

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

March 8, 2011
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

Per City Council Resolution No. 2010-38 matters taken up by the Council before 9:00 p.m. may be concluded, but no new matters shall be taken up after 9:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.

I. CALL TO ORDER

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

II. REPORT ON CLOSED SESSION

III. 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.

IV. 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 6

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 Meeting – 02/22/11.....	1
2.	Approval of Minutes – Regular Meeting – 02/22/11	2
3.	Report of Investments for January 2011.....	15
4.	Ordinance No. 1436 – 2 nd Reading: An Ordinance of the City Council of the City of Banning, California, Amending Banning Municipal Code Chapter 8.32 and 8.48 Relating to Graffiti Prevention, Removal and Cost Recovery	25
5.	Adoption of Resolution No. 2011-11, Authorizing the Banning Police Department to Destroy Internal Affairs Records in Excess of Five Years from Date of Completion Per California government code section 34090 California Penal code Section 832.5.....	38
6.	Resolution No. 2011-16, Approving the Lease Agreement with Waste Management of the Inland Empire for the Lease of a Portion of the Property Located at 176 E. Lincoln Street	44

- Open for Public Comments
- Make Motion

V. PUBLIC HEARINGS

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

1.	Second Reading of Ordinance No. 1437 Amending Title 6 of the Banning Municipal Code to Regulate and Control the Keeping of Animals.	
	Staff Report	76
	Recommendation: That the City Council hold a public hearing and introduce the second reading of Ordinance No. 1437, Amending Title 6 of the Banning Municipal Code by adopting by reference the entirety of Title 6 of the Beaumont Municipal Code entitled “Animals” to regulate and control the keeping of animals.	

Mayor asks the City Clerk to read the title of Ordinance No. 1437:

“An Ordinance of the City Council of the City of Banning, California, Amending Title 6 of the Banning Municipal Code by Adopting by Reference the Entirety of Title 6 of the Beaumont Municipal Code Entitled “Animals” Relative to Animal Control and Regulation.”

Motion: I move to waive further reading of Ordinance No. 1437.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1437 pass its second reading and be adopted.

2. Resolution No. 2011-10, A Resolution of the City Council of the City of Banning, Approving Adoption of the Banning Park and Recreation Master Plan Update.

Staff Report 147

Recommendation: **That the City Council adopt Resolution No. 2011-10, Approving Adoption of the Banning Parks and Recreation Master Plan Update.**

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 – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Update on Economic Development Plan (*May 24th*)
3. Review of Fees and Rates
4. Consideration of Speaker Cards (*April 12th*)
5. Annual Review of Pledge of Civility and Code of Conduct (*Mar. 9th*)
6. Discuss Council Attendance/Costs to Attend Various Events
7. Policy Discussion Re. Code Enforcement (*study session*)
8. Update on Shop Local Program

VIII. ADJOURNMENT

Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Thursday, 8 a.m. to 5 p.m.

NOTICE: Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A three-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to "share" his/her three minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (951) 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

02/22/11
JOINT MEETING

A joint meeting of the Banning City Council and the Community Redevelopment Agency was called to order by Mayor Hanna on February 22, 2011 at 4:03 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS/

BOARDMEMBERS PRESENT:

Councilmember Botts
Councilmember Franklin
Councilmember Machisic
Councilmember Robinson
Mayor Hanna

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager/Executive Director
David J. Aleshire, City Attorney/Agency Counsel
Duane Burk, Public Works Director
Zai Abu Bakar, Community Development Director
Steve Dukett, Consultant
Marie A. Calderon, City Clerk/Secretary

CLOSED SESSION

City Attorney said that the City Council would meet in closed session pursuant to Government Code Section 54957.6 with regards to labor negotiations with International Brotherhood of Electrical Workers (IBEW – Utility Unit), IBEW – General Unit, Banning Police Officers Association (BPOA); and City of Banning Association of Managers (CBAM); also pursuant to Government Code Section 54956.9(a) with regards to one matter of pending litigation – Banning Airport Associates, v. Banning (Riverside Superior Court Case No. RIC 497338) and would give an update on that matter. The City Council would also meet pursuant to Government Code Section 54957 with regards to City Attorney and City Manager evaluations. He stated that the Agency Board would not meet in closed session in regards to the real property negotiations concerning Westview Terrace.

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

Meeting went into closed session at 4:04 p.m. and returned to regular session at 4:49 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 5:04 p.m.

Marie A. Calderon, City Clerk/
Agency Secretary

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

02/22/11
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Hanna on February 22, 2011 at 5:03 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager
David J. Aleshire, City Attorney
Duane Burk, Public Works Director
Zai Abu Bakar, Community Development Director
Fred Mason, Electric Utility Director
Leonard Purvis, Police Chief
Phil Holder, Lieutenant
Daniele Savard, Executive Secretary
Marie A. Calderon, City Clerk

The invocation was given by Councilmember Botts. Councilmember Franklin invited the audience to join her in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney said that the City Council met in closed session and a status report was given concerning labor negotiations and direction was given for further negotiations with the City's bargaining groups. A status report was also given on a litigation matter concerning Banning Airport Associates v. Banning (Riverside Superior Court Case No. RIC 497338) and direction was given for further discussions. The City Council also met regarding personnel evaluations involving the City Attorney and the City Manager. No reportable action was taken on any of those matters.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

There were none.

CORRESPONDENCE: There was none.

APPOINTMENTS:

1. Appointment to Parks and Recreation Advisory Committee

Mayor Hanna said last week the City Council had a special meeting and interviewed four candidates. There is actually another opening that just came about due to the resignation of a member of the Parks and Recreation Advisory Committee however that position needs to be posted for ten days before the Council can officially make that appointment.

Councilmember Franklin said that there were four very good applicants and it was good to see that the public actually responded and seeing that we have a need here. We did have one person that responded prior to the first deadline so she would like to nominate for the current opening Leroy Miller.

Councilmember Robinson said he would like a clarification that if the other candidates are willing to holdover the ten days and keep the applications on file or do they have to reapply again.

Mayor Hanna said or could we have a second candidate and have that person fill the position after notification.

City Attorney said an opening that is unscheduled when it becomes vacant does have to be posted for ten days before it can be filled. However, the Council could certainly direct that all of the applications that you have already received will be held for this position and they don't need to reapply but any new applications you get during the ten day period after the posting would also be added into the mix.

Motion Botts/Machisic that nominations be closed and direct staff to carryover all the applications as well as posting for the new vacant position. Motion carried, all in favor.

There was a vote taken and consensus of the Council that Leroy Miller be appointed to the Parks and Recreation Advisory Committee.

CONSENT ITEMS

1. Approval of Minutes – Regular Meeting – 01/25/11

Recommendation: That the minutes of the regular meeting of January 25, 2011 be approved.

2. Approval of Minutes – Study Session – 02/08/11

Recommendation: That the minutes of the study session of February 8, 2011 be approved.

3. Approval of Minutes – Regular Meeting – 02/08/11

Recommendation: That the minutes of the regular meeting of February 8, 2011 be approved.

4. Approval of Minutes – Special Meeting – 02/15/11

Recommendation: That the minutes of the special meeting of February 15, 2011 be approved.

5. Approval of Accounts Payable and Payroll Warrants for Month of November 2010

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

6. Approval of Accounts Payable and Payroll Warrants for Month of December 2010

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

7. Report of Investments for December 2010

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

8. Adoption of Resolution No. 2011-12 and 2011-13, Approving the Side Letter of Agreements Between the City of Banning and the International Brotherhood of Electrical Workers Local 47 Which Modify and Clarify the IBEW Memorandum of Understanding's Governing Both the Utility Unit Employees and the General Unit Employees for the Period July 1, 2010 through June 30, 2011.

Recommendation: That the City Council approve the Side Letter Agreements between the City of Banning ("City") and the International Brotherhood of Electrical Workers Local 47 ("IBEW") which modify and clarify the IBEW Memorandums of Understanding governing both the Utility Unit employees and the General Unit employees for the period July 1, 2010 through June 30, 2011.

Motion Machisic/Robinson that Consent Items 1 through 8 be approved. Mayor Hanna opened the item for public comments. There were none. **Motion carried, all in favor.**

PUBLIC HEARINGS

1. Amendment to Title 6 of the Banning Municipal Code to Regulate and Control the Keeping of Animals.
(Staff Report – Andy Takata, City Manager)

Councilmember Robinson said that because he owns a business that deals with animal care he will abstain from this discussion and he left the Council Chambers at this time.

City Manager stated that as you are aware we have been working with the City of Beaumont for animal control and we have had a lot of positive comments about their visibility, as well as, their handling of some of the animals. Even though our ordinance was closely related to what they had we wanted to have the exact same ordinance so that it would work, as well as, the exact same fees and that way they could have lifetime licenses for those who spay and

neuter and also the officers would not have to use two different sets of ordinances to enforce. He said that the relationship so far has been excellent. As far as costs year to date it is roughly \$63,000 dollars that we have been billed. He said that he thinks the animal control from the county including sheltering was going to be about \$350,000 for the whole year so basically we have seen a great amount of savings in regards to that. He said it has been a pleasure to work with Beaumont and he invited Frank Coe, Police Chief to come forward at this time.

Chief Coe addressed the Council introducing Sgt. Jeremy Duro who along with his sergeant duties oversees the Animal Control Program for the cities of Calimesa, Beaumont, and Banning and also they are in discussions with the Morongo Reservation to kind of complete the circle and cover from Calimesa to Cabazon. Basically, as the City Manager indicated, they are looking to make this as easy and seamless as possible. They have basically been enforcing their ordinance which is very close to the county's ordinance in all three cities. It is not their goal in any way, shape or form to use the ordinance as a way to penalize people to generate revenue from administrative citations. They actually reserve that for those significant problems that they cannot get through to the people to get them into compliance. It has actually been working very well and they have identified some issues and concerns within the community of Banning and they have addressed them. They have tried to work very closely with the residents to overcome any of their fears or concerns that we are going to utilize tactics that are going to take the animals and put them down and of course, that is not their goal. They offer several very unique programs and the signature program that they are most proud of is what they call the "lifetime license". Basically their goal there was to encourage responsible pet ownership. This would allow a pet owner to spay or neuter their animal and insert a microchip into the animal and then offer them the lifetime license and they will pay a fee of \$8.00 and although it is called "lifetime" they have to renew their license each time they get their rabies vaccination so if they get a one-year or a three-year vaccination it will go into their system and the person will get a reminder at that time. Also the license tags say "San Gorgonio Pass Animal Licensing". To date they have responded to approximately 1400 calls for service in 6 months. Out of those 1400 calls they have generated bills to the City of Banning which includes not only their responding to calls but also shelter costs, veterinarian costs in the amount of \$63,000. They have taken approximately 500 animals out of those 1400 calls to the shelter, assisted in issuing 300 licenses and have actually installed 178 microchips in Banning animals. Their goal is to again, encourage responsible pet ownership, get animals licensed, and to spay or neutered your pet. The phone is answered 24-hours a day and if you ever call 769-8500 to talk to animal services and you get a recording, he would like to know because that is their police emergency line so it is important that a human answers the phone.

City Manager asked Chief Coe to address how it is working with the animal sheltering.

Chief Coe said that unfortunately right now they do not have a shelter in the San Gorgonio Pass. They have a couple of different options that they are utilizing and they are actually expanding and this is something that Councilmember Robinson could become a party to. One of the things that they are trying to expand is creating "drop off centers" so that if a resident picks up a stray animal in the San Gorgonio Pass they can go to one of the "drop off centers" and animal control will come and pick up the animal and scan it for a microchip. If it has a microchip, they scan it and take it home. They have a temporary shelter system set up in the

City of Beaumont at the police station and are looking at expanding the kennel but have not found the space so they are looking at creating a temporary holding facility and their goal is to hold the animal for seven days and if after seven days no one has come to collect their animal, then it will be taken to the Ramona Shelter where they will assist in putting the animal up for adoption. If they do have to take the animal to the Ramona Shelter, they will take picture of the animal and it will put on-line. If your animal is down in San Jacinto and you don't have a way to go to San Jacinto and pick up your animal, they will go get the animal and bring it back. They are trying to make this as easy and seamless for the residents to reunite them with their lost animals. This whole program is a living program and they come up with new ideas everyday and it is all in the best interest of the citizens and their animals.

There were various Council questions in regards to licensing, costs to spay and neuter and to microchip, costs when your animal is picked up and boarding fees.

Councilmember Franklin said in our old code we have Section 17.40 that talks about some of the zoning and is this portion going to be included in your code also.

City Manager said yes. Chief Coe said your zoning codes will be amended to reflect what you have adopted here and they also had to do this as well.

City Manager said he wanted to let the Council know that we haven't abandoned our animal shelter. We are dealing with an individual who is interested in trying to create a non-profit for that animal shelter in order to bring it up to standard for today's animals, as well as, trying to get our business and business in the Pass in order to bring animals in. Obviously we do not give our business lightly when it comes to animals and we are very concerned that they go to the right place and are taken care of. That individual may be doing some capital improvements at the shelter when we sign the lease in lieu of some rent and that is not uncommon in regard to doing those things and it would be at fair market value currently for the rent.

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item (*any written comments handed to the City Clerk will be attached as an exhibit to the minutes*):

Inge Schuler, resident

Ellen Carr, resident

Gary Hironimus, resident

John McQuown, Banning City Treasurer

Seeing no one else coming forward Mayor Hanna closed the public hearing.

