two year process provides the City Council with a longer-term view of impacts created by various actions.

**Policy 3** Any changes in current service levels, employee negotiated benefits or other actions resulting in increased costs must be offset by ongoing increased revenues or a corresponding reduction in expenditures. This will assist in the goal of preserving existing reserve balances.

**Policy 4** hiring freeze will be in effect until cancelled by the City Council. All hiring requests shall be submitted for City Council approval. This shall include new positions, filling of vacated positions, departmental reorganizations and other personnel actions with the potential of increasing costs or providing for savings. This policy will allow the City Council to strategically determine how best to allocate personnel and service levels.

**Policy 5** Water and Wastewater rate studies are to include revenue scenarios that provide varying amounts of available funds for lease payment obligations from the Banning Utility authority to the General Fund. At a minimum these should include scenarios that provide for payments of an additional \$500,000 per year and \$1,000,000 per year.

The formation of the Banning Utility Authority created an expectation of lease obligation to the General Fund. The 55 year term of the BUA lease was intended to provide sufficient time to pay leases amounts up to the valuation of the Water and Wastewater assets. The combined total for these assets was in excess of \$268,000,000.

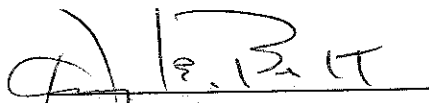
The current City Manager is respectfully requesting that one of those policy directives be rescinded. Specifically, Policy 4, in regard to staffing requests being approved by City Council before recruitment takes place. The City Manager is requesting, and I am recommending that this authority be delegated to the City Manager.

Therefore, it is staff's recommendation that the authority associated with only Policy 4 of the five policy statements be delegated to the City Manager for any required decisions regarding hiring requests including new positions, filling of vacated positions, departmental reorganizations and other personnel actions with the potential of increasing costs or providing for savings. Please note however, that the four other remaining policies will remain in effect.


**FISCAL DATA:**

No fiscal impact.

**Recommended By:**

  
Hoyl E. Belt  
Human Resources Director

**Reviewed By:**

  
Kirby Warner  
Interim Finance Director

**Approved By:**

  
Andy Takata  
City Manager

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## CITY COUNCIL AGENDA

**DATE:** April 13, 2010  
**TO:** City Council  
**FROM:** Duane Burk, Director of Public Works  
**SUBJECT:** Larry D. Smith Correctional Facility Wastewater Permit Fees

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

**BACKGROUND:** The purpose of this report is to formalize an understanding reached between the City of Banning and the County of Riverside concerning water and sewer fees for the Larry D. Correctional Facility located at 1627 S. Hargrave Avenue in Banning. To summarize the circumstances, Water and Sewer Fees for the Phase 3 Expansion of the said facility were calculated by the City of Banning Water/Wastewater Department as described in that attached memorandum dated May 12, 2008.

In regard to the Water Fees, both parties agree that the County will pay the sum of \$233,593.60 to the City of Banning for water fees associated with the Phase 3 Expansion of the facility. Payment for this portion of the fees was received by the City on April 15, 2009 in its entirety.


In regard to the Sewer Fees, the City's calculation for Phase 3 amounts to \$2,231,586.00. Both parties agree that the County will immediately pay a portion of this fee in the amount of \$916,594.00. Once the actual sewer flow can be established for the facility, the County will pay the remaining balance owed based on the actual flow.

At this time, both parties have reached an agreement on determining future sewer fees. As part of the Phase 3 construction, a sampling manhole with a flow meter will be installed. This installed meter will capture sewer flow from the expanded facility only. Once the expanded facility is fully operational, the City of Banning in coordination with the County of Riverside will take actual sewer flow measurements to determine final costs.


Further, the City's records indicate sewer discharge fees for Phase 1 and Phase 2 of the Larry D. Smith Facility, previously constructed, were not collected by the City of Banning. Consequently, during the construction of Phase 3, the County of Riverside will set a second sewer flow meter downstream of the entire Larry D. Smith Correctional Facility. Measurements of the actual sewage flow will be taken at the same time the Phase 3 measurements are taken. The Phase 3 flow rate will be deducted from the facilities total flow rate in order to determine the amount owed by the County to the City for sewer discharge fees related to this portion of the project.

**FISCAL DATA:** The County of Riverside has paid \$233,593.60 to the City of Banning for water fees associated with the Phase 3 Expansion of the Larry D. Smith Correctional Facility. There are no other outstanding fees related to water for the facility at this time. In regard to sewer fees, the City's calculation for Phase 3 amounts to \$2,231,586.00. The County will pay \$916,594.00 immediately and will pay the balance of \$1,314,992 upon completion of the Phase 3 Expansion, once supported by the actual sewage flow test. Once the actual sewer flow is determined, a credit or additional charge may be in order.

**RECOMMENDED BY:**

  
Duane Burk  
Director of Public Works

**REVIEWED BY:**

  
Kirby Warner  
Interim Director of Finance

**APPROVED BY:**

  
Andy Takata  
City Manager

---

# CITY OF BANNING

## MEMORANDUM

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GT 5/12/08

### LARRY D. SMITH COORECTIONAL FACILITY PHASE III EXPANSION

|          | <u>Inmates</u> | <u>Staff</u> | <u>Total</u> |
|----------|----------------|--------------|--------------|
| Existing | 936            | 289          | 1,225        |
| New      | 582            | 266          | 848          |
| Total    | 1,518          | 555          | 2,073        |

$\frac{848 \text{ New}}{1225 \text{ Total Existing}} = 69.2\% \text{ Increase Population of Expansion}$

#### Water Fees

##### Water Connection Fees

New 6" Water Meter = 32.3 EDU

32.3 EDU x \$7,232.00 per EDU = \$233,593.60

Water Frontage Fee            Not Required (constructing a 10" water line)

6" water meter installation costs at Time and Materials during construction of water line.

#### Sewer Fees

##### Sewer Connection Fees

Present Discharge (Sept. 07) is 1,156.95 EDU

Future Discharge 1,157 EDU x 69.2% = 801 EDU

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

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$$801 \text{ EDU} \times \$2,786.00 \text{ per EDU} = \$2,231,586.00$$

A Sampling Manhole with flow meter will be required as part of the construction. This will save user fees in the future.

|              |                       |
|--------------|-----------------------|
| Water Fees   | \$ 233,593.60         |
| Sewer Fees   | \$2,231,586.00        |
| <b>Total</b> | <b>\$2,465,179.60</b> |

Other Costs:                      6" water meter Installation  
    10" water line Installation  
    Sampling Manhole with flow meter

Sewer EDU Formula:

$$\# \text{ EDUs} = \frac{Q}{225 \text{ gpp/day}} \left[ 0.50 + 0.25 \frac{\text{BOD}}{200 \text{ mg/l}} + 0.25 \frac{\text{SS}}{200 \text{ mg/l}} \right]$$

Q = Monthly Flows from Prison    320 mg/l BOD from Prison    290 mg/l SS from Prison

$$\# \text{ EDUs} = \frac{Q}{225 \text{ gpp/day}} \left[ 0.50 + 0.25 \frac{320}{200 \text{ mg/l}} + 0.25 \frac{290}{200 \text{ mg/l}} \right]$$

$$\# \text{ EDUs} = \frac{Q}{225 \text{ gpp/day}} [0.50 + 0.40 + 0.36] = \frac{Q}{225 \text{ gpp/day}} [1.26]$$

Monthly Water Consumption

Road Camp Meters

| <u>Month</u> | (Cu. Ft.) |           |           | <u>Sum</u> |                                |
|--------------|-----------|-----------|-----------|------------|--------------------------------|
|              | <u>8"</u> | <u>2"</u> | <u>1"</u> |            |                                |
| Sept         | 755,000   | 51,900    | 21,700    | 828,600    | x 7.48 g/cu ft = 6,197,928 gal |

$$\text{Sept EDUs} = \frac{6,197,928 \text{ gal}}{225 \text{ gpp} \times 30 \text{ days}} [1.26] = 1,156.95 \text{ EDU}$$



## CITY COUNCIL AGENDA

**DATE:** April 13, 2010

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

**FROM:** Zai Abu Bakar, Community Development Director

**SUBJECT:** **Ordinance No. 1422 - An Interim Urgency Ordinance Establishing a Temporary Moratorium on the Permitting of Tattoo & Piercing, Fortune Telling, Push-cart Vendors, and Hookah (Smoking) Lounge Land Uses Pending the Review and Possible Amendment of Zoning Regulations Applicable to Such Uses.**

**RECOMMENDATION:** That the City Council adopt Ordinance No. 1422 - An Interim Urgency Ordinance establishing a temporary moratorium on the permitting of tattoo & piercing, fortune telling, push-cart vendors, and hookah (smoking) lounge land uses pending the review and possible amendment of zoning regulations applicable to such uses to become effective immediately.

**JUSTIFICATION:** Staff received a significant number of inquiries within the last six months relative to these uses. The Zoning Code is currently silent and does not address these general uses.