Chief Coe answered the questions stating that in regards to microchips they are in the National Registry so when they get a chip inserted in the City of Beaumont it is uploading into the National Registry and the readers that they have are basically the same ones that the veterinarians have so they read actually the HomeAgain and AVID chips and in Beaumont they insert the AVID chips at their clinics. As far as the ordinance authorizing entry on to a property basically that still requires an inspection warrant so they would still need to go before a judge and ask for authorization based on what they tell the judge they expect to find

and locate on the property. The only time that they would go onto the property without a warrant would be a circumstance, for instance, if a neighbor called and said there is an animal in the backyard and it sounds like it is dying. The ordinance does give the authority to go on to the property for the protection of that living creature and usually the animal care officer would request a police officer to go with him. As far as the shelter in Thousand Palms basically he needed to sign a contract with Riverside County to give us that additional option of other shelters in the event the Ramona Shelter was filled and it is very cost prohibited to use them and so at this time they will stay with the Ramona Shelter. In regards to the mandatory spay and neuter basically the mandatory part of it would only kick in when the animal is apprehended by an animal care officer. They are not going to knock on doors and tell people that they have to spay or neuter their animals but they do encourage people to get their animal licensed and microchipped if possible. Their encouragement of responsible pet ownership is their fee structure. So they encourage people for \$8 to get that license. As far as not being able to find anything out about Ms. Carr's cat they have just started their photo program in probably the last 30 to 60 days and so her cat was probably before that period of time. In regards to his comment that the animals may stay in the truck all day that is not really their intention to drive around for 12 hours with an animal in the vehicle. Right now they are actually taking the animals to the shelter as quickly as possible because they have the facilities. As far as what goes on at the shelter he is not an expert about that and he is under the impression the shelter actually does do a basic evaluation of any animal. He is sure that all shelters probably tell pet owners or at least they should that your animal was here and we don't really know who they were in contact with and would encourage you to take your animal to your veterinarian and take any necessary precautions. Also, if you already have a microchip, they would encourage you to contact the Beaumont Police and if you have the registry information with a certificate from the provider, you can bring that information in and they will upload that information into their system.

Community Development Director said that in regards to the question from Inge Schuler regarding the fowls currently the Zoning Code Chapter 17.40 addressed the fowls and currently there are five zoning districts in the city that allows the keeping of the fowls and they are ranch-agriculture, ranch-agriculture hillside, rural residential, rural residential hillside, and very low density residential and there are also maximum limits. She said that for clarity the language in Section 6.02.040 of the Banning Municipal Code shall be amended to read, "No person, either as owner, agent or employee, shall keep any roosters, peacocks, or pigeons, doves, ducks or other birds or fowl, domestic or otherwise within the City of Banning with the exception of the zoning districts in which the fowls are permitted by Chapter 17.40 of the Banning Zoning Code.

Mayor Pro Tem Machisic thanked Chief Coe and the City of Beaumont for coming forward and organizing this program dealing with animal control. He said that our cities whether you are talking about Calimesa, Banning or Beaumont or the Reservation we are pretty small and as a result we can't offer all the services that the people would like to have and one of the things that we have to do is that we have to operate as a region. He thinks that animal control is one of the things that we have to operate as a region and when we do that that means that some of the individual things that the City of Banning has been doing for a large number of years we have to mesh into this united organization and that requires change. This is a great step forward for the City of Banning.

Mayor Hanna asked the City Clerk to read the title of Ordinance No. 1437. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Amending Title 6 of the Banning Municipal Code by Adopting by Reference the Entirety of Title 6 of the Beaumont Municipal Code Entitled "Animals" Relative to Animal Control and Regulation.

Motion Botts/Machisic to waive further reading of Ordinance No. 1437. Motion carried, all in favor with Councilmember Robinson not voting.

Motion Machisic/Franklin that Ordinance No. 1437 pass its first reading as amended. Motion carried, all in favor with Councilmember Robinson not voting.

City Manager said that Councilmember Machisic did mention about the regional thing and there are other regional things that we are trying to explore with Beaumont. Also, even though we have the savings he would like to remind the Council that we still have a structural deficit and that savings would go towards taking care of part of that structural deficit that we currently have.

Councilmember Robinson returned to the Council Chambers at this time.

2. Ordinance No. 1436 of the City of Council of the City of Banning, California, Amending Banning Municipal Code Chapter 8.32 and 8.48 Relating to Graffiti Prevention, Removal and Cost Recovery.
(Staff Report - Phil Holder, Lieutenant)

Lt. Holder addressed the Council stating that the City's current graffiti ordinance was enacted in 1965 and it is obviously outdated and inadequate to handle our current problems. The proposed changes will address the growing problem by implementing safeguards to prevent opportunities for graffiti vandals and discouraging their activities through penalties and restitution including parental civil liability. He read the eight principles that the provision will provide (see Exhibit A).

There was some Council and staff discussion regarding statistics on graffiti, discussion with other utilities and costs to the City, how many are juveniles, and liability of parents at this time and avenues on seeking restitution.

Councilmember Franklin asked Lt. Holder if he would clarify Item No. 2 for the public because it is a little confusing and where does the money come from for the reward.

Lt. Holder said that unfortunately sometimes you may have a business owner or a homeowner where graffiti has been placed on their property and they have chosen either because they don't want it there or they are indifferent, they don't remove the graffiti themselves. This would allow the City to have access to that property to cover up the graffiti and then it would be up to the City to determine if they want to seek reimbursement for the cost of repainting that graffiti. The money for the reward for conviction obviously we would know who committed the crime and we would see restitution from the minor, the adult or the parents of the minor. To report graffiti you can call and leave a message on the Graffiti Hotline at 951-922-3290.

City Manager said as you heard our police department does an excellent job in getting the persons that actually do the tagging and wanted to congratulate them on doing such a good job. But the other ones that you don't see are the ones that take graffiti down and our crew that works with Public Works takes that graffiti down pretty quickly and they do an excellent job also.

Mayor Hanna opened the public hearing on this item for public comments.

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item (*any written comments handed to the City Clerk will be attached as an exhibit to the minutes*):

Inge Schuler, resident
Gary Hironimus, resident

Seeing no one else coming forward Mayor Hanna closed the public hearing.

Lt. Holder responded to the question about photos and stated that they do take pictures of the tagging for evidencing purposes so that they can later go back and prosecute the subjects who graffiti. Also, he wanted to clarify that the 24-hour graffiti hotline doesn't necessarily mean that at 2:00 a.m. someone is going to respond and cover up the graffiti but they will get there as soon as they can on a normal business day but again, if there is something that is so inflammatory to the public, the police department is pretty quick in contacting public works and will work to have that removed.

Mayor Hanna asked the City Clerk to read the title of Ordinance No. 1436. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Amending Banning Municipal Code Chapter 8.32 and 8.48 Relating to Graffiti Prevention, Removal and Cost Recovery.

Motion Franklin/Botts to waive further reading of Ordinance No. 1436. Motion carried, all in favor.

Motion Botts/Robinson that Ordinance No. 1436 pass its first reading. Motion carried, all in favor.

3. Resolution No. 2011-10, A Resolution of the City Council of the City of Banning, Approving Adoption of the Banning Park and Recreation Master Plan Update.

City Manager said that unfortunately we have a staff member out ill and is unable to attend but he is asking that the public hearing be opened and keep it open until our next meeting.

Mayor Hanna opened the public hearing on this item.

Motion Machisic/Robinson to keep this public hearing open until the next City Council meeting. Motion carried, all in favor.

REPORTS OF OFFICERS

1. Activation of a Housing Authority (Staff Report - Zai Abu Bakar, Community Development Director)

Zai stated that this is in response to the Governor's proposal to eliminate redevelopment agencies. As part of the Governor's proposal he is suggesting that any low and moderate income housing be transferred in the future to the County Housing Authority. So what staff is bringing before the Council is a resolution to establish a housing authority trying to curb the proposal by the Governor. At subsequent meetings the bylaws, etc. will be brought back to the Council so this is the first step towards trying to take action to oppose the Governor's proposal. You would also need to adopt a finding that the housing authority is required based on the Health and Safety Code Section and this is included in the resolution.

City Manager said just to add to that basically what you are doing is taking those monies in the housing authority and having them go towards Banning because if they would go to the Housing Authority in Riverside County the Council would not have any control at that point in time.

City Attorney said that he would like to add just one section to the resolution that makes the City Manager the Executive Director of the entity and directs that these bylaws and other documents that Zai referred to would be brought back and adopted by the Board.

Councilmember Botts said if we create this we can then make a decision subject to what happens in the Sacramento to transfer current tax set a side, 20% tax set a side, monies from redevelopment into this in total.

City Attorney said that in terms of some of the actions that we are contemplating that the Governor might take he thinks that there are some follow-up things we would want the Council to do to implement this in terms of looking at budgets and allocating funds and so forth. We really don't have that program laid out tonight; this is just the first step. Even should the proposal not go forward because there are certainly a number of legislative hurdles there are many redevelopment agencies and municipalities that have also set up housing authorities and they feel that it helps give a focus to the housing activity to have a separate housing authority meeting and those meetings don't have to take a long time and it gives a lot of flexibility of how that is set up and that is why we need to prepare the by-laws and so forth. We think there is a reasonable chance that even if this didn't go forward, there is a good reason to have a housing authority.

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

Councilmember Botts said in the last paragraph on page 334 you talk about when these powers are created that we could assist traditional housing.

City Attorney said that there is a whole separate law dealing with the housing authorities as compared to redevelopment agencies. When you look at the provision in the redevelopment law concerning housing they are certainly very extensive but the provisions in the laws of the housing authority are actually a little more detailed and comprehensive so there are some

additional specifications. Another thing about redevelopment agencies is that its housing authorities are focused within the project areas. An Agency can spend money outside of a project area for housing but of course for a housing authority it is the whole jurisdiction that is the focus of the housing activities and not limited to project areas. There are a number of ways like that with the housing authority law that is a little bit more extensive than what we find in the community redevelopment law.

Mayor Hanna said that we are also to designate a first interim chairperson of the housing authority and she would propose Councilmember Franklin, if she is agreeable. Councilmember Franklin said yes.

City Attorney said that the City Attorney is General Counsel, the City Manager is the Executive Director and the Interim Chairperson would be Boardmember Debbie Franklin until such time as you adopt the bylaws.

Motion Botts/Robinson that the City Council adopt Resolution No. 2011-14, Declaring that there is a need for a Housing Authority to function in the City, Declaring that the Members of the City Council shall be the commissioners of the Housing Authority and designate the first interim Chair of the Housing Authority as amended by the City Attorney. Motion carried, all in favor.

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

City Council

Councilmember Robinson –

- He attended the February 16th construction job walk at the hospital and it is getting to be a very exciting process and at the end of March one of the first phases will be done. The roofs are almost all redone on the old section and that will not have patient care in it when that is over and there will be another section for patient care. In regards to the emergency room you can see the steel structure and the concrete floors and they are getting ready to put on siding, etc. The 60th Anniversary will be dedicated to WWII Veterans that went through that hospital and other WWII Veterans.

Councilmember Botts –

- You are recall the 12-hour stoppage on Interstate 10 a couple of years ago and then a 6-hour stoppage and two things are happening. The Interstate 10 bypass is moving forward and is in the design stages and Caltrans is working with the California Highway Patrol on developing a plan where they would take out some K-rails at strategic spots and put in lockable gates with the property authorities having keys and so forth to be able to open those gates and re-route traffic.

Councilmember Franklin –

- There are some classes for computer training that are being offered at the library on Tuesdays in regards to basic and advanced training.
- She attending the Community Action Partnership meeting last week and the President is talking about doing away with Community Action programs completely. For people here in Riverside County that would include the low energy heat and energy assistance programs,

- weatherization programs, as well as, the mediation programs that really help our courts. We will be getting more information for Riverside County.
- She extended a thank you to all our City staff. We had an opportunity attend the Employee Recognition last week but she really wanted to say thank to all of the staff because they are doing a really good job for us.

Mayor Hanna –

- She said that in the Press Enterprise Business Section on Saturday it reported that Banning RV sold the most travel trailers in California.
- She came across some research about buy local campaigns. Our Banning Chamber of Commerce, as well as, the City have been cooperating with other chambers in the Pass for a buy local program and she thought maybe it would be good to have an update on that and how people can participate in that program. It really helps our local businesses stay in business if you buy local.
- She said she just received an email from Ken Miller, Director of Facilities for the Banning Unified School District and at our recent joint meeting with the Board of Education we discussed having the City participate in the planning and participation in the opening ceremony and ribbon cutting for the Banning High School athletic facilities. They would like to start planning that the week of March 7th and if it is okay with everyone she would suggest that the 2 x 2 committee with the school district be those persons to participate in that planning and that would be herself and Councilmember Franklin. **There was Council consensus.**

City Committee Reports -There were none.

Report by City Attorney – Nothing to report at this time.

Report by City Manager

- He said that on March 7th at 5:30 p.m. in the Council Chambers there will be a meeting to try to create a committee for our Centennial Anniversary in 2013. So if anyone is interested try to attend.
- Also we had about 600 homes that had electrical issues that were caused by a truck running into a pole and that employer of that truck fired the person on the spot. This caused a breaker of Southern California Edison to trip that normally would not have happened and city hall was also affected and this happened around 6:50 a.m. today.
- Also this is a warning that we have had individuals that have been disguising themselves as City utility workers mainly and we received a letter from a lady stating that these individuals pretended to be electrical workers and were asking for money. He wanted to let everyone know that our staff will never ask for any money from you directly at that point in time and please make sure that they have the appropriate identification on their shirts and those types of things before allowing them to even look at our electricity.
- The work on George Street up Almond Way has been completed.

Mayor Hanna said that the Council will have a special joint meeting on Tuesday, March 1st with the Banning Library Board starting at 5 p.m.

ITEMS FOR FUTURE AGENDAS

New Items - None

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Schedule Meeting with Banning Library Board (*March 1st*)
3. Update on Economic Development Plan (*April 26th*)
4. Review of Fees and Rates
5. Consideration of Speaker Cards (*April 12th*)
6. Annual Review of Pledge of Civility and Code of Conduct
7. Discuss Council Attendance/Costs to Attend Various Events

Councilmember Robinson wanted to clarify that in regards to Pending Item No. 6 that will be covered in the meeting we are going to have with the City Attorney' Office. City Manager said that was correct and that item will be removed from the list when completed.

ADJOURNMENT

By common consent the meeting adjourned the meeting at 6:20 p.m.

Marie A. Calderon, City Clerk

THE ACTION MINUTES REFLECT 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.

Exhibit "A" to Ordinance No. 1436

The following is a brief summary of the principal provisions of the proposed amendment to Ordinance No. 1436 relating to graffiti prevention, removal and cost recovery:

1. It is unlawful for a property owner to allow graffiti to remain on their property for a period of seven (7) days after notice of the same.
2. The City may abate graffiti and pursue cost recovery for the expense of abatement which includes all costs incurred by the city in abating graffiti including the recordation of a lien against the property where the graffiti is maintained.
3. Any gas, telephone, water, sewer, cable, telephone and other utility operating in the city, other than an electric utility, shall paint their above-surface metal fixtures installed after the effective date of this Ordinance with a uniform paint type and color as directed by the city manager or his or her designee.
4. In imposing conditions upon conditional use permits, variances, building permits, the City may impose graffiti removal requirements.
5. If the person causing the graffiti nuisance is a minor, then the parent or legal guardian of the minor shall be jointly and severally liable with the minor, and the expense of abating the graffiti shall be a personal obligation and a lien against the property of the parent or guardian having custody or control of the minor.
6. Any commercial retail store selling aerosol paint containers or actuators shall store such items in an area that is viewable, but not accessible to the public in the regular course of business without employee assistance.
7. Any commercial retail store selling graffiti implements shall place signs in direct view of store employees accepting customer payment for graffiti implement that states "Pursuant to the Banning Municipal Code, selling graffiti implements to persons less than eighteen (18) years of age is against the law and punishable by six (6) months in jail and/or fine of \$1,000."
8. The City offers a reward of up to two thousand dollars (\$2,000.00) for information leading to the arrest and conviction of any person in violation of Penal Code 594 or any section of this chapter.

CITY COUNCIL AGENDA

Date: March 08, 2011

TO: City Council

FROM: June Overholt, Administrative Services Director/Deputy City Manager

SUBJECT: Report of Investments for January 2011

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

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

BACKGROUND: This report includes investments on hand at the end of January 2011. As of January 31, 2011, the City's operating funds totaled \$66,682,859. Included in operating funds is \$2,547,134 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Treasurer's Report. As of January 31, 2011 approximately 43% of the City's unrestricted cash balances were invested in investments other than LAIF.

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

FISCAL DATA: The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) increased to 0.538 % in January. The average rate for all investments in December was 0.564%.

RECOMMENDED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

Summary Schedule of Cash and Investments

Operating FundsPetty CashBank Accounts

	Interest	Amount
	Rate	Amount
Wells Fargo Bank	0.000%	222,497
Wells Fargo Bank-Investment Account	0.100%	1,135,383
Bank of America-Airport	0.300%	5,480
Bank of America-Parking Citations	0.300%	3,043
Bank of America-CNG Station	0.300%	<u>3,061</u>

Money Market and Bank Account Sub-Total 1,369,465

Government Pools

Local Agency Investment Fund: Account #1 0.538% 31,406,941

Account #2 Operating Amount 4,709,858

Account #2 CRA Bond Cash Bal 2,547,134

Local Agency Investment Fund: Account #2 0.538% 7,256,992

Government Pool Sub-Total 38,663,933

Operating Cash Balance 40,035,703

Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund 0.040% 1,264,730

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2 0.629% 25,382,427

Operating Funds Total **66,682,859**

Fiscal Agent

	Amount
BNY Western Trust Company	<u>538,762</u>
US Bank	<u>44,754,598</u>

Fiscal Agent Total **45,293,360**

City of Banning Investment Report

January 31, 2011

Operational Portfólio Individual Investments

Average Rate All = 0.564%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 27, 2010. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 324 days and does not include Bond Reserve Fund Investments.

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City of Banning Investment Report

January 31, 2011

Individual Investments with Fiscal Agent

		Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Minimum Reserve Requirement	Interest Dec-10	Market Value	1/31/2011
TRUSTS									
Bond Issue Description									
BNY WESTERN TRUST COMPANY									
1997 Admin Building COPs Refunding	2020		Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270%	11/1/2020	522,375	*	522,562	16,200
US BANK				0.000%	daily				
1991 Wilson St. Assessment District	2012		AIM U.S. Treasury Money Market US Bank Mmkt 4-Ct	0.200%	daily	265,580	4.65	265,608	
2005 Fair Oaks Ranch Estates	2035		US Bank Mmkt 4-Ct	0.390%	daily		0.00		3
2003 CRA Tax Allocation Bonds	2028		U S Treasury Bill US Bank Mmkt 4-Ct	0.200%	daily	188,943	31.13	189,457	
Surplus Fund			US Bank Mmkt 4-Ct US Bank Mmkt 4-Ct	0.000%	7/29/2010	971,763	4,322.50	0	1,013,075
0.200%	daily			0.200%	daily		0.02	251,552	
0.025%	daily			0.025%	daily				8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007									
Redevelop Fund	2037		US Bank Mmkt 4-Ct	0.200%	daily		2,024.63	11,921,255	
Reserve Fund			US Bank Mmkt 4-Ct	0.200%	daily		318.83	1,876,982	
Special Fund			US Bank Mmkt 4-Ct	0.200%	daily		0.02	608,426	
Surplus Fund			US Bank Mmkt 4-Ct	0.210%	daily				9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Bond Fund			US Bank Mmkt 4-Ct	0.140%	daily				7
Interest Account			US Bank Mmkt 4-Ct	0.230%	daily				9
Principal Account			US Bank Mmkt 4-Ct	0.190%	daily		0.01		52
			US Bank Mmkt 4-Ct	0.200%	daily		625.83	3,684,979	
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Bond Fund			US Bank Mmkt 4-Ct	0.200%	daily		0.01		44
Interest Account			US Bank Mmkt 4-Ct	0.210%	daily		0.01		38
Principal Account			US Bank Mmkt 4-Ct	0.200%	daily		0.02		135
Reserve Fund			US Bank Mmkt 4-Ct	0.200%	daily		2,310,710	392.70	2,312,284
Project Fund			US Bank Mmkt 4-Ct	0.200%	daily		712.26	4,193,898	
BUA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES									
Reserve Fund			US Bank Mmkt 4-Ct	0.200%	daily		5.45	55,202	
Reliance Trust Company # 9AMGGBEZ7			Reliance Trust Company # 9AMGGBEZ7	3.650%	11/17/2011	2,961,500		3,016,513	
Acquisition & Construction			US Bank Mmkt 4-Ct	0.250%	daily		2,609.50	15,365,058	
			US Bank Mmkt 4-Ct	0.200%	daily				4
									11,047.57
									45,293,360
*Paid Semi-Annually-Deposited into Money Mkt Account									

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Summary Schedule of Cash and Investments

Operating FundsPetty CashBank Accounts

	Interest	Amount
	Rate	Amount
Wells Fargo Bank	0.000%	1,870
Wells Fargo Bank-Investment Account	0.100%	1,737,690
Bank of America-Airport	0.300%	3,681
Bank of America-Parking Citations	0.300%	3,071
Bank of America-CNG Station	0.300%	3,047

*Money Market and Bank Account Sub-Total***1,749,359**Government Pools

Local Agency Investment Fund: Account #1 0.462% 31,370,908

Account #2 Operating Amount 3,412,560

Account #2 CRA Bond Cash Bal 2,735,337

Local Agency Investment Fund: Account #2 0.462% 6,147,898*Government Pool Sub-Total***37,518,806****Operating Cash Balance****39,270,470**Restricted Operating Funds at Riverside Public UtilitiesHighmark U.S. Government Money Market Fund 0.040% **740,510**Other InvestmentsInvestments-US Bank/Piper Jaffray - See Page 2 0.939% **25,334,813*****Operating Funds Total*****65,345,794****Fiscal Agent**

	Amount
BNY Western Trust Company	538,762
US Bank	<u>43,884,626</u>

Fiscal Agent Total**44,423,388**

City of Banning Investment Report

December 31, 2010

Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
1,870	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	1,870	n/a	1,870
1,737,690	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	1,737,690	n/a	1,737,690
3,681	Bank of America-Airport	n/a	0.30%	daily	varies	3,681	n/a	3,681
3,071	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,071	n/a	3,071
3,047	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,047	n/a	3,047
Sub-total								1,749,359
<u>Government Pools</u>								
31,370,908	L.A.I.F. account #1	n/a	0.462%	daily	varies	31,370,908	n/a	31,370,908
6,147,898	L.A.I.F. account #2	n/a	0.462%	daily	varies	6,147,898	n/a	6,147,898
37,518,806								
<u>Investments-US Bank/Piper Jaffray</u>								
2,000,000	FNMA MTN	n/a	0.750%	4/23/2013	10/5/2010	2,000,000	1,990,800	
3,000,000	FNMA MTN	n/a	1.000%	10/21/2013	10/5/2010	3,000,000	2,959,890	
2,000,000	Federal Home Loan Banks	n/a	1.625%	1/7/2013	4/7/2010	2,000,000	2,000,200	
3,000,000	Federal Home Loan Banks	n/a	1.200%	8/5/2013	8/5/2010	3,000,000	3,006,420	
4,000,000	FHLMC MTN	n/a	1.150%	4/26/2013	7/26/2010	4,000,000	4,001,600	
4,000,000	FHLMC MTN	n/a	1.150%	9/3/2013	9/3/2010	4,000,000	3,990,360	
3,000,000	FHLMC MTN	n/a	1.100%	12/9/2013	12/9/2010	3,000,000	2,980,800	
4,404,743	Money Market	n/a	0.000%	daily	varies	4,404,743	0	4,404,743
US Bank/Piper Jaffray Average Rate=								0.939%
Average Rate All=								0.640%
25,334,813								

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 27, 2010. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 324 days and does not include Bond Reserve Fund Investments.

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City of Banning Investment Report

December 31, 2010

Summary Schedule of Cash and Investments

Operating Funds		Amount
<u>Petty Cash</u>		2,305
<u>Bank Accounts</u>	Interest	
Wells Fargo Bank	Rate	Amount
Wells Fargo Bank-Investment Account	0.000%	209,571
Bank of America-Airport	0.100%	1,519,846
Bank of America-Parking Citations	0.300%	3,494
Bank of America-CNG Station	0.300%	3,156
	0.300%	3,316
	<i>Money Market and Bank Account Sub-Total</i>	1,739,383
<u>Government Pools</u>		
Local Agency Investment Fund: Account #1	0.454%	31,370,908
Account #2 Operating Amount		4,154,217
Account #2 CRA Bond Cash Bal		2,943,681
Local Agency Investment Fund: Account #2	0.454%	<u>7,097,898</u>
	<i>Government Pool Sub-Total</i>	<u>38,468,806</u>
	Operating Cash Balance	40,210,494
<u>Restricted Operating Funds at Riverside Public Utilities</u>		
Highmark U.S. Government Money Market Fund	0.040%	1,072,592
<u>Other Investments</u>		
Investments-US Bank/Piper Jaffray - See Page 2	0.809%	25,401,673
	<i>Operating Funds Total</i>	<u>66,684,759</u>

Fiscal Agent		Amount
BNY Western Trust Company		538,762
US Bank		44,822,244
	<i>Fiscal Agent Total</i>	<u>45,361,006</u>

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Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	(Premium) Amortization	Discount or Premium	Market Value
<u>Bank Accounts</u>									
209,571	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	209,571	n/a	209,571	
1,519,846	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	1,519,846	n/a	1,519,846	
3,494	Bank of America-Airport	n/a	0.30%	daily	varies	3,494	n/a	3,494	
3,156	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,156	n/a	3,156	
3,316	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,316	n/a	3,316	
	Sub-total							1,739,383	
<u>Government Pools</u>									
31,370,908	L.A.I.F. account #1	n/a	0.454%	daily	varies	31,370,908	n/a	31,370,908	
7,097,898	L.A.I.F. account #2	n/a	0.454%	daily	varies	7,097,898	n/a	7,097,898	
								38,468,806	
<u>Investments-US Bank/Piper Jaffray</u>									
2,000,000	FNMA MTN	n/a	0.750%	4/23/2013	10/5/2010	2,000,000		1,996,260	
3,000,000	FNMA MTN	n/a	1.000%	10/21/2013	10/5/2010	3,000,000		2,978,430	
2,000,000	Federal Home Loan Banks	n/a	1.625%	1/7/2013	4/7/2010	2,000,000		2,002,500	
3,000,000	Federal Home Loan Banks	n/a	1.200%	8/5/2013	8/5/2010	3,000,000		3,012,180	
4,000,000	FHLMC MTN	n/a	1.150%	4/26/2013	7/26/2010	4,000,000		4,003,560	
4,000,000	FHLMC MTN	n/a	1.150%	9/3/2013	9/3/2010	4,000,000		4,004,000	
		n/a	0.000%	daily	varies			7,404,743	

Average Rate All = 0.582%

US Bank/Piper Jaffray Average Rate= 0.809% 25401673

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City a period of six months. The weighted average maturity of the pooled investment portfolio is 280 days and does not include Bond Reserve Fund Investments.

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City of Banning Investment Report

November 30, 2010

ORDINANCE NO. 1436**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
BANNING, CALIFORNIA, AMENDING BANNING
MUNICIPAL CODE CHAPTER 8.32 AND CHAPTER 8.48
RELATING TO GRAFFITI PREVENTION, REMOVAL.**

WHEREAS, the City Council of the City of Banning ("City") finds that the increase of graffiti, on both public and private property, is creating a condition within the City which results in blight and deterioration of property values and of the comfortable enjoyment of life and property for adjacent and surrounding residents and owners, and contributes to the overall detriment of the City; and

WHEREAS, the City Council finds that graffiti constitutes a public nuisance and a threat to public safety which must be abated to alleviate the detrimental impact of such graffiti on the City, and to prevent the further spread of graffiti; and

WHEREAS, the City Council finds that there exists an increasing number of graffiti implements with which individuals can deface public and private property by writing, painting, and/or drawing on surfaces and the City's municipal code provisions must be expanded to include definitions of these graffiti implements; and

WHEREAS, the City Council finds that holding parents and legal guardians liable for graffiti caused by their minor children will encourage the active involvement of parents and legal guardians in preventing graffiti within the City; and

WHEREAS, the City Council finds that issuing a monetary reward for information leading to the arrest and/or filing of a criminal complaint will contribute to the punishment of and deterrence against graffiti offenses; and

WHEREAS, the City Council finds that a process for recoupment of costs for abatement of graffiti will reimburse the City for some of its costs associated with the graffiti and encourage property owners to maintain their property free of graffiti; and

WHEREAS, Government Code Section 53069.3 authorizes the City of Banning to enact ordinances to provide for the use of City funds to remove graffiti from public or private property, and in order to promote expeditious removal of graffiti; and

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

Section 1. Chapter 8.32 of the Banning Municipal Code consisting of Sections 8.32.010 to 8.32.090 is hereby repealed in their entirety and a new Chapter 8.32 is hereby adopted consisting of sections 8.32.010 to 8.32.110 to read as follows:

8.32.010 - Purpose and intent.