**BACKGROUND/ANALYSIS:** The City Council approved the General Plan and Zoning Ordinance on January 31, 2006. The Zoning Code is the primary tool for implementing the goals, policies, and programs of the General Plan. In response to public inquiries, staff has identified that no provision is made for tattoo & piercing, fortune telling, push-cart vendors, and hookah lounge land uses. One of the purposes of the establishment of land use districts as defined in the Zoning Code is to improve the livability of residential neighborhoods while encouraging economic development that supports commercial and industrial businesses. This, in part, is accomplished by permitting or conditionally permitting some uses, and prohibiting other uses in any given land use zone.

Section 17.04.090(A) of the Code states: "All land or structures shall be used and constructed in accordance with the regulations and requirements of this Zoning Ordinance, including obtaining applicable permits prior to use initiation". When individuals approach the business license division to obtain approval for tattoo & piercing, fortune telling, push-cart vending, and hookah lounge, the Planning Division is unable to approve or conditionally approve the use because those uses are not listed in the Zoning Code. When a use is not specifically listed in the Zoning Code, it may be permitted if the Community Development Director determines that the use is similar to

other uses listed. However, the Director has determined that the subject uses differ in character substantially from the listed uses.

Staff's concern is that these uses may have the potential to affect health, safety, and welfare of the community as indicated below. Therefore, these unique uses must be analyzed in relation to the surrounding land uses and zoning and determine which, if any, zoning districts are appropriate for such uses, and the level of discretionary review is required for such uses.

### Staff's Concerns

#### **Tattoo & Piercing**

The practice of tattoo and body piercing presents certain public health and safety risks, in particular the potential spread of blood born diseases such as hepatitis. Additionally, the image of tattoo parlors may not be compatible with other uses designed to encourage a family-oriented environment.

#### **Fortune Telling**

Consistent with the City's image as primarily a single-family community, fortune telling and other occult arts may not be compatible with single-family residential neighborhoods and those commercial zones that allow single-family dwellings such as the Downtown Commercial zone.

#### **Push-cart Vendors / Ice Cream Truck Vendors**

The unrestricted sale and distribution of food, beverages, merchandise or services from push-cart food units within or upon public streets, sidewalks and rights-of-way, public property or in the vicinity of school buildings, under certain circumstances, constitutes a danger to public safety because of the likelihood of injury to pedestrians that are exposed to hazards from other vehicular traffic in the vicinity. Also, the unauthorized use of public property for private commercial activity constitutes a misuse of public property and that similar activity on private property when not in conformity with health, safety, zoning and land use regulations is contrary to the public welfare. Push-cart vendors could include ice-cream vendors that would attract children. Parents may be concerned about the identity and background of the vendor that could harm children.

#### **Hookah (Smoking) Lounge**

The hookah is a glass or metal water pipe usually highly decorated and shaped somewhat like a bottle or small tank with a long, flexible cord pipe used to smoke tobacco. In most hookah pipes, hot charcoal is used to heat the tobacco. California has yet to enact any law directly addressing use of a hookah, placing hookah regulation in the same category as cigarettes, cigars and other forms of tobacco. A "hookah lounge" is treated as a type of "smoking lounge" and the issue becomes to what extent a city can restrict smoking in a business establishment.

As a matter of law, a city is not required to allow a smoking lounge at all. To the contrary, many states including California have passed anti-smoking laws, effectively banning smoking in most indoor areas such as restaurants and bars. In addition, public policy strongly discourages smoking and encourages smokers to terminate their smoking habit. Also, smoking lounges produce secondary smoke which can negatively affect workers, passers-by and neighbors, particularly minors, the elderly, sick and disabled. Smoking lounges too may serve as a marketing vehicle for tobacco, which can also have detrimental effects on minors by encouraging them to smoke.

A chart is prepared below that relates how some nearby cities regulate the subject land uses in general terms:

**Comparison Table**

| City         | Tattoo & Piercing |       | Fortune Telling |      | Push-cart Vendors |      | Hookah Lounge |      |
|--------------|-------------------|-------|-----------------|------|-------------------|------|---------------|------|
|              | Permitted         | Type  | Permitted       | Type | Permitted         | Type | Permitted     | Type |
| Beaumont     | Y                 | CUP   | N               | -    | N                 | -    | N             | -    |
| Calimesa     | N                 | -     | N               | -    | N                 | -    | N             | -    |
| Hemet        | Y                 | P/CUP | Y               | CUP  | N                 | -    | Y             | CUP  |
| Palm Springs | Y                 | P     | Y               | P    | N                 | -    | N             | -    |
| Riverside    | Y                 | P     | Y               | P    | Y                 | P    | N             | -    |
| San Jacinto  | N                 | -     | N               | -    | Y                 | P    | N             | -    |

Y = Yes

N = No

P = Permitted by right

CUP = Conditional Use Permit


### Conclusion

In order to evaluate these uses, City staff needs time to 1) study the effect of said uses on the public; 2) determine which, if any, zoning districts are appropriate for such uses; 3) determine what level of discretionary review is required for such uses. If these uses are allowed to proceed without regulations, they could have potential adverse effects on neighborhoods in the City, which presents a clear and immediate danger to the public health, safety and welfare. Therefore, Staff recommends this interim emergency measure. Any amendments to the Zoning Code developed as a result of Staff's analysis and study of the subject uses would be presented to the Planning Commission for review and recommendation. The recommendations of the Planning Commission would then be forwarded to the City Council for final consideration and approval.

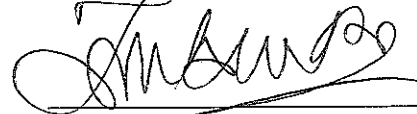
**PUBLIC COMMUNICATION.** This Ordinance shall be published once in a newspaper of general circulation, printed, published and circulated in the City of Banning, within fifteen (15) days from and after its adoption.

**FISCAL DATA:** There is no direct fiscal impact associated with adoption of this ordinance.

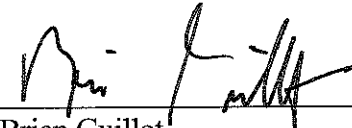
**APPROVED BY:**

  
\_\_\_\_\_  
Andy Takata  
City Manager

**RECOMMENDED BY:**

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

**PREPARED BY:**

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

**Attachment:**

1. Ordinance No. 1422

# Attachment 1

(Ordinance No. 1422)

ORDINANCE NO. 1422

AN INTERIM URGENCY ORDINANCE OF THE CITY OF BANNING, CALIFORNIA ESTABLISHING A TEMPORARY MORATORIUM ON THE PERMITTING OF TATTOO & PIERCING, FORTUNE TELLING, PUSH-CART VENDORS, AND HOOKAH (SMOKING) LOUNGE LAND USES PENDING THE REVIEW AND POSSIBLE AMENDMENT OF ZONING REGULATIONS APPLICABLE TO SUCH USES, TO BECOME EFFECTIVE IMMEDIATELY

**WHEREAS**, the City Council approved the General Plan and Zoning Ordinance on January 31, 2006; and

**WHEREAS**, in response to public inquiries, staff has identified that no provision is made in the adopted Zoning Code for tattoo & piercing, fortune telling, push-cart vendors, and hookah (smoking) lounge land uses; and

**WHEREAS**, one of the purposes of the establishment of land use districts as defined in the Zoning Code is to improve the livability of residential neighborhoods while encouraging economic development that supports commercial and industrial businesses; and

**WHEREAS**, the Community Development Director has determined that the subject uses differ in character substantially from those uses listed in the Zoning Code; and, therefore a zone text amendment is necessary to address if the uses should be explicitly permitted in the Zoning Code; and

**WHEREAS**, if the subject uses are established without zoning regulations, such uses may be inconsistent with surrounding land uses, detrimental to the public health, safety, and welfare, and in conflict with existing regulations; and

**WHEREAS**, Government Code Sections 65858, 36934, and 36937 expressly authorizes the City Council to adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a zoning proposal.

**NOW THEREFORE**, the City Council of the City of Banning does ordain as follows:

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

**SECTION 2.**     Effectiveness of Ordinance. This Interim Urgency Ordinance shall be effective for forty-five (45) days from and after the date of its adoption, pursuant to the authority conferred upon the City Council by Government Code Section 65858(a),

and may thereafter be extended twice provided notice is given pursuant to Government Code section 65090; and, a public hearing is held thereon.

**SECTION 3.** Findings; Declaration of Urgency. The City Council finds and declares that there is a need to adopt this Interim Urgency Ordinance establishing a moratorium on all new tattoo & piercing, fortune telling, push-cart vendors, and hookah (smoking) lounge land use permits, variance, building permit, business license, occupancy permit and any land use entitlement. The City has received inquiries regarding the establishment of these uses. Based on the following, the City Council declares that this Interim Urgency Ordinance is necessary to protect the public health, safety, and welfare while the City considers revisions to the zoning regulations:

The practice of tattoo and body piercing presents certain public health and safety risks, in particular the potential spread of blood born diseases such as hepatitis. Additionally, the image of tattoo parlors may not be compatible with other uses designed to encourage a family-oriented environment.