The city council specifically finds that graffiti on public or private property is a blighting factor which not only depreciates the value of property which has been the target of such vandalism but also depreciates the value of the adjacent and surrounding properties so as to create a negative impact on the entire city. The purpose of this chapter is to provide a program for abatement of graffiti from public and private property to reduce blight and deterioration within the city, protect public safety, and for expeditious removal at public expense of graffiti from structures on both public and private property.

8.32.020 – Graffiti and other inscribed material defined.

- A. “Adhesive stickers” means any sheet of paper, fabric, plastic or other substance or material with an adhesive backing.
- B. “Aerosol paint container” means any aerosol container, regardless of the material from which it is made, which is adapted or made for the purpose of spraying paint or other substances capable of being applied to public or private property in a manner that defaces the property.
- C. “City” shall mean the city of Banning.
- D. “City council” means the city council of the city of Banning.
- E. “City manager” means the city manager of the city of Banning or his/her designee
- F. “Continuously viewable to store employees” means within line of sight of an employee or store manager at all times during business hours. Continuously viewable to store employees shall include viewable via closed circuit security cameras.
- G. “Etch cream or etching cream” means any caustic cream, gel, liquid, or solution capable, by means of a chemical action, of defacing, damaging, or destroying hard surfaces.
- H. “Etchers or etching tools” means any sharp or pointed instrument, device or other mechanism, including but not limited to, glass etchers, metal etchers, cutting and grinding instruments, awls, chisels, glass cutters, drill bits or any other instrument that is capable of scratching or otherwise marking any surface, including but not limited to, glass, mirrors, windows, steel, aluminum, brass, tin, fiberglass, wood, plastic, concrete or any other surface.

- I. "Graffiti" means any unauthorized inscription, word, figure, symbol, configuration of letters and/or numbers or design that is marked, etched, scratched, drawn, written, scribed, stained, stuck on, adhered or affixed to or on any real or personal property, including but not limited to, buildings, walls, windows, signs, structures, places, rocks, landscape materials, or other surfaces and/or the interior or exterior of any other structure, regardless of the nature of the material of which the surface is composed.
- J. "Graffiti implement" means an adhesive sticker, aerosol paint container, etching cream, etching tool, marking pen, a paint or graffiti stick, spray actuators, or other similar devices that may be used to scar or deface property.
- K. "Marking pen" means any marker pen or any similar implement containing an ink, paint, or other pigmented liquid.
- L. "Official" means city official or official authorized to take action with regards to the abatement of a nuisance on behalf of the city including building official, chief, city manager, health officer, code enforcement officer manager and their designees.
- M. "Paint stick or graffiti stick" means a device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of leaving a visible mark on a surface.
- N. "Spray actuator" means an object or device that is capable of being attached to an aerosol or other paint container for the purpose of spraying the substance contained therein.

8.32.030 – Graffiti prohibited.

- A. It shall be unlawful for any person to apply graffiti on any surface of any trees, buildings, walls, fences, poles, signs or any other public or privately owned real or personal property within the city.
- B. It shall further be unlawful for any person to solicit or command another person to apply graffiti, or for any person to aid or abet, or agree to aid or abet another person to plan to apply graffiti, including but not limited to, acting as a "lookout."
- C. The parent or legal guardian of a child under the age of eighteen (18) that engage in any of the activities set forth in subsection A or B of this section shall be personally responsible for such activities.

8.32.040 – Graffiti removal provisions – Right of city to require removal.

- A. It is unlawful for any person, who is the owner or who has primary responsibility for control of property or who has primary responsibility for the repair or maintenance of property ("responsible party"), to permit property which is defaced with graffiti to remain so defaced for a period of seven (7) days after

notice of same, unless: (i) said person shall demonstrate by a preponderance of evidence that he or she does not have the financial or physical ability to remove the defacing graffiti; or (ii) it can be demonstrated that the responsible party has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that program in which case it shall be unlawful to permit such property defaced with graffiti to remain defaced for a period of fifteen (15) days after notice of same.

- B. The existence of any surface of a structure on real property which has been defaced with graffiti after removal more than five (5) times in twelve (12) months by the city at its expense is a public nuisance, and may be abated by modifications to the structure or surface, or to the immediate surrounding area. The surface or surfaces may be required to be retrofitted, at the cost of the property owner of said property, or at the cost of the city at the city's option, with such features or qualities as may be established by the city as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal thereof.

8.32.050 – Graffiti removal provisions – Right of city to remove.

Whenever the city becomes aware or is notified and determines that graffiti is so located on publicly- or privately-owned property within the city, the city shall be authorized to use public funds for the removal of the graffiti, or painting or repairing the property, but shall not authorize or undertake to provide for the painting or repair of any more extensive area than that where the graffiti is located, unless the city manager or his or her designee, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the responsible party or the person causing the graffiti, or if a minor, his or her parent or guardian agree to or ordered to pay for the costs of repainting or repairing the more extensive area.

8.32.060 – Graffiti removal provisions – Right of entry on private property.

- A. Prior to entering upon private property or property owned by a public entity other than the city, for the purposes of removal of graffiti, the city shall attempt to secure the consent of the responsible party, and a release of the city from liability for private or public property damage.
- B. If a responsible party fails to remove the offending graffiti within the time herein specified, or if the city shall have requested consent to remove or paint over the offending graffiti and the responsible party shall have refused consent for entry on terms acceptable to the city consistent with the terms of this section, the city may commence abatement of the graffiti and recover costs for the abatement of the graffiti in accordance with Chapter 8.48, which procedures authorize the recovery of all costs incurred by the city in abating graffiti

including the recordation of a lien against the property where the graffiti was maintained.

8.32.070 – Graffiti removal provisions – Preservation of evidence.

The Banning Police Department may promulgate procedures for pre-removal preservation of sufficient evidence of the graffiti for criminal prosecutions or proceedings pursuant to Section 602 of the Welfare and Institutions Code pertaining to the person or persons who inscribed the graffiti. These procedures shall be followed by the city prior to or during removal of the graffiti.

8.32.080 – Graffiti removal provisions – Conditions of permits.

- A. Any gas, telephone, water, sewer, cable, telephone and other utility operating in the city, other than an electric utility, shall paint their above-surface metal fixtures which are installed after the effective date of the Ordinance codified in this chapter with a uniform paint type and color as directed by the city manager or his or her designee;
- B. Encroachment permits issued by the city may, among other things, be conditioned on:
 1. The permittee applying an anti-graffiti material to the encroaching object or structure of a type and nature that is acceptable to the city manager, or his or her designee;
 2. The immediate removal by the permittee of any graffiti;
 3. The right of the city to remove graffiti or to paint the encroaching object or structure;
 4. The permittee providing the city with sufficient matching paint and/or anti-graffiti material on demand for use in the painting of the encroaching object or structure containing graffiti.
- C. In imposing conditions upon conditional use permits, variances, building permits to the extent permitted by this Code, or other similar land use entitlements or development or design applications, the city may impose graffiti removal requirements or any or all of the following conditions, or other similar or related conditions:
 1. Applicant shall apply an anti-graffiti material of a type and nature that is acceptable to the city manager, or his or her designee, to such of the publicly viewable surfaces to be constructed on the site deemed by the city manager, or designee, to be likely to attract graffiti ("graffiti attracting surfaces" hereinafter in this Section);

2. Applicant shall grant in writing, the right of entry over and access to such parcels, upon forty-eight (48) hours' posted notice, by authorized city employees or agents, for the purpose of removing or painting over graffiti on graffiti attracting surfaces previously designated by the city manager, or designee. Such grant shall be made an express condition of approval and shall be deemed to run with the land;
3. Applicant, and any and all successors in interest, shall, for a specified period of years after approval, provide the city with sufficient matching paint and/or anti-graffiti material on demand for use in the painting over or removal of designated graffiti-attracting surfaces;
4. Persons applying for subdivision maps shall, as part of any conditions, covenants and restrictions, covenant, which covenant shall run with the land, in a form satisfactory to the city, that the owners of the lots shall immediately remove any graffiti placed on publicly viewable trees and structures thereon to the city's satisfaction.
5. The city and the redevelopment agency shall, as part of any conditions, covenants and restrictions, covenant, which covenant shall run with the land, that the owners of the lots shall immediately remove any graffiti placed on publicly viewable trees and structures thereon to the city's satisfaction.

8.32.090 – Sale of graffiti implement to minors.

- A. It shall be unlawful for any person, other than a parent or legal guardian, to sell, exchange, give, loan, or otherwise furnish, or cause or permit to be exchanged, given, loaned, or otherwise furnished, any graffiti implement to any person under the age of eighteen (18) years.
- B. No person shall sell any graffiti implement without first obtaining from the purchaser a "bona fide evidence of majority and identity" as defined by Penal Code Section 594.1(a)(3).

8.32.100 – Display and storage of graffiti implement.

- A. Every person who owns, conducts, operates or manages a retail commercial establishment selling any aerosol paint containers or actuators shall store or cause such supplies to be stored in an area viewable by, but not accessible to, the public in the regular course of business without employee assistance, pending legal sale or disposition of such supplies. "Not accessible to the public" means that such supplies must be (i) stored under lock and key, and only the store manager or his/her designee shall have access to the supplies, or (ii) stored behind or under a store counter that is only accessible to authorized store personnel.

- B. Every person who owns, conducts, operates or manages a retail commercial establishment selling any paint sticks, marking pens, etching creams or etching tools shall store or cause such supplies to be stored in an area continuously viewable to store employees.
- C. Nothing herein shall relieve such person or business entity from, at all times, complying with the requirements of Penal Code Section 594.1(c) by posting signs as described therein.
- D. Every retail commercial establishment selling graffiti implements shall place a sign in the direct view of such persons responsible for accepting customer payment for graffiti implements stating: "Pursuant to the Banning Municipal Code, selling graffiti implements to persons less than eighteen (18) years of age is against the law and punishable by six (6) months in jail and/or a fine of \$1,000."
- E. Upon request of a Banning police officer or code enforcement officer, any person who owns, conducts, operates or manages a retail commercial establishment selling any graffiti implements shall provide copies of any merchandise inventory that relates to graffiti implements.

8.32.110 – Possession of graffiti implements.

No person shall have in his or her possession any graffiti implement, with intent to apply graffiti, while upon public or private property.

8.32.120 – Possession of graffiti implements by minors.

It shall be unlawful for any person under the age of eighteen (18) years to have in his or her possession any graffiti implement, with intent to apply graffiti, while upon public or private property.

8.32.130 – Declaration of nuisance.

The existence of graffiti within the city limits is a public nuisance and may be abated in accordance with the procedures set forth in Chapter 8.48. The cost for the abatement of graffiti may be recovered in accordance with the cost recovery provisions also set forth in Chapter 8.48.

8.32.140 – Civil penalties.

- A. Pursuant to Civil Code Section 1714, any person that causes any injury to or the defacement of the property of another by any act of graffiti shall be personally liable for any damages resulting from the graffiti
- B. Pursuant to Civil Code Section 1714.1, any parent or legal guardian, whose child under the age of eighteen (18) possesses a graffiti implement, shall be personally liable for any and all costs to any person incurred in connection with

the removal of graffiti caused by said child, or by said graffiti implement, and for all attorney's fees and court costs incurred in connection with the civil prosecution of any claim for damages, up to twenty five thousand dollars (\$25,000.00).

8.32.150 – Rewards.

- A. Pursuant to Section 53069.5 of the Government Code, the city does hereby offer a reward of up to two thousand dollars (\$2,000.00) for information leading to the arrest and conviction of any person for violation of Penal Code Section 594 or any section of this chapter, not to exceed one (1) reward of two thousand dollars (\$2,000.00) per violation. The specific amount of the reward shall be determined by the chief of police up to the two thousand dollar (\$2,000.00) maximum, provided that a greater amount may be authorized by the city council by resolution. In the event of multiple contributors of information for a single violation, the reward amount shall be divided by the city in the manner deemed appropriate by the city police chief. For the purposes of this section, diversion of the offending violator to a community service program, or a plea bargain to a lesser offense, shall constitute a conviction.
- B. Claims for rewards under this section shall be filed, processed, and paid in accordance with procedures established by the police chief.
- C. The person convicted of committing the graffiti offense shall be liable for any rewards paid pursuant to this section and, if that person is an unemancipated minor, the custodial parent of said minor shall be jointly and severally liable for any rewards paid pursuant to this section.

8.32.160 – Criminal penalties.

- A. Any violation of this chapter shall be a misdemeanor offense punishable by either six (6) months in jail, a one thousand dollar (\$1,000.00) fine, or both such fine and imprisonment.
- B. In lieu of, or in addition to the penalties specified in this section, a minor or other person who is convicted of or pleads guilty or nolo contendere to graffiti violations shall be required to perform community service as described by the court, based on the following minimum requirements:
 1. The minor or adult shall perform not less than forty (40) hours of community service.
 2. The period of community service shall be performed under the supervision of a community service provider approved by the chief of police or his or her designee.

Section 2. Sections 8.48.590, 8.48.600 and 8.48.610 of Chapter 8.48 is hereby amended to read as follows:

8.48.590 – Graffiti abatement – General provisions.

- A. The abatement of any nuisance resulting from the defacement of the property of another by graffiti or any other inscribed material as prescribed in this Code shall be at the sole expense of the person, minor or other person creating, causing or committing the nuisance.
- B. If the person creating, causing or committing the nuisance is a minor, the parent or guardian having custody and control of the minor shall be jointly and severally liable with the minor. The city shall make the expense of abatement of any nuisance, resulting from the defacement by a minor of the property of another by graffiti or any other inscribed material, a lien against the property of a parent or guardian having custody and control of the minor and/or a personal obligation against the parent or guardian having custody and control of the minor.
- C. The prevailing party in any action, administrative proceeding or special procedure to abate a nuisance pursuant to this section may recover its reasonable attorneys' fees in those individual actions or proceedings wherein the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to any prevailing party to exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.
- D. The city may collect the cost of abatement of any nuisance, resulting from the defacement of the property of another by graffiti or any other inscribed material, and related administrative costs by either: (1) obtaining a court order stating that this reimbursement requirement is a personal obligation of the minor or other person or parent or guardian having custody and control over the minor who committed the defacement, recoverable by the city in the same manner as any civil judgment; (2) recording a nuisance abatement lien against a parcel of land owned by the minor or other person or parent or guardian having custody and control over the minor who committed the defacement; or (3) making the cost of abatement of a nuisance resulting from the defacement of the property of another, a special assessment against a parcel of land owned by the minor or other person or parent or guardian having custody and control over the minor who committed the defacement.
- E. Alternatively, the property owner of the property maintaining the graffiti nuisance may be liable for the expense of abatement. In such case, the expense of abatement of the graffiti nuisance may be a lien against the property on which it is maintained and a personal obligation against the property owner.