Consistent with the City's image as primarily a single-family community, fortune telling and other occult arts may not be compatible with single-family residential neighborhoods and those commercial zones that allow single-family dwellings such as the Downtown Commercial zone.

The unrestricted sale and distribution of food, beverages, merchandise or services from push-cart food units or pedestrians within or upon public streets, sidewalks and rights-of-way, public property or in the vicinity of school buildings, under certain circumstances, constitutes a danger to public safety because of the likelihood of injury to pedestrians that are exposed to hazards from other vehicular traffic in the vicinity. Also, the unauthorized use of public property for private commercial activity constitutes a misuse of public property and tax money and that similar activity on private property when not in conformity with health, safety, zoning and land use regulations is contrary to the public welfare.

The establishment of hookah (smoking) lounges produce secondary smoke which can negatively affect workers, passers-by and neighbors, particularly minors, the elderly, sick and disabled. Moreover, smoking lounges may serve as a marketing vehicle for tobacco, which can also have detrimental effects on minors by encouraging them to smoke.

In order to evaluate these uses, City staff needs time to 1) study the effect of said uses on the public; 2) determine which, if any, zoning districts are appropriate for such uses; 3) determine what level of discretionary review is required for such uses. If these uses are allowed to proceed without regulations, they could have potential adverse effects on neighborhoods in the City, which presents a clear and immediate danger to the public health, safety and welfare.

Further, if these uses are established without regulations, such uses might be inconsistent with surrounding uses, detrimental to the public health, safety and welfare, and in conflict with contemplated zoning proposals. The premature establishment of such uses may result in significant irreversible change to neighborhood and community character. Based on the foregoing, the City Council declares that this Interim Urgency Ordinance is necessary to protect the public health, safety and welfare while the City considers revisions to the zoning regulations related to these uses.

**SECTION 4.**     Moratorium. The City Council hereby declares a moratorium on any new tattoo & piercing, fortune telling, push-cart vendors, and hookah (smoking) lounge land use permit, variance, building permit, business license, occupancy permit and any land use entitlement.

**SECTION 5.**     Conflicting Laws. For the term of this ordinance, as set forth in Section 2 above, the provisions of this ordinance shall govern. To the extent that there is any conflict between the provisions of this ordinance and the provisions of any other city code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

**SECTION 6.**     Grandfathering. This Interim Urgency Ordinance shall only apply to new applications for new tattoo & piercing, fortune telling, push-cart vendors, and hookah (smoking) lounge land use permits, variance, building permit, business license, occupancy permit and any land use entitlement. This Interim Urgency Ordinance shall not apply to any project which has been previously approved by the City or its constituent boards, commissions or officials so long as such approvals remain valid, nor shall it apply to any application for discretionary land use development entitlements, or zoning variances which were approved and that were issued a Certificate of Occupancy by the City prior to the effective date of this Interim Urgency Ordinance.

**SECTION 7.**     Publication and Posting. This Ordinance shall be published once in a newspaper of general circulation, printed, published and circulated in the City of Banning, within fifteen (15) days from and after its adoption.

**SECTION 8.**     CEQA Finding. The City Council hereby finds that there is no possibility that the adoption of this Interim Urgency Ordinance will have a significant effect on the environment. This finding is supported by the following facts: (1) this ordinance authorizes the undertaking of feasibility and planning studies; and (2) any development which may occur pursuant to the interim standards will not be approved until a complete environmental evaluation of the proposed project has occurred. This Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14 California Code of Regulations, Section 15262.

**SECTION 9.**     Vote Required for Adoption of Ordinance. This Interim Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Banning by Government Code Section 65858, 36934 and 36937, and shall

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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 INTERIM URGENCY ORDINANCE this 13<sup>th</sup> day of April, 2010.

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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  
City of Banning, California

**ATTEST:**

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Marie A. Calderon, City Clerk

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Urgency Ordinance No. 1422 was duly adopted at a regular meeting of the City Council of the City of Banning, held on the 13<sup>th</sup> day of April, 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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ALESHIRE &  
WYNDER, LLP  
ATTORNEYS AT LAW  
www.awattorneys.com

o/k

## MEMORANDUM

**TO:** HONORABLE MAYOR AND MEMBERS OF THE BANNING CITY COUNCIL  
ANDREW TAKATA, CITY MANAGER

**FROM:** DAVID J. ALESHIRE, CITY ATTORNEY  
HEATHER KENNY, DEPUTY CITY ATTORNEY

**DATE:** APRIL 2, 2010

**RE:** OPTIONS FOR DIRECT ELECTION VERSUS APPOINTMENT OF MAYOR AND  
MAYORAL COMMITTEE APPOINTMENT PROCEDURES: ALTERNATIVES,  
ADVANTAGES AND DISADVANTAGES

### I. INTRODUCTION & SUMMARY OF CONCLUSIONS

The City Attorney's office has prepared this memorandum in response to the City Council's inquiry regarding: (i) the advantages and disadvantages of a rotational mayoral system; (ii) the procedures and statutory requirements of a directly elected mayor; and (iii) the process for appointing councilmembers to various committees or appointing commissioners under each system, including the current system.

Under California law, there are two systems for picking a Mayor; either by appointment by a majority of the Council or through direct election by the voters. Currently, the City of Banning ("City") has an appointed mayoral system without a strict requirement for rotation.<sup>1</sup> The only constraints in Banning's appointment system are as follows: A Councilmember may be elected to a maximum of two consecutive one-year terms in the same office.<sup>2</sup> A Councilmember who has been elected to serve as Mayor or Mayor Pro Tem for two consecutive one-year terms may be reelected to the same office if such Councilmember has not served in the office for two or more years immediately preceding such reelection.<sup>3</sup>

In a rotational system, each Councilmember works his or her way up to Mayor Pro Tem and is then "elected" by the rest of the Council to the position of Mayor. At the end of his or her term as Mayor, the Councilmember moves back down to the bottom rung of the ladder. Any new Councilmember elected generally takes the bottom rung in the ladder. However, the key

<sup>1</sup> Rules of the City Council, Section II, Paragraph B, Subsection 2.3(a)(1) states: "The City Council shall meet annually to elect one of its members as Mayor and another of its members as Mayor Pro Tem." There is no requirement for a rotation among members.

<sup>2</sup> *Id.* at Subsection 2.3(a)(2).

<sup>3</sup> *Id.* at Subsection 2.3(a)(3).

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Honorable Mayor and Members of the  
Banning City Council  
Andrew Takata, City Manager  
Page 2

aspect of a rotational system, as described in this memorandum, is that the mayoral position is changed annually, by a pre-established system irrespective of personal considerations.

We would like to summarize the main points addressed in this memo.

1. For general cities without directly elected mayors, the position of Mayor is largely ceremonial (though even in directly elected systems the powers of the Mayor are largely the same as other councilmembers).
2. Often, cities with rotational mayoral systems have unwritten policies, although there are cities with written policies. We have included two examples as Exhibits "A" and "B." Although some jurisdictions have a good track record adhering to a rotational system, with three council votes the system can be altered, even where there is a written policy.
3. There are advantages and disadvantages to having a rotational mayoral system. For example, such a policy can give all councilmembers an opportunity to serve as mayor and mayor pro-tem, allowing all councilmembers to gain experience and giving the appearance of fairness. Moreover, a rotational system can encourage a spirit of cooperation in that each councilmember will eventually need their colleague's votes. However, a rotational system may put a councilmember in the mayoral position who does not reflect the majority of the council which is where rotational schemes often breakdown.
4. Lack of council consensus concerning rotational systems has led cities to adopt directly elected mayoral systems which are governed by State law. Directly elected mayoral systems must be adopted by the voters, so shifting council majorities can't alter the system.
5. There are separate statutes regulating directly elected mayors, including laws pertaining to salary. A directly elected mayor has the power to nominate individuals to regional, as well as local, boards, commissions and committees with the approval of the council (mayor must nominate and council approve).
6. A number of cities have switched from rotational mayoral policies to directly elected mayors with success. Cities can rarely switchback as given the choice, voters prefer direct election. One city, El Monte, recently tried via initiative to switch from directly elected mayor to a rotational mayoral system but the initiative failed.
7. The Rules of the City Council give the mayor the power to appoint Councilmembers to all positions on committees and commissions as

representatives of the City on non-City boards and commissions after consultation with the City Council, but other policies require Council "approval" for ad hoc "Council Committees" (2x2) while still other ordinances and policies contemplate one appointment by each Councilmember. These policies could be made more uniform by the Council.

## II. ANALYSIS

### 1. For General Cities Without Directly Elected Mayors, The Position Of Mayor Is Largely Ceremonial (Though Even In Directly Elected Systems The Powers Of The Mayor Are Largely The Same As Other Councilmembers).

As a general law city, and under the City of Banning's ordinances and policies, the Mayor's job is to attend ceremonial functions, chair meetings,<sup>4</sup> preserve order and decorum,<sup>5</sup> and perform a variety of tasks representing the City. The Mayor is often the "face" of the City. However, on most matters that come before the Council, the Mayor's vote is just one of the five.

The Mayor does chair council meetings, and as chair has the ability to direct debate and frame issues, and this can be significant. It also can set the tone for public perception of the City.

The Mayor's formal duties include: (i) signing all warrants drawn on the city treasurer; (ii) all written contracts made or entered into by the city; (iii) and all instruments requiring the city seal.<sup>6</sup> The Mayor's duties may include administering oaths and affirmations, and taking affidavits and certifying them under his or her hand.<sup>7</sup> Further, the Mayor may acknowledge the execution of all instruments executed by the City and required to be acknowledged.<sup>8</sup> The position does not come with any increased salary or benefits.

The case of a directly elected mayor is discussed below in Section 5, but in most respects the powers are similar in appointive and directly elected systems. One significant difference is that Government Code Section 40605 specifically allows the directly elected mayor to nominate individuals for appointment to boards, committees and commissions, with the approval of the council. Directly elected mayors may also be compensated differently from the rest of the council. Where most people get the impression of mayors having significant powers has to do with charter cities. Charter cities can create a "strong mayor" system. This is outside the scope of this memorandum.

<sup>4</sup> Rules of the City Council, Section II, Paragraph B, Subsection 2.3.

<sup>5</sup> *Id.* at Subsection 2.3(b): "The Chairperson shall preserve order and decorum."

<sup>6</sup> Cal. Gov. Code § 40602.

<sup>7</sup> *Id.* at § 40603.

<sup>8</sup> *Id.* at § 40604.

2. **Often, Cities With Rotational Mayoral Systems Have Unwritten Policies, Although There Are Cities With Written Policies. We Have Included Two Examples As Exhibits "A" And "B." Although Some Jurisdictions Have A Good Track Record Adhering To A Rotational System, With Three Council Votes The System Can Be Altered, Even Where There Is A Written Policy.**

To illustrate how rotational mayoral systems work, in this section we will describe several varieties. Cities vary as to whether the systems are set forth in writing or carried out by tradition. The argument for written policies is that they are more likely to be followed. But in the end, even a written policy can be changed by three votes, though if enacted by ordinance, the amendment process would be more cumbersome.

A. **Indian Wells**

The City of Indian Wells passed a resolution codifying into their Policy Manual the following:

- The order of mayoral succession is determined by the length of the term of incumbency, as defined by the date of election. When two or more councilmembers have equal terms of incumbency, the order is determined by the highest number of votes received.
- The outgoing mayor's name rotates to the bottom of the previous year's mayoral succession list, with all other names moving up one position, in order that the outgoing mayor pro-tem becomes the new mayor and the next councilmember on the list becomes the new mayor pro-tem.
- Newly elected councilmembers are added to the bottom of the mayoral succession list, following the outgoing mayor in that election year's council reorganization. When there are two or more newly elected councilmembers, the order is determined by the person who received the highest number of votes in the election.
- Any councilmember appointed to fill a vacancy is added to the bottom of the mayoral succession list. In the event the appointment is to fill a vacancy at the mayor or mayor pro-tem's position, all other names on the succession list move up one position.

As you can see, Indian Wells was thorough in thinking through several different scenarios (e.g., what happens when a new councilmember gets elected, what happens if someone gets appointed, etc.). Some policies, such as Palm Desert's below, simply deal with who will

Honorable Mayor and Members of the  
Banning City Council  
Andrew Takata, City Manager  
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become mayor and mayor pro-tem and not necessarily the actual rotation of the other councilmembers.

B. Palm Desert

In 2001, the City Council of the City of Palm Desert passed a resolution stating a policy for the qualifications of mayor and mayor pro-tem. Unlike the City of Indian Wells, Palm Desert did not express its desire that each Councilmember necessarily rotate through the positions of Mayor and Mayor Pro-Tem. Rather, the Resolution set forth specific criteria that must be met by a Councilmember serving in each position:

"[T]he appointments of Mayor and Mayor Pro-Tempore shall be made on an annual rotating basis, and no one Council member shall serve a term in either office to exceed a one-year period of time....prior to any member of the Council being appointed as Mayor such Council member shall have been a member of the Council for approximately two years and the Mayor Pro-Tempore shall have been a member of the Council for at least one year prior to being selected for those respective offices."<sup>9</sup>

Thus, Palm Desert offers another option – a policy that ensures experience in the offices of Mayor and Mayor Pro-Tem, but does not bind the Council into a rotation where each member is guaranteed an opportunity to serve, if that is not what the Council desires.

C. Huntington Beach

In 1990, Huntington Beach adopted a rotational system in choosing its mayor and mayor pro tem. At adoption, the current mayor pro-tem became mayor. Under the policy, the councilmember with the next most consecutive years of council experience succeeded that councilmember as mayor pro-tem and moved next in line to become mayor. If two members had the same amount of council experience, the one who received the most votes in the last election became mayor pro tem. So, similar to Palm Desert, the policy was more concerned with the selection of mayor and mayor pro-tem than an actual rotation where each councilmember was given an opportunity to serve in the role.

Prior to adopting the policy, the City Council had simply elected a mayor and mayor pro-tem, which had caused a great deal of strife and "back room politics."<sup>10</sup> Although it appears the

<sup>9</sup> Resolution 01-110, A Resolution of the City Council of the City of Palm Desert, California, Setting Forth a Policy on the Office of Mayor and the Office of Mayor Pro Tempore.

<sup>10</sup> Los Angeles Times, Huntington Beach Green Picked Mayor in Rotation System, January 24, 1990, [http://articles.latimes.com/1990-01-24/local/me-702\\_1\\_mayor-pro](http://articles.latimes.com/1990-01-24/local/me-702_1_mayor-pro), last visited March 3,

policy was adopted as an ordinance, we could not locate a copy of it in the most updated municipal code. In addition, at this time, the City of Huntington Beach is considering moving to a directly elected mayor position.<sup>11</sup>

3. **There Are Advantages And Disadvantages To Having A Rotational Mayoral System. For Example, Such A Policy Can Give All Councilmembers An Opportunity To Serve As Mayor And Mayor Pro-Tem, Allowing All Councilmembers To Gain Experience And Giving The Appearance Of Fairness. Moreover, A Rotational System Can Encourage A Spirit Of Cooperation In That Each Councilmember Will Eventually Need Their Colleague's Vote. However, A Rotational System May Put A Councilmember In The Mayoral Position Who Does Not Reflect The Majority Of The Council Which Is Where Rotational Schemes Often Breakdown.**

In a rotational mayoral system, there is an annual change in the office of mayor which, theoretically, gives each member of the council an opportunity to be mayor and the opportunity to be the "face" of the city. Further, it gives each councilmember the experience of running the meetings and becoming familiar with the procedural rules governing such meetings, as well as handling constituents, working closely with staff members, etc.

There is also an idea that rotating the position of mayor among all five councilmembers provides a sense of fairness and camaraderie among the city council. Each councilmember knows that if he or she remains on the council long enough, he or she will eventually have a turn at the gavel. It can encourage the council to work together as a team.

Despite the written policies reviewed above, often the rotational policies are by "tradition," meaning they are informal and unwritten. Accordingly, there is nothing to stop a majority of the city council from skipping over a councilmember in line for the position of mayor pro tem or mayor.

Several of our municipal clients have had very successful traditions of rotating the office of mayor. Signal Hill puts Councilmembers in the following positions: Mayor, Mayor Pro Tem, Chair of Redevelopment Agency, and Vice Chair of the Agency. Councilmembers rotate

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2010.

<sup>11</sup> Action Minutes, Charter Review Commission (October 6, 2009), [http://search.surfcity-hb.org/search?q=cache:1LuH1TOIEHoJ:www.huntingtonbeachca.gov/government/boards\\_commissions/files/charter\\_review\\_commission\\_minutes\\_100609.pdf+mayor&access=p&output=xml\\_no\\_dtd&site=default\\_collection&ie=UTF-8&client=default\\_frontend&proxystylesheet=default\\_frontend&oe=UTF-8](http://search.surfcity-hb.org/search?q=cache:1LuH1TOIEHoJ:www.huntingtonbeachca.gov/government/boards_commissions/files/charter_review_commission_minutes_100609.pdf+mayor&access=p&output=xml_no_dtd&site=default_collection&ie=UTF-8&client=default_frontend&proxystylesheet=default_frontend&oe=UTF-8), last visited March 3, 2009.



through these positions annually, with the Mayor rotating into the no office position. Any new Councilmember goes to the end of the rotation. This rotation, while not a written policy, has been maintained successfully for over 30 years. Of course, there have been 3-2 Councils during this period, but Councilmembers have worked together sufficiently to respect the rotation.

Of course, this is not true everywhere. The rotational tradition breaks down in cities with contentious majorities, or where a councilmember personalizes their conflicts with other councilmembers. In this situation, they may get skipped or the rotation system may be scrapped. For example, in the City of Pittsburg they had a rotational mayoral policy. However, in 2000, the City Council made the local San Francisco newspaper when they "[broke] with decades old tradition" and skipped over the Vice-Mayor (the equivalent of Mayor Pro Tem) and appointed someone in the Council majority as Mayor instead.<sup>12</sup>

As another example, in the City of Placentia, one unpopular Councilmember was passed over numerous times for the positions of Mayor Pro Tem and Mayor, even though the City had a purported rotational mayoral policy. This is true for several other cities that we spoke to during our research.