- F. If the property owner maintaining the graffiti nuisance is liable for the expense of abatement, the property owner may request the city for a release from any lien and/or personal obligation for such expense upon showing proof that another person has been convicted of causing the graffiti nuisance on the property. For the purposes of this section, diversion of the offending violator to a community service program or a plea bargain to a lesser offense shall constitute a conviction.
- G. The city manager or his designee shall keep an accounting of the cost, including incidental expenses, of abatement of such nuisance for each separate lot, or parcel of land where the work has been done and shall render an itemized report in writing to the city council showing the cost of abatement, including salvage value, if applicable, for each separate lot or parcel of land; provided, that before the report is submitted to the city council for approval, a copy of the same shall be posted for at least five days upon the premises or property upon which such building(s) or structure(s) were situated, together with a notice of the time when the report shall be submitted to the city council for confirmation; a copy of the report and notice shall be served upon minor or other person or parent or guardian having custody and control over the minor who committed the defacement, and the owner of the property, in accordance with Section 415.10 et. seq. of the Code of Civil Procedure, at least five (5) days prior to submitting the same to the council; proof of the posting and service shall be made by affidavit and filed with the city clerk of the city. The term "incidental expenses" includes, but is not limited to, the actual expenses and costs of the city in the preparation of notices, specifications and contracts, and in inspecting the work, and the costs of printing and mailings required under this chapter.
- H. At the time and place fixed for receiving and considering the report, the city council shall hear and pass upon the report of the city manager or his designee, together with any objections or protests, which must be in writing, raised by any of the persons liable to be assessed for the cost of abating such nuisance. Thereupon the city council may make such revision, correction or modification to the report as it may deem just, after which, by resolution, the report as submitted, or as revised, corrected or modified, shall be confirmed; provided, that the hearing or consideration may be continued from time to time. The decision of the city council on all protests and objections which may be made shall be final and conclusive.

8.48.600 – Graffiti – Nuisance abatement lien.

- A. Prior to the recordation of a graffiti nuisance abatement lien, notice shall be given to the person or parent or guardian having custody and control over the minor who committed the defacement by graffiti or any other inscribed material, and/or the owner of the abated property on which the graffiti was maintained as shown on the last equalized assessment roll or supplemental roll, whichever is more current. Such notice shall be served in the same manner as a summons

in a civil action in accordance with Sections 415.10 et seq., of the Code of Civil Procedure. The date upon which service is made shall be entered on or affixed to the face of the copy of the notice at the time of service. However, service of such notice without such date shall be valid and effective.

- B. A graffiti nuisance abatement lien shall be recorded in the Riverside County recorder's office and from the date of recording shall have the force, effect, and priority of a judgment lien.
- C. A graffiti nuisance abatement lien authorized by this section shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.
- D. If the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection B of this section shall be recorded by the city. A graffiti nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.
- E. A graffiti nuisance abatement lien may be satisfied through foreclosure in an action brought by the city. The city may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien or as a condition of releasing the lien upon payment.

1.48.610 – Graffiti Special assessment.

- A. As an alternative to the recordation of a graffiti nuisance abatement lien, the city may make the cost of the abatement of any nuisance resulting from the defacement by a minor or other person of property of another by graffiti or other inscribed material, and related administrative costs, a special assessment against a parcel of land owned by the minor or other person or by the parent or guardian having custody and control of the minor, or the owner of the abated property on which the graffiti was maintained.
- B. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attached thereon, prior to the date on which the first installment of the taxes would become delinquent, then

the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

- C. Notices or instruments relating to the abatement proceeding or special assessment may be recorded.
- D. Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding a minor or other person or parent or guardian having custody and control of a minor responsible for a condition that may be abated as a nuisance pursuant to subsection A of this section, the court may order such minor or other person or parent or guardian having custody and control of such minor to pay treble the costs of the abatement.

Section 3. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The city council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 4. The Mayor shall sign this Ordinance and the city clerk shall attest thereto and shall within fifteen (15) days of its adoption cause it, or a summary of it, to be published in the Record Gazette, a newspaper published and circulated in the city. Thereupon this Ordinance shall take effect thirty (30) days after adoption and be in force and effect according to law.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Banning, California, on this 22nd day of February 2011.

Barbara Hanna, Mayor
City of Banning

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 Ordinance No. 1436 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 8th day of February, 2011, and was duly adopted at a regular meeting of said City Council on the 22nd day of February, 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: **March 8, 2011**

TO: **City Council**

FROM: **Leonard Purvis, Chief of Police**

SUBJECT: **Resolution No. 2011-11, authorizing the destruction of city records as provided by Section 34090 of the California Government Code, Section 832.5 of the California Penal Code, and Resolution No. 2003-26 of the City of Banning.**

RECOMMENDATIONS: "The City Council adopt Resolution No. 2011-11 authorizing the destruction of city records as provided by Section 34090 of the California Government Code, Section 832.5 of the California Penal Code, and Resolution No. 2003-26 of the City of Banning."

JUSTIFICATION: The City Clerk and the City Attorney have certified the records listed in Attachment A to Resolution 2011-11 are no longer required to be kept by the City.

BACKGROUND: In March of 2003, the City Council adopted Resolution No. 2003-26, setting forth the schedule for destruction of City Records. The records listed in Attachment A of Resolution No. 2011-11 have all reached the end of their retention period.

STRATEGIC PLAN INTEGRATION: Council approval of this request will meet the City's goal to comply with California Government Code Section 34090 and California Penal Code Section 832.5, concerning the destruction of city records.

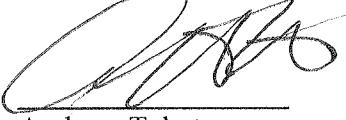
FISCAL DATA: This request requires no funds.

RECOMMENDED BY:



Leonard Purvis
Chief of Police

APPROVED BY:



Andrew Takata
City Manager

RESOLUTION NO. 2011-11

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE BANNING POLICE DEPARTMENT TO DESTROY INTERNAL AFFAIRS RECORDS IN EXCESS OF FIVE YEARS FROM DATE OF COMPLETION PER CALIFORNIA GOVERNMENT CODE SECTION 34090 AND CALIFORNIA PENAL CODE SECTION 832.5.

WHEREAS, Penal Code Section 832.5 requires that citizen complaints against police department personnel and any related reports or findings be maintained for a period of at least five years; and

WHEREAS, Government Code Section 34090 expressly authorizes the Chief of Police for the City of Banning, upon resolution of the City Council and written consent of the City Attorney, to destroy City records, documents, instruments, and other papers under his charge after the same are no longer required; and

WHEREAS, the Chief of Police has agreed to review the status of any such citizens complaint investigation in excess of five years for pending related civil or criminal litigation prior to its destruction; and

WHEREAS, the City Attorney hereby give his written consent for the destruction of the following records (See Attachment A); and

NOW, THEREFORE, BE IT RESOLVED, that the Chief of Police is hereby granted the authority to order the destruction of any and all records, reports, and findings relating to citizen complaints in excess of five years from the date of completion once the Chief of Police has determined that such are no longer required;

BE IT FURTHER RESOLVED that nothing in this resolution is intended to supersede or otherwise conflict with any law or any lawful judicial process which might affect retention or destruction of such records.

PASSED, APPROVED, AND ADOPTED this 8th day of March, 2011.

Barbara Hanna, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk

APPROVED AS TO FORM
AND LEGAL CONTENT:

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. 2011-11 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of March, 2011, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Attachment A

BPD INTERNAL AFFAIRS INVESTIGATIONS INVENTORY WORKSHEET

PAGE 1 OF 1

(Signature/Date)

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REQUEST FOR DESTRUCTION OF RECORDS

Date: 03-08-11
Department: Banning Police Department

We are requesting destruction of the attached records due to:

- A copy has been made in accordance with Administrative Policy #A-28.
 The retention period on the following records has elapsed.

Approvals:

Department Head _____ Date _____

City Clerk _____ Date _____

City Attorney _____ Date _____

Destruction Date:	Destroyed By:	Remarks:

Return signed original to City Clerk when completed.

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CITY COUNCIL AGENDA

DATE: March 8, 2011

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2011-16, "Approving the Lease Agreement with Waste Management of the Inland Empire for the Lease of a Portion of the Property Located at 176 East Lincoln Street"

RECOMMENDATION: Adopt Resolution No. 2011-16, "Approving the Lease Agreement with Waste Management of the Inland Empire for the Lease of a Portion of the Property Located at 176 East Lincoln Street"

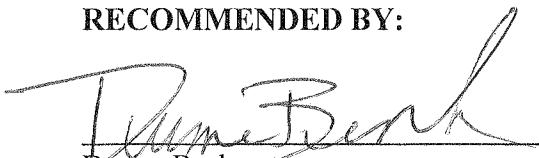
JUSTIFICATION: Waste Management of the Inland Empire desires to lease a portion of the property located at 176 East Lincoln Street for the purpose of refuse truck parking, maintenance of vehicles and related services.

BACKGROUND: Since 1993, Waste Management of the Inland Empire has been providing the City services including the collection, transportation and disposal of solid waste. Recently, Waste Management identified a need for acquiring a local space for parking refuse trucks and to provide maintenance and related services to their vehicles and equipment. In the best interest of the City, it was determined that vacant and usable facility space located at the City Yard could be leased to Waste Management to meet their needs while at the same time providing revenues to the City.

The portion of property located at 176 East Lincoln Street available for lease consists of a 50' by 200' area of outside space in the open yard for parking. Additionally, the option to lease a portion of interior space within the Fleet Maintenance Shop facility consisting of a 33' by 50' bay area to be utilized for maintenance and related services is also available. The proposed agreement outlining the details is attached as Exhibit "A". If approved, this agreement will be valid for a one-year period. Staff also respectfully requests the authorization to approve future amendments related to this lease agreement including, but not limited to, extensions, the inclusion of the option to lease the additional interior space; rate adjustments, and so forth be granted to the City Manager.

FISCAL DATA: Waste Management shall pay rent in the amount of \$2,000 per month for the outside parking space. If the option to lease the interior space is exercised, an additional \$3,000 per month shall be due. Revenues related to this agreement shall be appropriated to Refuse Fund and will be utilized at the discretion of the Public Works Department to support refuse related services and activities.

RECOMMENDED BY:



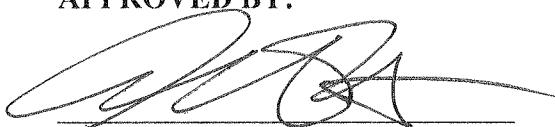
Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2011-16

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, APPROVING THE LEASE AGREEMENT WITH WASTE
MANAGEMENT OF THE INLAND EMPIRE FOR THE LEASE OF A PORTION OF THE
PROPERTY LOCATED AT 176 EAST LINCOLN STREET**

WHEREAS, Waste Management of the Inland Empire has been providing the City services including the collection, transportation and disposal of solid waste since 1993 and recently identified the need for acquiring a local space for parking refuge trucks and to provide maintenance and related services to their vehicles and equipment; and

WHEREAS, it was determined that vacant and usable facility space located at the City Yard could be leased to Waste Management to meet the their needs while at the same time providing revenues to the City; and

WHEREAS, the portion of property located at 176 East Lincoln Street available for lease consists of a 50' by 200' area of outside space in the open yard for parking as well as the interior space located inside the Fleet Maintenance Shop facility consisting of a 33' by 50' bay area to be utilized for maintenance and related services; and

WHEREAS, attached as Exhibit "A" is the agreement outlining the details which includes the lease of the 50' by 200' outside area with the option to lease the interior space at a later date; and

WHEREAS, this agreement will be valid for a one-year period and the City Manager will be authorized to approve future amendments related to this lease agreement including, but not limited to, extensions, the inclusion of the option to lease the additional interior space; rate adjustments, and so forth; and

WHEREAS, Waste Management shall pay rent in the amount of \$2,000 per month for the outside parking space with the option to lease the interior space for an additional \$3,000 per month; and

WHEREAS, revenues related to this agreement shall be appropriated to Refuse Fund and will be utilized at the discretion of the Public Works Department to support refuge related services and activities.

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

Section 1. The Lease Agreement with Waste Management of the Inland Empire is approved by City Council for the lease of a portion of the property located at 176 East Lincoln Street.

Section 2. The City Manager is authorized to execute the Lease Agreement with Waste Management of the Inland Empire. This authorization will be rescinded if the contract agreement is not executed by the parties within ninety (90) days of the date of this resolution.

Section 3. The City Manager is authorized to approve future amendments related to this lease agreement including, but not limited to, extensions, the inclusion of the option to lease the additional interior space; rate adjustments, and so forth.

PASSED, ADOPTED AND APPROVED this 8th day of March, 2011.

Barbara Hanna, Mayor

ATTEST:

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

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

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-16 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 8th day of March, 2011.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"

**LEASE AGREEMENT WITH
WASTE MANAGEMENT OF THE INLAND EMPIRE**

LEASE AGREEMENT

By and Between

THE CITY OF BANNING and

WASTE MANAGEMENT OF CALIFORNIA, INC.

[176 East Lincoln, Banning, California 92220]

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease" herein) is executed this _____ day of _____, 2010, by and between the CITY OF BANNING, a municipal corporation ("Lessor"), and WASTE MANAGEMENT OF CALIFORNIA, INC., a California nonprofit corporation ("Lessee").