Accordingly, having a rotational mayoral policy is no guarantee that each councilmember will serve his or her turn as mayor and/or mayor pro tem when the time comes. This is true even where there is a written policy. The City of Menlo Park had adopted a rotational mayoral policy in 1993, which basically stated that the "mayor's gavel" would rotate to each councilmember. However, in 2006, the majority of the Council ignored the policy, (as it had done one time before), arguing that it was simply there to "guide" future Councils, not bind them. The motion to make the policy an enforceable ordinance was defeated 3-2 (by the same majority who had ignored it in the first place).<sup>13</sup>

In the end, there is no way to guarantee a successful system free from the will of three councilmembers. Our experience is that a rotational system can only last so long as councilmembers maintain healthy council relations.

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<sup>12</sup> SFGate.com, Pittsburg/Council Breaks Tradition of a Rotating Mayor, December 6, 2006, [http://articles.sfgate.com/2000-12-06/bay-area/17672964\\_1\\_mayoral-vote-vice-mayor-bob-lewis-chairing-meetings](http://articles.sfgate.com/2000-12-06/bay-area/17672964_1_mayoral-vote-vice-mayor-bob-lewis-chairing-meetings), last visited March 3, 2010.

<sup>13</sup> Palo Alto Online, Menlo Park Squabbles Over Mayor Policy, January 26, 2006, [http://www.paloaltoonline.com/news/story\\_print.php?story\\_id=2311](http://www.paloaltoonline.com/news/story_print.php?story_id=2311), last visited March 3, 2010.

4. **Lack Of Council Consensus Concerning Rotational Systems Has Led Cities To Adopt Directly Elected Mayoral Systems Which Are Governed By State Law. Directly Elected Mayoral Systems Must Be Adopted By The Voters. So Shifting Council Majorities Can't Alter The System.**

Where rotational systems have failed, one result has been to go to a statutory scheme provided under State law permitting the election of the mayor directly by the voters. An example is one of our clients, the City of Lawndale where it was the rotational turn of the sole woman councilmember, who was going to be up for election. She was passed over, and then became an advocate for direct election. Eventually this was placed on the ballot and passed overwhelmingly.

The statute providing for direct election provides as follows:

“At any general municipal election, or at a special election held for that purpose, the city council may submit to the electors the question of whether electors shall thereafter elect a mayor and four city councilmen, and whether the mayor shall serve a two-year or four-year term....”<sup>14</sup>

A little more than one-third of California's incorporated cities have directly elected mayors ranging from Yountville (population approximately 3,000) to Los Angeles (population approximately 4 million).<sup>15</sup> A directly elected mayor is distinct from a rotational mayor. In general, many duties are the same - the mayor is a member of the city council and has all of the powers and duties of a member of the city council.<sup>16</sup> A further description of the powers and duties follows in Section 5 below.

In order to change from a rotational mayor to a directly elected mayor, a city must go through a statutory process. First, at any general election, or at a special election held for that specific purpose, the city council submits to the voters the question of whether they would prefer an elected mayor and four councilmembers. A second question on the ballot is whether the mayor should serve a two-year term or a four-year term.<sup>17</sup> If the majority of the voters vote “yes,” the office of the mayor will become an elective office at the next general municipal election.<sup>18</sup> It has been our experience that the voters will universally select the two-year term.

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<sup>14</sup> Cal. Gov. Code § 34900.

<sup>15</sup> League of California Cities.

<sup>16</sup> Cal. Gov. Code § 34903.

<sup>17</sup> Cal. Gov. Code § 34900.

<sup>18</sup> *Id.*

The ballot measure needs to create a system so that two of the council seats will be for four years, and two seats for two years.

California Government Code Section 34902(a) states that "one of the offices of city councilperson, to be filled at the [next general municipal] election, shall be designated as the office of mayor, to be filled at the election." Thus, if three Council seats are up for election, only two will be open for councilmembers and the other one will be open for mayoral candidates.

At any time, if the city wishes to return to a rotational mayoral system, as El Monte attempted to in November 2009, the procedure is similar – the question is placed on the ballot. If a majority of voters vote to return to a rotational mayoral system, the directly elected mayoral system will expire upon the incumbent's term.

As a side note, a person is not eligible to hold office as mayor unless he or she is at the time of assuming that office an elector of the city and was a registered voter of the city at the time nomination papers are issued to the candidate.<sup>19</sup>

One thing that is clear is that once the voters are given the choice to go to a directly elected system, they virtually universally chose to do so. Moreover, since the system is established by the voters, it may only be dissolved by the voters. Again, in our experience this rarely occurs. Lawndale has taken the question of returning to the rotational system back to the voters and this has been rejected.

A more recent example occurred in November 2009 where there was an initiative in the City of El Monte to change from a directly elected mayor to a rotational mayoral system. The arguments for the switch were that it cost nearly \$30,000 to run for mayor every two years and that it was hard to make long-term plans for the City with all the squabbling going on internally, i.e., the politics and behind-the-scenes maneuvering due to Councilmembers running for mayor. However, it failed 67 percent to 32 percent and the City of El Monte's directly elected mayor system continues.

**5. There Are Separate Statutes Regulating Directly Elected Mayors, Including Laws Pertaining To Salary. A Directly Elected Mayor Has The Power To Nominate Individuals To Regional, As Well As Local, Boards, Commissions And Committees With The Approval Of The Council. (Mayor Must Nominate And Council Approve).**

As stated previously, the powers of a directly elected mayor are substantially the same as the appointment system. Certainly a directly elected mayor can justifiably feel in a stronger

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<sup>19</sup> *Id.* at § 34904.

position visa vie the rest of the council: in an appointive system the mayor can be removed by three votes, but in a directly elected system it would take a recall by the voters.

There are differences, however. One has to do with salaries. Salaries of a city councilmember are generally dictated, by California Government Code Section 36516, which sets salary according to a city's population (and by allowing for increases by city ordinance). However, the statute relating to directly elected mayoral salaries, Section 36516.1 states:

"A mayor [directly] elected...may be provided with compensation in addition to that which he receives as a councilman. Such additional compensation may be provided by an ordinance adopted by the city council or by a majority vote of the electors voting on the proposition at a municipal election." (Emphasis added).

So, by ordinance or at an election, a city can provide that its mayor receive extra compensation on top of the compensation received for acting as a councilmember. Further, the salary of a mayor cannot be reduced during his or her current term of office, according to the Attorney General's Office (80 Ops. Cal. Atty. Gen. 119 (1997)).

Another potential difference is that in a directly elected system, the mayor nominates appointees to all city boards, committees and commissions.

"In general law cities where the office of mayor is an elective office...the mayor, with the approval of the city council, shall make all appointments to boards, commissions, and committees unless otherwise specifically provided by statute."<sup>20</sup>

In 81 Ops. Cal. Atty. Gen. 75 (1997), the Attorney General's Office interpreted this provision to mean that except where otherwise provided by statute, i.e., in the case of the Delta Protection Commission, for example, a directly elected mayor is responsible for making all appointments to local and regional boards, commissions and committees.

However, those appointments are subject to the approval of the city council, although that approval is similar to the "advice and consent" provision of the United States Constitution" (U.S. Const., art II, § 2(2)) (81 Ops. Cal. Atty. Gen. 75). Thus, the city council cannot direct the mayor to appoint a specific person. (*Id.*)

In the City of Palm Springs which established a directly elected system, the difficulties of this system were illustrated when the Mayor had a serious disagreement with one Commissioner and refused to reappoint him. The rest of the Council would not approve the Mayor's nominees,

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<sup>20</sup> Cal. Gov. Code § 40605.

and the Mayor would not reappoint the incumbent (who went off the Commission when his term was up). The position remained vacant for six months until the Mayor relented.

**6. A Number Of Cities Have Switched From Rotational Mayoral Policies To Directly Elected Mayors With Success. Cities Can Rarely Switchback As Given The Choice, Voters Prefer Direct Election. One City, El Monte, Recently Tried Via Initiative To Switch From Directly Elected Mayor To A Rotational Mayoral System But The Initiative Failed.**

Cities which have gone to directly elected systems have operated successfully under the system for many years. Lawndale cited previously, has had its system now for over two decades, and it did resolve the rotation disputes.

There are certain advantages to a directly elected mayor. The elected mayor has the opportunity to campaign on a platform of issues and is then elected, theoretically, to accomplish those issues. A mayoral race may raise council visibility in general and get voters interested in the issues. The elected mayor has two or four years, instead of one, to work on issues, which can create a sense of stability.

The system can give the community a chance to interface closely with one visible person while making that person accountable for his or her campaign promises. A directly elected mayor can also provide consistency in getting the community involved, e.g., setting up committees to examine local problems and other long-term goals that may fall by the wayside with a mayor who only gets to serve one term.

There are also disadvantages to a system revolving around a directly elected mayor. There can be a tendency for the mayor to separate himself or herself out from the council and work less as a teammate than someone elected by his or her peers to serve a one-year term. At times, the agenda of the mayor may differ from that of the council, i.e., he or she may have been elected on certain points that the council does not agree with and will have to learn to work with the rest of the council as a group in order to accomplish these tasks or there may be animosity within the council.

Beyond these points, there is a huge drawback. It is our experience that when the voters are given the chance to select the mayor's term of office, they generally pick the two year term (and when given future opportunities to change to a 4 year term, they retain the 2 year term). This means that every time the mayor is up for election, there are two incumbent councilmembers who are not up and have a free ride to run against the mayor. As the proponents of the initiative in El Monte pointed out, it doesn't create a great deal of camaraderie among the council when they are running against one another for mayor and fighting it out on the campaign trail. This creates endless competition and strife amongst the councilmembers. In the end the

negative dynamic which leads to the breakdown of the rotational system is shifted into an electoral format where voters are asked very two years to resolve these intra council conflicts.

As a side note, where incumbent councilmembers run, it can also create council vacancies when they win, which have to be filled by appointment – another consideration as this can also cause instability, and lead to the cost of a special election if the councilmembers can't agree on a replacement.

7. **The Rules Of The City Council Give The Mayor The Power To Appoint Councilmembers To All Positions On Committees And Commissions As Representatives Of The City On Non-City Boards And Commissions After Consultation With The City Council, But Other Policies Require Council "Approval" For "Council Committees" While Still Other Policies and Ordinances Contemplate One Appointment By Each Councilmember. These Policies Could Be Made More Uniform By The Council.**

Generally, in Banning there are three types of committees: (i) those on which only Councilmembers are appointed to, which include non-City Boards and Commissions, as well as ad hoc "Council Committees" (2x2s); (ii) those standing committees on which residents and non-residents serve, such as Economic Development; and (iii) those on which purely citizens are appointed to serve and which "serve in the conduct of the operation of the City government" (Rules of the City Council, Section IV, Paragraph 4.2), such as Planning Commission and Parks and Recreation Committee.

As a general rule, Section II (Meetings), Paragraph I (Appointments), Subsection 2.40 of the Rules of the Council states:

"Except as otherwise provided herein or by law, including the Banning Ordinance Code, all appointments to positions on committees and commissions or of Council members as representatives of the City on non-City boards and commissions, shall be made by the Mayor after consultation with the City Council."

Thus, basically, the Mayor has the power of appointment, unless it is stated otherwise in the Banning Municipal Code, the Rules of the City Council, or dictated by state law. However, he or she must "consult" with the City Council, although that is an undefined term. This would appear to include all regional boards and commissions as well as all other boards and commission not mentioned specifically elsewhere. As a side note, there are particular regional committees that requires the city's mayor to be the representative (i.e., the League of California Cities Executive Board Representative), so in those cases, the Mayor has no choice but to appoint himself or herself.

However, there is something of a conflict in the Council rules for ad hoc "Council committees" (2x2). Section IV (Committees and Commissions), Paragraph 4.1, of the Rules of Council for the Banning City Council, states as follows: "...Except as otherwise specifically provided by law, the Mayor shall appoint the members of the Council committees, subject to the approval of the Council..." Here, it states that "Council committees" are "subject to the approval of the Council," and that phrasing is different than "after consultation with the City Council," as used in Section II. The phrasing "subject to the approval of the Council" is the same as that used in the statute pertaining to the power of appointment of a directly elected mayor, as discussed above in Section II.5. However, there is, of course, no case law interpreting the meaning of "subject to the approval of the Council" for the Rules of the City Council. Rules of statutory construction require giving meaning to words and language, and the different phrasing must be given meaning. "Subject to the approval of Council" in Section IV would seem to require, as in the case of directly elected mayors, actual approval by the Council. In effect, the Council has a veto. We interpret it to mean only those committees under (i) above where only councilmembers are members. The language in Section II, however, requiring only "consultation" must mean something different and our interpretation would be that once the Mayor hears the opinions of other councilmembers, the Mayor is free to ignore the opinions and make the appointment as the Mayor desires.

The Banning Municipal Code gives specific requirements for several different City commissions and committees, including the Planning Commission, the Economic Development Committee, the Parks and Recreation Advisory Committee, the Public Works Advisory Board, the Design Review Board, and the Disaster Council (where the Mayor is automatically chairperson and the membership is set by ordinance, although citizens can serve "at-large" at the pleasure of the City Council). Council rules for these appointments are not necessarily uniform. Further, although the ordinances set forth specific rules for appointment, on April 25 2006, the City Council voted to adopt a recommendation by then City Manager Randy Anstine pertaining to City Commissions, Committees and Boards stating that that "All appointments shall be made by the City Council." (Exhibit "C"). In addition, basically, the rules and procedures applied to the Planning Commission would be uniformly applied to all City Commissions, Committees and Boards, including the appointment process.

However, this change in procedure was not reflected in the Rules of the City Council, and the adoption of a policy would not modify an ordinance. Although, the City Clerk has informed us that the Council has informally followed the policy, no changes to the other rules were made. Section IV, Paragraph 4.2 of the Rules of City Council continues to state, that: "Membership and selection of members shall be one appointment by each member to a term to coincide with the member['s] term unless otherwise expressed by Ordinance/Resolution creating said Board. Moreover, in spite of the Council's decision to change the way appointments were made in 2006, the Banning Municipal Code Section 2.40.030(A) still states as follows: "Each appointment to the parks and recreation committee shall be by a city councilperson to a term to run concurrent with the term of the appointing councilperson. Each councilperson shall have one appointee to the committee." Thus, the ordinance coincides directly with Section IV, Paragraph 4.2 of the

Honorable Mayor and Members of the  
Banning City Council  
Andrew Takata, City Manager  
Page 14

Rules of the City Council and requires that each Councilmember choose one member of the Committee. However, this appears to conflict with the Council's 2006 decision and the current way things are being done in the City.

The Planning Commission appointments (Banning Municipal Code Section 2.28.020(B)) "shall be made by the City Council." This wording is consistent with the staff recommendation in 2006 and the Council's subsequent decision. However, is the intent that "the City Council" comply with its general policy in Section II (Mayor after consultation) or the policy in Section IV (one appointment by each member, which would be appear to be inconsistent with its 2006 decision), or does neither policy apply and "City Council" means a majority of the full body?

Further, the 2006 Council decision to change all City Commissions, Committees and Boards to "All appointments shall be made by the City Council" conflicts directly with certain provisions in the Banning Municipal Code. As described above, Section 2.40.030(A), which describes the appointment process for the Parks and Recreation Advisory Committee states: "Each councilperson shall have one appointee to the committee." Accordingly, the Council may wish to amend some sections of the Municipal Code to make it consistent with the 2006 decision that "All appointments shall be made by the City Council," however that phrase is defined.

When the Council operates cooperatively by consensus these potential conflicts are insignificant. The Council recently filled the Planning Commission vacancies in a cooperative manner involving the full Council. However, in the future such discrepancies could become a problem. Of course, the Council's Rules of Procedure can be changed with majority vote. They should not conflict with an ordinance or with each other. The Council may wish to review potential conflicts in appointment procedures and establish a uniform procedure.



**RESOLUTION NO. 2004-16**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF INDIAN WELLS,  
CALIFORNIA, AMENDING SECTIONS 3.05.010 AND 3.06.010 OF THE  
POLICY MANUAL RELATING TO SELECTION OF THE MAYOR AND TERM  
OF OFFICE**

**BE IT RESOLVED** by the City Council of the City of Indian Wells as follows:

**SECTION 1.** Sections 3.05.010 and 3.06.010 of the City Council/Redevelopment Agency Policy Manual are amended to read as follows:

**3.05.010 ELECTION AND TERM OF OFFICE FOR MAYOR.**

**3.05.010(a)** The City of Indian Wells has a council/manager form of City government. All five (5) members of the City Council are elected at large to four (4) year terms. The Mayor is selected by the Council following the normal Council elections and annually thereafter for a one (1) year term. The Mayor can be changed at any time through a majority vote of the Council. The Mayor remains as one member of the City Council and has no rights or authority different from any member of the Council.

**3.05.010(b)** The order of mayoral succession shall be determined by the length of the current term of incumbency, as defined by the date of election. When two (2) or more council members have equal terms of incumbency, the order shall be determined by the highest number of votes received at their election to the city council. The current rotation is as follows:

Mary T. Roche - Mayor  
Percy L. Byrd - Mayor Pro-Tem  
Ed Monarch  
Conrad Negron, Sr.  
Robert A. Bernheimer

**3.05.010(c)** The outgoing mayor's name will rotate to the bottom of the previous year's mayoral succession list, with all other names moving up one position, in order that the outgoing mayor pro-tem shall become the new mayor, and the next council member on the list shall become the new mayor pro-tem.