RECITALS

WHEREAS, Lessor is the owner of that real property located at 176 East Lincoln, Banning, California 92220 legally described on Exhibit "A" hereto and by this reference incorporated herein ("Property"); and

WHEREAS, Lessee desires to lease a portion of the Property consisting of a 33' by 50' area of space in the interior of the shop located at the east end of the building located on the Property ("Interior Space") and approximate area 50' by 200' of outdoor space in the open yard for parking ("Parking Space"), all as shown on the attached Site Map on Exhibit "B" hereto and by this reference incorporated herein; and

WHEREAS, it is the intention of the parties that the Lessee initially lease the Parking Space and be provided with an option to lease the Interior Space under the terms provided herein; and

WHEREAS, the term Premises shall initially refer to the Parking Space and, following exercise of the option provided herein, shall also refer to and include the Interior Space; and

WHEREAS, the Lessee provides garbage refuse collection services in the City of Banning and desires to use the Premises for truck parking, maintenance and related services as its current facilities are inadequate; and

WHEREAS, the Lessee has an immediate need for additional space and Lessor has an interest in the Lessee continuing to provide services to the community and in providing a facility suitable for the organization; and

WHEREAS, Lessor has a vacant and usable facility and parking lot constituting the Premises; and

WHEREAS, it is the intent of the parties that the Premises (initially the Parking Space) will be leased to the Lessee for its {exclusive} non-exclusive use and purpose for a term of years one year as described herein.

LEASE PROVISIONS

In consideration of the covenants and agreements contained herein, and incorporating the foregoing recitals and all exhibits hereto, Lessor and Lessee hereby agree as follows:

1.00 LEASE OF PREMISES.

1.01 Premises.

Lessor hereby grants, demises and lets unto Lessee the Premises, and Lessee hereby leases the Premises from Lessor. Lessee agrees that it accepts the Premises "As-Is" and "Where-is" without any representations or warranties of any nature or kind whatsoever from Lessor. Upon commencement of this Lease, the Premises shall constitute the "Parking Space" described on Exhibit "B" hereto.

The Lessee shall have the option to include the Interior Space in the Premises by executing the "Lease Amendment" attached hereto as Exhibit "DC" hereto and by this reference incorporated herein (the "Lease Amendment"). Lessee shall have one year from the dated date hereof to exercise the option. The City Manager shall have the authority to execute the Lease Amendment on behalf of the City to agree to the terms. From and after the commencement date set forth in the Lease Amendment with respect to the Interior Space, the Interior Space shall constitute part of the Premises and shall be subject to all terms of this Lease.

1.02 Term.

The term of this Lease is fora term of one year ("Lease Term") commencing on ("Commencement Date"), and terminating one year later on ("Termination Date"). The term of this Lease with respect to any Lease Amendment shall commence on the date set for the in the Lease Amendment and shall end on the Termination Date.

Lessor may grant Lessee early possession of the Premises prior to the Commencement Date. Any holding over by Lessee after the expiration of the Lease Term shall be deemed a month-to-month tenancy upon the same terms and conditions of this Lease.

{Notwithstanding the foregoing, Lessee and Lessor shall each have the option to terminate this Lease for any reason upon sixty-thirty (60/30) days written notice to Lessor in the event that Lessee determines it necessary to close or relocate its offices for funding or other reasons.} party.

1.03 Quiet Possession.

Lessor covenants and agrees with Lessee that Lessee may occupy and enjoy the Premises for the full Lease Term, subject to the provisions of this Lease. Notwithstanding the foregoing, the Premises are a part of the City's maintenance yard facilities for all municipal operations, including for the municipal utility, and includes storage of vehicles and trucks, equipment and materials storage, and vehicle and equipment maintenance. Maintenance activities are conducted within the building which includes the Interior Space. Lessor's activities are noisy and dirty and subject to offensive noises and odors. Lessee enters this Lease with a clear understanding as to the nature of these operations and their potential adverse impacts; and shall conduct its activities so as to not interfere with the operations of Lessor in the normal conduct of its operations.

1.04 Rent.

During the Lease Term, Lessee shall pay to Lessor and Lessor shall accept from Lessee rent in the amount of \$2,000 per month for the Parking Space and \$3,000 per month for the Interior Space ("Rent"), payable in advance on the first day of each . The initial [prorated] rent payment shall be with respect to the Parking Space and shall be provided for in the Lease Amendment for the Interior Space.

1.05 Payment.

Rent shall be payable in advance in lawful currency of the United States on the Payment Date, which shall be on or before the first working day of the month beginning with the Commencement Date and the first working day of every month thereafter during the Lease Term. Rent shall be paid at the address designated for notices or such other place as may be designated in writing by Lessor, without prior demand therefor, and without any deduction or offset whatsoever.

1.06 Utilities.

[Update] Lessee Lessor shall pay all charges for Lessee's the following utilities and services furnished to the Premises constituting the Parking Space during the Lease Term, including but not limited to water, sewer, gas, heat, electricity, garbage disposal, and trash disposal. Lessee shall make all arrangement to have utility bills sent directly to Lessee and shall promptly arrange to be designated by all utility providers as the sole responsible entity for all utility costs associated with the Premises. To the extent, the utilities are connected to the Property and cannot be charged on a separate bill, Lessee shall pay to Lessor its fair share of the costs of such utilities to Lessor as determined by Lessor.

Notwithstanding the above paragraph, Lessee shall not be required to pay any utilities in connection with its lease of the Parking Space. Lessor shall pay all utilities related to the Parking Space. The parties shall provide in the Lease Amendment the relative responsibility for utilities with respect to the Interior Space.

1.07 Real and Personal Property Taxes, Assessments, Fees.

During the Term hereof Lessee shall pay prior to delinquency all taxes, assessments and fees assessed against the levied upon the Premises, fixtures, furnishings, equipment and all other personal property, if any, owned by Lessee located on the Premises, and when possible Lessee shall cause said real property, fixtures, furnishings, equipment and other personal property to be assessed and billed separately from the real property of Lessor. In the event any or all of the Lessee's real property, fixtures, furnishings, equipment and other personal property shall be assessed and taxed with the City's real property, the Lessee shall pay to Lessor its share of such taxes within ten (10) days after delivery to Lessee by Agency Lessor of a statement in writing setting forth the amount of such taxes applicable to the Lessee's property. Lessor hereby notifies Lessee that Lessee is responsible for property taxes with respect to its leased interest in the Premises, whatever they may be determined to be.

2.00 DEVELOPMENT OF THE PREMISES.

2.01 Construction of Improvements.

{This Paragraph to be adjusted and perhaps added to lease amendment [Prior to the Commencement Date Lessee shall, at its sole cost, improve the Premises with the Improvements described in Exhibit "C" hereto (the "Improvements").] Lessee shall procure the required plans and approvals for the Premises and install all necessary utilities and shall procure all the necessary insurance provided herein and as requested by the Lessor.

{Lessor shall repair all burnt out exterior lighting in the parking area of the Premises prior to commencement}.

Lessee shall be responsible for constructing any improvements necessary to use the Premises for the sole purpose described herein. All work shall be undertaken at Lessee's sole cost and expense. All work shall be performed in a safe and workmanlike manner and in compliance with all applicable laws, regulations, ordinances and orders of governmental authority and insurers of the Premises. Lessor is not obligated to, and shall not, provide any additional improvements to the Premises.

Lessee shall not construct any improvements on the Premises without Lessor's written consent, in Lessor's sole and absolute discretion.

{More specificity of what is being done}

2.02 Ownership of Improvements.

During the term of this Lease, title to all improvements constructed or placed on the Premises by Lessee, including buildings, structures, and other tenant improvements are and shall be vested in Lessee, but shall automatically become the property of Lessor upon the expiration or sooner termination of this Lease. Lessee shall have the right to retain any furniture or equipment or any personal property of Lessee not affixed to the buildings constructed on the Premises, all of which property (whether classified as real or personal property) shall be the property of Lessee.

2.03 Mechanics' Liens.

Lessee shall not permit any mechanic's, materialman's, contractor's, subcontractor's or other lien arising from any work or improvement, for any labor done, services performed, or materials, appliances, transportation, or power used or furnished, however it may arise, to stand against the Premises or any improvement thereon. Lessee shall at Lessee's expense cause such lien to be removed within thirty (30) days.

3.00 USE OF THE PREMISES.

3.01 Uses.

Lessee shall have the non-exclusive use of the Premises, including _____ [reference to Site Map]; non-exclusive use of the _____ portion any of the Property needed for ingress and egress to

the Parking Space, with respect to the Interior Space, non exclusive use of the hallways and restrooms not constituting the Premises (collectively, "Common Areas") [Specify if any common areas, including common driveway for entering. Lessor shall be entitled to use any portion of the Parking Space] to the extent necessary for ingress, egress, maintenance, repair or as determined by Lessor. Lessee shall use the premises Premises for [CNG fueling of its trucks and for truck parking, maintenance and repair.] The foregoing use shall be for the Lessee's operations only and for no other purposes without Lessor's written consent, in Lessor's sole and absolute discretion. Lessee's use of the CNG fueling station shall be as that of a regular retail customer of the station. Lessee shall coordinate use of the Common Areas with other tenants of the Property, including Lessor. Lessee shall have no right to subdivide, separate, or partition the Premises. The parties will cooperate in good faith and not interfere with each party's use of the portion of the Property in which they are in possession. Breach of the provisions of the City's Municipal Code or any conditions imposed on a particular use pursuant thereto shall be a material breach of this Lease and shall be valid and sufficient grounds for Lessor's termination of this Lease.

[Specific Hours of Operation] The general hours of operation for use of the Parking Space will be 4 p.m. to 5:30 a.m.

3.02 Compliance with Law.

Lessee agrees that all operations and activities, including the construction or installation of the Improvements, by or under Lessee on the Premises shall be conducted in compliance with all applicable statutes, ordinances, orders, laws, rules and regulations, and the requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and offices thereof, which may be applicable to the Premises or to the use or manner of use of the Premises. Lessee shall indemnify and hold the Lessor harmless against all actions, claims and damages by reason of (i) Lessee's failure to perform the terms hereof; or (ii) Lessee's non-observance or non-performance of any statute, ordinance, order, law, rule, regulation and/or governmental requirement related to Lessee's use and occupancy of the Premises or the condition thereof.

3.03 Miscellaneous Restrictions.

Lessee agrees in using the Premises:

(a) Not to commit any waste or suffer any waste to be committed upon the Premises.

(b) Not to perform any acts or carry on any practices that may injure adjoining buildings or property or be a nuisance or menace to other persons or businesses in the area or disturb the quiet enjoyment of any person, nor to conduct or permit to be conducted any public or private nuisance on the Premises.

(c) Not to engage in any activity on or about the Premises that violates any "Environmental Law" (as defined below), and to promptly, at Lessee's sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any "Hazardous

Material" (as defined below) created or caused by or under Lessee. The term "Environmental Law" shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Premises including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601 et seq.; (ii) the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sections 6901 et seq.; (iii) California Health and Safety Code Sections 25100 et seq.; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq.; (v) the Federal Water Pollution Control Act, 33 U.S.C. Sections 1317 et seq.; (vi) California Water Code Section 1300 et seq.; and (vii) California Civil Code Section 3479 et seq., as such laws are amended and the regulations and administrative codes applicable thereto. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition or pollution or nuisance under the Environmental Laws; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the parties hereto to construe the terms "Hazardous Materials" and "Environmental Laws" in their broadest sense. Lessee shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq. Lessee shall provide prompt written notice to Agency of the existence of Hazardous Substances on the Site and all notices of violation of the Environmental Laws received by Lessee. Lessee's obligations pursuant to this Section shall be referred to in this Lease as "Environmental Compliance".

3.04 Maintenance of Improvements.

(a) Duty of Lessee to Maintain.

Lessee covenants and agrees for itself, its successors and assigns, and every successor in interest to the Premises or any part thereof, that Lessee shall be responsible for the maintenance and repair of all interior and exterior improvements constituting the Premises (including outdoor areas, parking, landscaping, roofs, electrical, plumbing, heating, cooling, ventilation fixtures, etc.) in a neat, attractive, clean, and sanitary condition, free from any accumulation of debris or waste materials. Lessee shall keep the Parking Space in good condition free from waste and debris from its operations. Lessee shall place all rubbish in authorized containers. All maintenance, repair and replacements shall be at the sole cost of the Lessee.

(b) Right of Lessor to Maintain and Repair.

If Lessee refuses, neglects, or fails to maintain and repair the Premises as required hereunder and to the reasonable satisfaction of Lessor as soon as reasonably possible after written demand, Lessor may enter the Premises at all reasonable times during normal business hours and perform said maintenance or make such repairs or perform any other act required to be performed by Lessee hereunder, without liability to Lessee for any loss or damage that may accrue to Lessee's merchandise, fixtures, or other property or to Lessee's business by reason thereof. In the event Lessor makes any repair or maintenance which Lessee has failed to do, then, within ten (10) days following Lessor's written demand therefor, Lessee shall pay Lessor's

costs in performing such maintenance and making such repairs plus an amount equal to twenty percent (20%) of such cost for Lessor's overhead. If Lessee fails to make such payment when due, the same shall accrue interest as provided in Section 6.03 and shall be a material breach of this Lease, subject to all rights and remedies herein.

(c) Duty of Lessor to Maintain.

[Describe relative duties] { Lessor covenants that Lessor shall be responsible for the maintenance of the Common Areas of the Property and any of the Property not constituting the Premises, including the hallways, conference room, and restrooms and shall provide for regular janitorial maintenance for the Common Areas. Lessor shall be responsible for maintenance of all major building systems including outdoor areas, parking (except Lessee's area), landscaping, roofs, electrical, plumbing, heating, cooling, ventilation fixtures, etc. Lessor shall also be responsible for maintenance of all exterior improvements to the Property other than the Premises. Lessor shall make all necessary replacements, repairs, and alterations to the Property, except Lessee shall be responsible for any damage arising out of Lessee's use of the Premises.}

3.05 Rights of Access.

(a) Generally.

Lessor or the authorized representatives of Lessor may, without prior written or oral notice to Lessee, enter the Premises at all reasonable times during usual business hours for the purposes of inspecting the same. In addition, as provided in Section 3.04, Lessor or its representatives may enter the Premises to make such repairs or reconstruction required or permitted pursuant to this Lease or to perform any work therein that may be necessary by reason of Lessee's default under the terms of this Lease.

(b) Public Improvements.

Lessor, for itself and for the City of Banning and other public agencies, at their sole risk and expense, reserves the right to enter the Premises or any part thereof at all reasonable times during normal business hours with as little interference as possible for the purpose of construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities located on the Premises. Any damage or injury to the Premises or to the improvements constructed thereon resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry.

4.00 INDEMNIFICATION AND INSURANCE.

4.01 Insurance.

The Insurance Requirements are described on Exhibit "ED" hereto and by this reference incorporated herein. {UPDATE WITH CURRENT REQUIREMENTS; DETERMINE WHO WILL BE RESPONSIBLE FOR WHAT}}

4.02 Indemnification.

(a) General

Lessee in connection with any claim arising from Lessee's uses and occupancy of the Premises, shall indemnify Lessor, its officers, employees, and agents against, and will hold and save them in connection with any claim arising from Lessee's use and occupancy of the Premises, 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 work, operations, or activities of Lessee, its agents, employees, subcontractors, or invitees, hereunder, upon the Premises, whether or not there is current passive, or active negligence on the part of Lessor, its officers, agents, invitees, or employees and in connection therewith:

(1) Lessee will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(2) Lessee will promptly pay any judgment rendered against Lessor, its officers, agents, or employees for any such claims or liabilities arising out of or in connection with such work, operations, or activities of Lessee hereunder; and Lessee agrees to save and hold Lessor, its officers, agents, and employees harmless therefrom;

2. In the event Lessor, its officers, agents, or employees is made a party to any action or proceeding filed or prosecuted against Lessee for such damages or other claims arising out of or in connection with the work operation or activities of Lessee hereunder, Lessee agrees to pay to Lessor, its officers, agents, or employees, any and all costs and expenses incurred by Lessor, its officers, agents, or employees in such action or proceeding, including but not limited to legal costs and attorneys' fees. To the extent Lessee provides the primary defense, Lessor will limit its need to incur legal expense to the extent prudent.

(b) Exceptions

The foregoing indemnity shall not include the following claims or liabilities arising from the sole or gross negligence or willful misconduct of the Lessor, its officers, agents, or employees, who are directly responsible to Lessor.

(c) Additional Coverage

Without limiting the generality of the foregoing, said indemnity shall include any liability arising by reason of: and in connection with Lessee's use and occupancy of the Premises.

(1) Any claim made by any occupant, subtenant, assignee, employee, agent, visitor, invitee, or user of any portion of the Premises.

(2) Any accident or other occurrence in or on the Premises or on any adjoining sidewalk causing injury to any person or property whatsoever;

(3) Any failure of Lessee to comply with performance of all of the provisions of this Lease;

(4) Lessee's failure to prevent any employee or any invitee or any other person from entering upon or remaining in any place upon the Premises which is not safe and does not comply with all laws pertaining thereto as they may now or hereafter exist.

(d) Loss and Damage.

Lessor shall not be liable for any damage to property of Lessee or of others located on the Premises, nor for the loss of or damage to any property of Lessee or of others by theft or otherwise. Lessor shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, or leaks from any part of the Premises or from the pipes, appliances, or plumbing works or from the roof, street, or subsurface or from any other place or by dampness or by any other cause of whatsoever nature. Lessor shall not be liable for any such damage caused by other tenants or persons in the Premises, or the public, or caused by operations in construction of any private, public or quasi-public work. Lessor shall not be liable for any latent defect in any building or structure located on the Premises, or any fixture or appurtenance thereto. All property of Lessee kept or stored on the Premises shall be so kept or stored at the risk of Lessee. In the event that any subsurface soils condition, including environmental or soil contamination or hazard, results in loss or damage to Lessee, Lessor shall subrogate to Lessee any rights which it may have to recover such losses or damages against any third parties who may have legal liability, but only to the extent of the actual losses or damages of Lessee. [Responsibility of Insurance]

(e) Waiver of Subrogation.

Lessee agrees that Lessee in connection with any claim arising from Lessee's use and occupancy of the Premises shall not make any claim against, or seek to recover from Lessor or its agents, servants, or employees, for any loss or damage to Lessee, or to any person or property, including without limitation, the property of others under the control of Lessee, and Lessee shall give notice to any insurance carrier of the foregoing waiver of subrogation, and obtain from such carrier, a waiver of right to recovery against Lessor, its agents and employees. In furtherance of the foregoing, Lessee agrees that in the event of a sale of the Premises by Lessor, the hereinabove waiver of subrogation shall continue in favor of the original Lessor hereunder, and any subsequent Lessor, and their respective successors and assigns. In addition, Lessor agrees that Lessor shall not make any claim against or seek to recover from Lessee or its agents, servants or employees for any loss or damage to Lessor, but nothing contained herein shall be deemed to prevent Lessor from terminating this Lease due to the material default of Lessee.

5.00 REMOVAL/DESTRUCTION OF PREMISES.

5.1 Destruction of Premises.

Should any of the buildings on the Premises be totally or substantially destroyed by an uninsured peril, so that all or a substantial portion of the Premises are unfit for the conduct of Lessee's business, Lessee shall have the right, giving thirty (30) days' prior notice to Lessor, to terminate this Lease with respect to the portion of the Premises so affected, and all rent and other

charges with respect to such portion of the Premises shall be adjusted to the date of such destruction. This Lease shall remain in full force and effect with respect to the unaffected portion of the Premises. If Lessee does not elect to terminate this Lease as to any portion of the Premises affected by such destruction, the Lessee shall, within six (6) months, commence and diligently prosecute to completion the restoration of the destroyed buildings or improvements to a condition which will continue to fulfill the conditions, covenants, and requirements contained herein and shall continue operations in accordance with the terms hereof. Should the Premises, any part thereof, or any improvement thereon be totally or partially destroyed by an insured peril, the Lessee shall promptly cause the restoration of the destroyed improvements to their original condition and shall continue operations in accordance with the terms hereof. Lessor shall have no duty to restore or repair Premises in the event of partial or complete destruction of Premises.

6.00 ENFORCEMENT.

6.01 Default and Grounds For Termination Prior to Expiration of Term.

Lessor shall be entitled to declare a default of this Lease and terminate the Lease prior to the expiration of the term where Lessee (i) makes an unauthorized transfer of the Premises, or (ii) vacates or abandons the Premises, or fails to:

- (a) Pay rent to Lessor, as rent is defined in Section 1.04;
- (b) Procure or maintain insurance pursuant to Section 4.01 hereof;
- (c) Discharge any mechanic's, materialman's, contractor's, subcontractor's or other lien as required by Section 2.03;
- (d) Reimburse Lessor for any other loss, fee or charge which is responsibility of Lessee pursuant to this Lease;
- (e) Pay charges for taxes, utilities and other services as provided herein;
- (f) Comply with all applicable governmental statutes, ordinances, rules, regulations, orders and prior covenants and restrictions of record; provided that failure to so comply shall not be a default so long as Lessee is exercising any legal rights to protest or appeal such statute, rule, regulation, order or covenant and restriction, or so long as no official enforcement action has been commenced by the appropriate agency; or
- (g) Perform any other material obligation of Lessee contained in this Lease.

~~Lessor shall also be entitled to declare a default of this Lease and terminate this Lease prior to the expiration of the Term where Lessee:~~

- ~~(1) Makes an unauthorized transfer of this Lease without the consent of Lessor; or~~
- ~~(2) Vacates or abandons the Premises.~~

6.02 Procedure For Termination and Opportunity to Cure.

Lessor may terminate the Lease by reason of the foregoing defaults where Lessor has given notice in writing to Lessee specifying the nature of the default and the corrective action required to be taken, and Lessee has not cured such default within thirty (30) days after receipt by Lessee of such notice, or, where the nature of the default is such that it cannot reasonably be cured within such thirty (30) days, then Lessee shall not be in default so long as Lessee commences the actions necessary for cure within such thirty (30) days and diligently prosecutes the same to completion. ~~[Lessor shall provide a copy of the notice of default to any holder of any mortgage, deed of trust or other form of conveyance relating to Lessee's financing.]~~ Lessor may waive any default hereunder in writing, but such waiver shall not be construed as a waiver of any other default. No acceptance of rent by Lessor or delay in enforcing any obligation shall be construed as a waiver of any default by Lessee. Except as required to protect against further damages, the an injured party may not institute legal proceedings against the a party in default until after giving the notice required in this Section.

6.03 Interest.

Lessee acknowledges that late payment by Lessee of rent or any sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Any rent or sums due hereunder paid after the due date shall accrue interest commencing ten (10) days following the due date at the rate of ~~[one percent (1%) per month or the maximum legal rate, whichever is more, compounded monthly]~~. The parties agree that the foregoing amounts represent a reasonable interest rate, and a fair and reasonable estimate of the cost that Lessor will incur by reason of such late payment. Acceptance of any late payment charge shall not constitute a waiver of any default nor prevent Lessor from exercising any other rights or remedies granted hereunder.

6.04 Surrender of Premises.

(a) General.

In the event of any termination of the Lease, whether by lapse of time, cancellation, forfeiture, default, or otherwise, Lessee shall immediately surrender and deliver the Premises to Lessor, and all rights and claims of Lessee in and to use and enjoyment of such Premises shall cease. Such termination shall not release the Lessee from any liability which accrued under this Lease to Lessor prior to such termination.

(b) Condition of Premises.

Except as otherwise provided in Section 5.01, upon said termination, Lessee shall surrender the Premises neat and clean, in good and tenantable condition, reasonable wear and tear excepted. Lessee shall do all work and make all repairs necessary to place the Premises in said condition at Lessee's sole expense, and should Lessee fail to do such work and make such repairs after receipt of Lessor's demand to do so, Lessor may perform such work, and Lessee shall reimburse Lessor for the expense thereof within ten (10) days after being invoiced therefor by Lessor.

(c) Removal of Property.

Upon termination, and provided Lessee is not in default hereunder, Lessee shall have the right to remove from the Premises all furniture, furnishings, fixtures, and equipment placed in the Premises, provided that Lessee shall make all repairs to the Premises required because of such removal. If any of such property shall remain in the Premises after the end of the term hereof, such property shall be and become, at the option of Lessor, the property of Lessor without any claim therein of Lessee; provided that Lessor may direct Lessee to remove such property and if Lessee fails to remove such when directed to do so by Lessor, then Lessor may remove such property and Lessee shall reimburse Lessor for the expense thereof within ten (10) days after being invoiced therefor by Lessor.

(d) Quitclaim Deed.

Upon termination, Lessee shall execute a quitclaim deed quitclaiming all of its right, title, and interest in and to the Premises to Lessor.

(e) Holding Over.

This Lease shall terminate and become null and void without further notice upon expiration of the term herein specified, and any holding over by Lessee after such expiration shall not constitute a renewal hereof or give Lessee any rights under this Lease. If Lessee fails to surrender the Premises, Lessee shall indemnify and hold Lessor harmless from all loss or liability, including any claims made by any succeeding tenant.

{At the end of the term of this Lease, should Lessee hold over for any reason, it is agreed that in the absence of a written agreement to the contrary, the tenancy shall be from month to month only and not a renewal of this Lease or an extension for further term. Lessee shall pay monthly rent in an amount established by Lessor, and the month to month tenancy shall be subject to every other term, covenant and condition in this Lease that is consistent with and not contrary to a month to month tenancy. }

6.05 Legal Actions.

(a) Institution of Legal Actions.

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Lease. Legal actions must be instituted and maintained in the Superior Court of the County of Riverside, State of California.

(b) Applicable Law and Forum.

The laws of the State of California shall govern the interpretation and enforcement of this Lease.

6.06 Rights and Remedies are Cumulative.

Except as otherwise expressly stated in this Lease, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

6.07 Waiver.

Lessor may waive any default hereunder in writing. Except as otherwise provided in this Lease, waiver by either party of the performance of any covenant, condition, or promise, or a default shall not invalidate this Lease, nor shall it be considered a waiver of any other covenant, condition, or promise or default. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

6.08 Attorney's Fees.

If either party to this Lease is required to initiate or defend any action or proceeding in any way connected with this Lease, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to receive reasonable attorney's fees from the other party. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

7.00 ESTOPPEL CERTIFICATE, ATTORNMENT, SUBORDINATION, MORTGAGEE PROTECTION CLAUSE.

7.1 Estoppel Certificate.

Within five (5) days after Lessor's written request, Lessee agrees to deliver in recordable form a certificate to any proposed mortgagee, lessee or purchaser, or to Lessor, certifying to such items as may be requested, including but not limited to that the lease is in full force and effect, the dates of payment, and the non-existence of defaults, the subordination of the lease and any other information that may be requested. If Lessee fails to timely execute the estoppel certificate, Lessee shall pay Lessor on demand a late fee of \$250.00 and such failure may, at Lessor's sole discretion, be considered a material default by Lessee under this Lease. Lessor and addressees shall be entitled to rely on said certificate.

7.2 Attornment.

[Lessee shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage, other lease or document made by the Lessor covering the Premises, attorn to the purchaser or ground lessor upon any such foreclosure

or sale or termination of ground lease and recognize such purchaser or ground lessor as the Lessor under this Lease, provided that any purchaser or mortgagee or ground lessor shall recognize this Lease as remaining in full force and effect so long as Lessee is not in default hereunder.]

7.3 Subordination:

Upon the written request of Lessor, Lessee will immediately subordinate its rights hereunder to the lien of any mortgage or mortgages or the lien resulting from any other method of financing or refinancing, and to all advances made or hereunder to be made upon the security thereof. This Section 8.03 shall be self-operative and no further instrument or subordination shall be required unless requested by Lessor's mortgagee or ground lessor. Lessee covenants and agrees that it will execute subordination agreements at any time upon Lessor's written request without compensation being made therefor. However, if Lessor so elects, this Lease shall be deemed prior in lien to any mortgage, deed of trust, lease or other encumbrances upon or including the Premises, regardless of recording and Lessee will execute a statement in writing to such effect at Lessor's request, regardless of whether Lessee is required to give up certain rights hereunder.