**3.050.010(d)** Newly elected council members shall be added to the bottom of the mayoral succession list, following the outgoing mayor in that election year's council reorganization. When there are two (2) or more newly elected council members, the order shall be determined by the person who received the highest number of votes at the election.

**3.050.010(e)** Any council member appointed to fill a vacancy shall be added immediately to the bottom of the mayoral succession list. In the event the appointment is to fill a vacancy at the mayor or mayor pro-tem's position, all other names on the succession list shall move up one position.

**3.06.010 ELECTION AND TERM OF OFFICE FOR MAYOR PRO TEM.**

The City of Indian Wells has a council/manager form of government. The Mayor Pro-Tem is elected by and serves at the pleasure of the City Council. The Mayor Pro-Tem will be appointed as the Mayor when there is a vacancy in the office of Mayor. All five members of the City Council are elected at-large to four (4) year terms. The Mayor Pro-Tem is selected by the Council following the normal Council elections and annually thereafter for a one (1) year term. The selection of the Mayor Pro-Tem will follow the rotation policy stated in Section 3.05.010. The Mayor Pro-Tem can be changed at any time through a majority vote of the Council.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Indian Wells, California, at a regular meeting held on this 15<sup>th</sup> day of April 2004.

  
\_\_\_\_\_  
**MARY T. ROCHE**  
**MAYOR**


**CERTIFICATION FOR RESOLUTION NO. 2004-16**

I, Linda Furbee, City Clerk of the City Council of the City of Indian Wells, California, **DO HEREBY CERTIFY** that the whole number of the members of the City Council is five (5); that the above and foregoing Resolution was duly and regularly passed and adopted at a regular meeting of the City Council of the City of Indian Wells on the 15<sup>th</sup> day of April 2004, by the following vote:

AYES: Bernheimer, Byrd, Monarch, Negron, Roche  
NOES: None

**ATTEST:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
**LINDA FURBEE**  
**CITY CLERK**

  
\_\_\_\_\_  
**STEPHEN P. DEITSCH**  
**CITY ATTORNEY**

RESOLUTION NO. 01-110  
OF THE CITY OF PALM DESERT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM DESERT,  
CALIFORNIA, SETTING FORTH A POLICY ON THE OFFICE OF MAYOR  
AND THE OFFICE OF MAYOR PRO-TEMPORE

WHEREAS, the City Council of the City of Palm Desert, California, must appoint from its own members two Council members to serve as Mayor and Mayor Pro-Tempore; and

WHEREAS, it has been the desire of each City Council serving the City of Palm Desert since incorporation to make these positions honorary in nature, held for a one-year period of time; and

WHEREAS, it is this City Council's opinion that each member elected to the Council is equally qualified and deserving to hold these offices, and each Council member should be given ample opportunity to serve in one or both of these offices.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Palm Desert, California, that the appointments of Mayor and Mayor Pro-Tempore shall be made on an annual rotating basis, and no one Council member shall serve a term in either office to exceed a one-year period of time. The selection shall be made and the term commence at the first regular council meeting in December.

BE IT FURTHER RESOLVED, prior to any member of the Council being appointed as Mayor such Council member shall have been a member of the Council for approximately two years and the Mayor Pro-Tempore shall have been a member of the Council for at least one year prior to being selected for those respective offices.

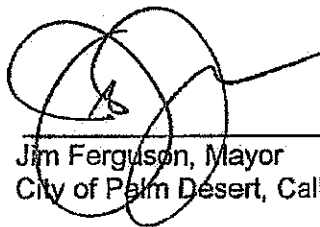
PASSED, APPROVED AND ADOPTED by the City Council of the City of Palm Desert, California, at its regular meeting held on the 11th day of October, 2001, by the following vote, to wit:

AYES: BENSON, CRITES, KELLY, SPIEGEL, FERGUSON

NOES: NONE


ABSENT: NONE

ABSTAIN: NONE

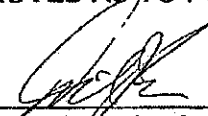


Jim Ferguson, Mayor  
City of Palm Desert, California

ATTEST:

By:   
for Sheila R. Gilligan, City Clerk  
City of Palm Desert, California

APPROVED AS TO FORM:

By:   
David J. Erwin, City Attorney  
City of Palm Desert, California

Excerpt of the Minutes of April 25, 2006

REPORTS OF OFFICERS

1. Analysis of City Commissions/Committees/Boards.  
(Staff Report – Randy Anstine, City Manager)

City Manager said that with the recent reorganizations that have taken place within the City administration the Council directed him to go back and do an analysis and a review of the existing commissions and committees that are under the auspices of the City. Banning like virtually every city in American has a number of citizen commission and committees organized in a variety of ways and performing a variety of functions. Council has asked the staff to explore the current status of how the commissions, the committee and the boards were established and assigned to the various departments of the City. Historically, each member of the City Council has been allowed to nominate one member whose appointment is subject to ratification by the City Council. After consultation with the various department directors, this report is attempting to outline some suggested changes related to the manner of appointment and assignments of members to boards and committees. He has listed and detailed the legal authority that covers each one of these committees or commissions. The ones that he had studied were the Planning Commission, Parks and Recreation Committee, Ruth Hooker Committee, Transit ADA Advisory Committee, Pass Area Transit Task Force, Skatepark Task Force, Public Works Advisory Committee, Water Utility Advisory Committee and the Economic Development Committee. Based upon that analysis and consultation with the various departments he has come up with a series of recommendations. On October 25, 2005, the City Council adopted Ordinance No. 1332, which amended Banning Municipal Code Sections 2-5 through 2-9. This Ordinance set forth the manner in which Planning Commissioners are appointed. It details the Membership Requirements, Term and Vacancies, Compensation, Rules of Procedure and Responsibilities. City Manager went over those recommendations.

Councilmember Welch said maybe it says itself by omission but there is no where in here regarding terms and vacancies that suggest incumbents. Once you serve your four years can you reapply, should not reapply, and are there term limits. There is nothing in here that gives guidance. Is it included by its absence?

City Attorney Biggs said if there is no prohibition against continuing or being reappointed, then it is just left alone.

Mayor Machisic asked does that mean now that every commission and committee only has five members. City Manager said if Council so chooses. Is that a given to the Council.

Mayor Pro Tem Hanna said no, not to her. In particular, the Public Utility Advisory Committee that is being recommended she doesn't think needs to be maintained at five. That is a very diverse subject. She said it says the primary function is to review and recommend utility rates as well as review of special projects. She would assume that that

going to be organizing a youth forum at Nicolet for 7 and 8<sup>th</sup> graders and she will be doing a focus with the group this Friday for them to determine what the theme is or the issue that would most compelling to 7<sup>th</sup> and 8<sup>th</sup> graders and as soon as she knows the date on that she will pass it along. She is not sure sitting in on City meetings is going to be that interesting to youth.

Councilmember Salas said first of all we don't know unless we try. Secondly, maybe we offer it in some of their bulletins and let them apply so if they have the interest, they can apply. We shouldn't mandate that there must be student participation in that meeting. Maybe even focus on the high school juniors and seniors who might potentially look into some of those fields.

Mayor Pro Tem Hanna said that if this was passed she would encourage the Mayor to direct some planning to allow the possibility of this being successful.

Mayor Machisic said he would like to offer an idea. We develop this youth council which would be young people and then why don't we at that point offer them the opportunity to serve on these other committees. If they have the interest for it, they will do it themselves. If they have the interest for a particular committee for instance the Park and Recreation Committee, they might go. We will see if there is any interest. Rather than trying to appoint someone to all the committees let the youth council get together and present them with the problem and see what the solution is.

Mayor Pro Tem Hanna said her suggestion is that the Mayor might appoint some small committee to work on this and develop a plan on how this will be realized.

**Motion Hanna/Salas to approve the recommendation as presented by staff with the changes.**

Mayor Machisic opened the item for public comments.

Bob Botts, 5410 Pinehurst and Chairman of the Economic Development Committee addressed the Council saying that he thinks what he has heard the Council say was 5 to 7 members on a committee. He thinks that five would limit the Economic Development Committee with two of the members being Councilmembers it would limit them to three public members. The other clarifications are to make it a standard four-year term and he thinks that is clear but the other was to have all of the Council voting for appointees and not from individual Council and he thinks that is what he heard.

Larry Rand, 694 N. 20<sup>th</sup> said it is a great idea to standardize this.

**Motion carried, all in favor with Councilmember Palmer absent.**

## **CITY COUNCIL AGENDA REPORT OF OFFICERS**

**Date:** April 25, 2006

**TO:** Honorable Mayor and City Council

**FROM:** Randy Anstine, City Manager

**SUBJECT:** Analysis of City Commissions/Committees/Boards

### **OBJECTIVE**

The purpose of this report is to propose changes to the City's Commissions, Boards and Committees in order to comply with Banning Ordinance 1332.

### **RECOMMENDED ACTION**

It is respectfully recommended that the City Council after hearing a presentation from staff provide direction to staff concerning appointments to and function of City Commissions, Boards, and Committees.

### **BACKGROUND**

Banning, like virtually every city in America, has a number of citizen commissions and committees, organized in a variety of ways and performing a variety of functions. Council has asked staff to explore the current status and how Commission/Committee/Boards are established and assigned to the various departments of the City.

Historically, each member of the City Council has been allowed to nominate one member whose appointment is subject to ratification by the City Council. After consultation with the various City departmental directors, this report will attempt to outline some suggested changes related to the manner of appointment and assignments of members to boards and committees.

### **LEGAL AUTHORITY**

Presently the legal authority governing the appointment of City Commissions and Committees is governed by:

- Banning Municipal Code Section 1-10 – Residence Requirements For Members of Commissions
- Banning Municipal Code Section 2-5 through 2-9 – Planning Commission
- Banning Municipal Code Section 2-51 - 2-54

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## **CURRENT LIST OF COMMISSION, COMMITTEES AND BOARDS**

At present the following Commission, Committees and Boards exist:

- Planning Commission
- Parks and Recreation Committee
- Ruth Hooker Committee
- Transit ADA Advisory Committee
- Pass Area Transit Task Force
- Skatepark Task Force
- Public Works Advisory Committee
- Water Utility Advisory Committee
- Economic Development Committee

## **RESPONSIBILITIES**

***Planning Commission (Legal Authority – Government Code Section 65100, 65101 and 65102; Banning Municipal Code Section 2-5 through 2-9):*** This Commission shall exercise those functions of the planning agency of the City delegated to it in the Banning Municipal Code. The Commission prepares, reviews, adopts and recommends to the City Council for its adoption, a long range, comprehensive General Plan to guide the future physical development and conservation of the City and its adjoining environs based on geographic, social, economic and political characteristics of the community. Commission prepares, reviews, adopts and recommends to the City Council for its adoption special area specific plans for identifiable areas wherein more detailed guidelines are needed to supplement the objectives of the General Plan. Commission reviews development applications submitted to the City for consistency with adopted plans and ordinances. Approves or denies applications when final authority is granted to the Planning Commission. Makes a recommendation on those actions for which the City Council is the final reviewing approval authority. Commission acts as the appeal body on decisions made by the Community Development Director. Commission performs such other functions and duties as the City Council may from time to time direct and/or provide within the Banning Municipal Code.

***Parks and Recreation Advisory Committee (Legal Authority – Banning Municipal Code Section 15-1 through 15-3):*** The City Park and Recreation Advisory Committee serves as an advisory Committee to the City Council and the Director of Community Services for the purpose of the formulation of rules, regulations, and policies for all parks and recreation programs, activities, and fees.

***Ruth Hooker Committee (Legal Authority – Banning City Council):*** This Committee was created by a majority of the City Council several years ago. Its purpose is to oversee the use of a \$60,000.00 bequest to the Banning Senior Center (made by Ruth M. Hooker). The bequest was given with the intent that it

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be used to provide meals for the elderly of Banning. The Committee meets on an "as needed basis" and has not met in many years.

**Transit ADA Advisory Committee (Legal Authority – Federal Mandate):** This Committee was formed by staff and meets quarterly. The Committee is required for the City's transit system to be in compliance with the Federal Americans With Disabilities Act (ADA) of 1990. The Committee reviews dial-a-ride statistics, advises transit staff on accessibility issues, and serves as the appeal board for the ADA complementary paratransit certification process.

**Pass Area Transit Task Force (Legal Authority – Banning City Council):** This Task Force was created by a majority vote of the City Council. The Task Force was formed to review the work of a consultant hired to conduct a transit needs assessment of the Pass Area and to develop a transit plan that addresses identified needs. The Task Force is made up of one City Council member from Banning, Beaumont, and Calimesa, a representative from the County Supervisors Office, representative from the Morongo Band of Mission Indians, Banning Community Services Director, Beaumont Transit Manager, RTA staff, SunLine staff and RCTC staff. This group meets on an "as needed basis".

When the study was completed, the Task Force chose to continue to meet to advise staff on the implementation of the Pass Area Transit Plan and serve as a forum to discuss regional transit issues. The current membership was expanded to include a representative from the Riverside County Employment Development Division office in Banning.

The Task Force meets on an "as-needed basis", which turns out to be about once every two to three months. The Task Force has shown itself to be a valuable link between the different agencies represented.

**Skatepark Task Force (Legal Authority – Banning City Council):** This Task Force was created by a majority vote of the City Council. The Task Force was formed to assess the feasibility of building a skatepark in Banning. This purpose quickly shifted to finding the funds to build the facility. The Task Force membership is made up of two City Council members, the City Manager, Community Services Director, a representative of the Banning Police Department, a Parks and Recreation Committee member, two community members at-large, and seven skateboarders. There are no established guidelines for the Task Force. This Task Force is essentially dark. Several of the members have resigned from the Task Force. A letter was sent to the members asking them if they wanted to recommit to the effort. No one responded. The last meeting of the Task Force was held in December 2001.

**Public Works Advisory Committee (Legal Authority – Banning Municipal Code Section 2-51):** This Committee was formed in May 1996. The primary function of the committee is to review the public Works programs, utility rates &

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other related functions. This committee meets on regular basis as set forth in the Ordinance. Per Ordinance the Committee is scheduled to meet quarterly, but historically, the Committee has met monthly. This Committee was mainly formed to advise the City Council utility rates, cable television franchise agreement and act as the airport committee.

**Water Utility Advisory Committee (Legal Authority – Banning City Council):** The Water Utility Advisory Committee was created in August, 2002 by City Council action. It appears the intent of the City Council was to have this Committee work as an adhoc Committee and meet on an "as needed basis" with no termination date set. The Committee has 9 members including two former Council members, a Planning Commissioner, a Public Works Advisory Committee member & four members from Community at large. There are no specific guidelines for this Committee. The Committee has not met for at least last 10 months. Water Superintendent has coordinated the meetings for this group. There is definitely some overlap between these this committee and the Public Works Advisory Committee.

**Economic Development Committee (Legal Authority – Banning Municipal Code Section 2-94):** The Economic Development Committee was established for the purpose of participating in the implementation of the City's economic strategic plan/implementation plan as approved by the City Council. The Committee is to advise the City Council on the economic impacts of proposed development within the City. The Committee reviews and advises the City Council on proposed economic development project within the City, as well as advising the City Council on economic development trends and/or program that may impact the City fiscally or economically.

#### **STAFF RECOMMENDATION(S)**

On October 25, 2005, the City Council adopted Ordinance No. 1332, which amended the Banning Municipal Code Sections 2-5 through 2-9. This Ordinance set forth the manner in which Planning Commissioners are appointed. It details the Membership Requirements, Term and Vacancies, Compensation, Rules of Procedure, Duties and Responsibilities.

**Recommendation 1:** Staff would respectfully recommend that for the sake of uniformity and continuity, Council utilize the requirements imposed on the Planning Commission for all City commissions, committees and boards. Specifically:

- All members shall be residents of the City of Banning who hold no other municipal office in the City.
- Members may not be employees of the City of Banning.
- Members shall serve four (4) year terms which shall be staggered every two years concurrent with the City elections.
- All appointments shall be made by the City Council.

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- Members shall serve at the pleasure of the Council and may be removed at any time by a majority vote of the entire Council.
- Any member who is unexcused for two consecutive regular meetings or six meetings within a 12 month period, whether the six meetings are excused or not, will be deemed to have resigned their office and the City Council may appoint a new member to serve the resigned Members place for the remainder of their term.
- To be excused from any such meeting, a Member shall notify the appropriate City Department 48 hours prior to any such meeting. If a Member is unable to attend due to illness, injury or family matters, a statement by the Member at the next regular meeting shall constitute an excused absence.
- Members shall not receive compensation; reasonable traveling expenses to and from conferences and/or special field trips and training sessions shall be reimbursed.
- Members shall adopt rules for the transaction of business and shall keep a record of its transactions, findings, and determinations. The Brown Act and "Robert's Rules in Plain English" by Doris P. Zimmerman (Harper Perennial) shall be incorporated into such rules.
- Members shall follow all applicable City fiscal and administrative policies and procedures.

**Recommendation 2:** Following consultation with the Director of Community Services it is respectfully recommended that the Ruth Hooker Committee, and the Skatepark Task Force be disbanded. They have served their specific purpose and are no longer necessary.

**Recommendation 3:** Following consultation with the Directors of Public Works, Electric Utility and Public Utility it is respectfully recommended that the Water Utility Advisory Committee be Disbanded. With the recent reorganization of the Public Works Department it is felt that the Committee would better serve the City if it was merged with the Public Works Advisory committee and renamed the Public Utility Advisory Committee. The primary function of the new Committee would be to review and recommend the Utility rates of City owned utilities as well as review of special projects as deemed necessary by the City Council.

**Recommendation 4:** Councilmembers have expressed an interest in having the Banning youth actively participate in the government process. Staff would recommend that Council give consideration to creating and appointing a Youth member to each of the various committees.

**Strategic Plan Integration**

N/A

**Budget/Cost Impact**

N/A

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