7.4 Mortgagee Protection Clause:

[Lessee agrees to give any mortgagees, trust deed holders and/or ground lessor, by registered mail, a copy of any notice of default served upon the Lessor, provided that prior to such notice Lessee has been notified in writing (by way of notice of assignment of lease, or otherwise) of the addresses of such mortgagees, trust deed holders and/or ground lessor. Lessee further agrees that if Lessor shall have failed to cure such default within the time provided for in this Lease, then the mortgagees and/or trust deed holders shall have an additional thirty (30) days within which to cure such default, or if such default cannot be cured within that time, then such additional time as may be necessary, provided such mortgagees, trust deed holders and/or ground lessor commence such cure within thirty (30) days and diligently pursue the remedies necessary to cure such default (including but not limited to commencement of foreclosure proceedings to effect such cure), in which event this Lease shall not be terminated while such remedies are being so diligently pursued.]

7.00 8.00 GENERAL PROVISIONS.

7.01 8.1 Time of Essence.

Time is of the essence of each and every covenant, term, condition, and provision of this Lease.

7.02 8.2 Nonliability of City Officials and Employees; Conflicts of Interest; Commissions.

(a) Personal Liability.

No member, official, employee, agent or contractor of Lessor shall be personally liable to Lessee in the event of any default or breach by Lessor or for any amount which may become due

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to Lessee or on any obligations under the terms of the Lease; provided, it is understood that nothing in this Section 8.02 is intended to limit Lessor's liability.

(b) Financial Interest.

No member, official, employee or agent of Lessor shall have any financial interest, direct or indirect, in this Lease, nor participate in any decision relating to this Lease which is prohibited by law.

(c) Commissions.

Neither the Lessor nor the Lessee has retained any broker or finder or has paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Lease. Neither party shall be liable for any real estate commissions, brokerage fees or finders' fees which may arise from this Lease, and each party agrees to hold the other harmless from any claim by any broker, agent, or finder retained by such party.

7.03 8.3AssignmentTransfer.

Lessee shall not assign, sublease, nor transfer this Lease or any of Lessee's rights hereunder, or any interest in the Premises or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, ~~except as provided below, without the prior written approval of Lessor, and if so purported to be transferred, the same shall be null and void.~~

7.04 8.4No Partnership.

Notwithstanding any other express or implied provision of this Lease, Lessor shall not in any way or for any purpose become or be deemed to be a partner of Lessee in its business or otherwise or a joint venturer, or a member of any joint enterprise with Lessee.

7.05 8.5Force Majeure.

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium, riots, insurrection, war or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Sublease (but excluding delays due to financial inability), and provided that Lessee gives Lessor written notice of the commencement of the delay within 10 days of said event, then performance of such act shall be excused for the period of such delay.

7.06 8.6Severability.

If any covenant, term, condition, or provision of this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall be valid and enforceable to the fullest extent permitted by law unless that covenant, term, condition, or provision declared to be invalid is so material that its invalidity deprives either party of the basic benefit of their bargain or renders the remainder of this Lease meaningless.

7.07 8.7 Interpretation.

The terms of this Lease shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Lease or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Lease. As used in this Lease and whenever required by the context thereof, each number, both singular or plural, shall include all numbers, and each gender shall include all genders. Lessor and Lessee, as, used in this Lease or in any other instrument referred to in or made a part of this Lease shall likewise include both the singular and the plural, a corporation, co-partnership, individual, or person acting in any fiduciary capacity as executor, administrator, trustee, or in any other representative capacity, and all successors and assigns. All covenants herein contained on the part of Lessee shall be joint and several.

7.08 8.8 Integration Clause.

It is understood that there are no oral agreements between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements, and understandings, if any, between the parties hereto or displayed by Lessor to Lessee with respect to the subject matter thereof, and none shall be used to interpret or construe this Lease. This Lease includes all exhibits attached hereto, which by this reference are incorporated herein, and also includes any other documents incorporated herein by reference as though fully set forth herein. Said documents shall be interpreted insofar as possible to prevent any inconsistency and to effectuate the terms thereof, without one prevailing over the other.

7.09 8.9 Notices, Demands and Communications Between the Parties.

Except as expressly provided to the contrary herein, any notice, consent, report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be deemed given, delivered, furnished, and received when given in writing and personally delivered to an authorized agent of the applicable party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Federal Express, at the time of delivery shown upon such receipt; in either case, delivered to the address, addresses and persons as each party may from time to time by written notice designate to the other and who initially are:

If to Lessee:

WASTE MANAGEMENT OF CALIFORNIA, INC.
720 East Butterfield Road
Lombard, Illinois 60148
Attn: Vice President of Real Estate
Telephone: _____
Telecopier: (630) 268-3521

If to Lessor: CITY OF BANNING
99 East Ramsey
Banning, California 92220 Tel
Attention: Public Works Director
Tel: (951) 922-3130
Fax: (951) 922-3141

A copy to: ALESHIRE & WYNDER, LLP
18881 Von Karman Avenue, Suite 400
Irvine, California 92612
Attention: David J. Aleshire, City Attorney
Tel: (949) 223-1170
Fax: (949) 223-1180

7.10 8.10 Amendments.

Any amendment of, or supplement to, this Lease must be in writing and signed by Lessor and Lessee or their respective successors.

7.11 8.11 No Warranties.

Lessor makes no warranty, representation, contract, agreement, or statement concerning the use, occupancy, or suitability of the Premises for the use of the Premises as set forth in this Lease, or with respect to the condition of title with respect thereto, or the means, mode, or manner or construction of any buildings or improvements, or the adequacy or fitness thereof for any use or occupancy, or the accuracy or validity of any statement, representation, warranty, agreement, or document by any other person, party, or entity, unless expressly set forth herein as an agreement of Lessor.

7.12 8.12 Execution.

(a) This Lease may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

(b) Lessor represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Lessor, Lessor has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers; and (iii) the entering into this Lease by Lessor does not violate any provision of any other agreement to which Lessor is a party.

(c) Lessee represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Lessee, Lessee has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers; and (iii) the entering into this Lease by Lessee does not violate any provision of any other agreement to which Lessee is a party.

7.13 8.13 Prior Lease Agreement.

As of the Commencement Date, any prior lease agreement between Lessor and Lessee related to the Premises is terminated without any further action.

[End – Signatures on Next Page]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the date first written above.

“LESSOR”

CITY OF BANNING

Dated: _____

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
David J. Aleshire, City Attorney

“LESSEE”

**WASTE MANAGEMENT OF CALIFORNIA,
INC.**

Dated: _____

By: _____
Name: _____
Title: President

Attest:

By: _____
Name: _____
Title: _____

Exhibit "A"

LEASE AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

[ATTACHED]

Exhibit "B"

LEASE AGREEMENT

SITE MAP

[ATTACHED]

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Exhibit "C"

FORM OF LEASE AMENDMENT

FIRST AMENDMENT TO LEASE

This FIRST AMENDMENT TO LEASE ("Amendment") is made and entered into as of this ____ day of ____ by and between the CITY OF BANNING, a general law city (hereinafter referred to as "Lessor") and WASTE MANAGEMENT OF CALIFORNIA, INC., a California Corporation (hereinafter referred to as "Lessee").

R E C I T A L S

A. On or about _____, Lessor and Lessee entered into that certain Lease Agreement, dated as of _____ ("Lease"), pursuant to which Lessor agreed to rent to Lessee a portion that certain property legally described in Exhibit "A" to the Lease and hereto and depicted as the "Parking Space" on the Site Map on Exhibit "B" to the Lease and hereto; and

B. Pursuant to Section 1.01 of the Lease, Lessee has requested that Lessor include the property described as the Interior Space in the Premises and to make such property subject to the terms of the Lease; and.

C. The parties wish to amend the Lease in accordance with the terms of this Amendment in order to make the Interior Space subject to the Lease.

NOW, THEREFORE, the parties agree that the Lease shall be revised pursuant to the following terms of this Amendment:

1. Interior Space Subject to the Lease. Pursuant to Section 1.01 of the Lease, from and after _____ (the "Commencement Date"), the Interior Space shall be included in the Premises and subject to the terms of the Lease.

2. Amendment to Section 1.04 of the Lease. Section 1.04 of the Lease is hereby amended to add the following paragraph at the end of the Section.

"In accordance with the terms of the above paragraph and the First Amendment to Lease, dated as of ____ between the Lessor and the Lessee, the initial [prorated] rent payment shall be _____ with respect to the Interior Space."

3. Amendment to Section 2.01 of Lease. [Insert Applicable Construction Amendments if necessary].

4. Due Execution. The person(s) executing this Amendment on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the

entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

5. Full Force and Effect. The parties further agree that, except as specifically provided in this Amendment, the terms of the Lease shall remain unchanged and in full force and effect. From and after the date hereof, all references to the Lease shall mean the Lease, as amended hereby.

IN WITNESS WHEREOF, the parties have executed and entered into this Amendment as of the date first written above.

LESSOR:

CITY OF BANNING

_____, City Manager

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:
Aleshire & Wynder, LLP

City Attorney

LESSEE:

WASTE MANAGEMENT OF
CALIFORNIA, INC.

By: _____
Title: _____

By: _____
Title: _____

[END OF SIGNATURES]

[Insert EXHIBIT A and B]

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Exhibit "D"

LEASE AGREEMENT

IMPROVEMENTS

Exhibit "E"

DESCRIPTION OF INSURANCE REQUIREMENTS

[Insert City Requirements, Include Casualty and Fire if applicable]

CITY COUNCIL

DATE: March 8, 2011

TO: Mayor and City Council Members

FROM: Andy Takata, City Manager

SUBJECT: **Second reading of Ordinance No. 1437 amending Title 6 of the Banning Municipal Code to regulate and control the keeping of animals**

RECOMMENDATION:

That the City Council hold a public hearing and introduce the second reading of Ordinance No. 1437 amending Title 6 of the Banning Municipal Code by adopting by reference the entirety of Title 6 of the Beaumont Municipal Code entitled "Animals" to regulate and control the keeping of animals.

JUSTIFICATION:

Government Code §§ 50022.3 and 50022.4 require that the City Council hold a public hearing on the second reading of the ordinance.

BACKGROUND/DISCUSSION:

On February 22, 2011, the City Council held a public meeting on Ordinance No. 1437, heard the staff report, and took public testimony on the matter. The staff report for February 22, 2011 meeting is attached. As required by the Government Code, the City Council is required to hold a public hearing prior to the introduction of the second reading of the Ordinance.

FISCAL DATA:

The cost associated with the preparation of the ordinance is absorbed in the current staffing and budget.

RECOMMENDED BY:



Andrew J. Takata
City Manager

Attachments:

1. City Council Staff Report dated February 22, 2011
2. Ordinance No. 1437
3. Title 6 "Animals" of the Beaumont Municipal Code
4. Public Hearing Notice

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ATTACHMENT 1

City Council Staff Report
Dated February 22, 2011

**CITY COUNCIL
REPORT OF OFFICERS**

DATE: February 22, 2011

TO: Mayor and City Council Members

FROM: Andy Takata, City Manager

SUBJECT: **Amendment to Title 6 of the Banning Municipal Code to Regulate and Control the Keeping of Animals**

RECOMMENDATION:

That the City Council adopt Ordinance No. 1437 amending Title 6 of the Banning Municipal Code by adopting by reference the entirety of the Title 6 of the Beaumont Municipal Code entitled "Animals" to regulate and control the keeping of animals and introduce the first reading of Ordinance No. 1437.

JUSTIFICATION:

The City's current animal control regulations codified in Title 6 "Animals" of the Banning Municipal Code have not been updated since their adoption in 1965. The City currently contracts with the City of Beaumont for animal control services. It is efficient and convenient for the Beaumont animal control officers to enforce the regulations since they are already familiar with the Code. Adoption by reference the entirety of the Beaumont Municipal Code Title 6 provisions allows the enforcement officers to facilitate consistency and ease of enforcement between rules that apply in Banning and Beaumont to residents who wish to keep animals. Additionally, the ordinance updates the Banning animal control regulations and brings them into compliance with existing law.

BACKGROUND/DISCUSSION:

The City entered into a contract services agreement with the City of Beaumont on July 1, 2010 for providing animal control services. The Beaumont Police Department is the department within the City of Beaumont that enforces animal regulations. Since the Beaumont animal control officers are already familiar with their Municipal Code, it is more efficient and convenient for them to enforce the same code in Banning. Additionally, the City of Beaumont fully revised and amended to their animal ordinance in November 2009, which is fairly recent. By adopting by reference the entirety of the Beaumont Code would help not only to provide consistent and ease of enforcement between the two cities but also will update the Banning Animal Section of the Code, which has not been updated since 1965.

The most significant changes to the ordinance include a mandatory spaying or neutering of all dogs and cats within the City, or the requirement to obtain an unaltered license if the owner is unable to spay or neuter their animal; and mandatory micro-chipping of all dogs and cats that are licensed within the City. Certain exemptions apply, which include animals that are unable to be spayed, neutered, or micro-chipped as certified by a licensed veterinarian. For clarification, mandatory micro-chipping of cats applies only to cats that

have been impounded and transported to the shelter will be required to be micro-chipped prior to their release back to their owner. The new ordinance prohibits owners from allowing unspayed or unaltered cats from remaining outdoors.

Fees for enforcing this ordinance will be evaluated and adopted as part of the City-wide fee evaluation/review.

FISCAL DATA:

The cost associated with the preparation of the ordinance is absorbed in the current staffing and budget.

RECOMMENDED BY:



Andrew J. Takata
City Manager

Attachments:

1. Ordinance No. 1437
2. Title 6 "Animals" of the Beaumont Municipal Code

ATTACHMENT 2

Ordinance No. 1437

ORDINANCE NO. 1437

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING TITLE 6 OF THE BANNING MUNICIPAL CODE BY ADOPTING BY REFERENCE THE ENTIRETY OF TITLE 6 OF THE BEAUMONT MUNICIPAL CODE, ENTITLED "ANIMALS", RELATIVE TO ANIMAL CONTROL AND REGULATION

WHEREAS, the City of Banning ("City") has established in its municipal code standards which protect the general health, safety and welfare of City residents; and

WHEREAS, strict compliance with the provisions of the municipal code, including those provisions which regulate and control the keeping of animals, will enhance the quality of life and help maintain property values in the City; and

WHEREAS, the City currently contracts with the City of Beaumont for animal control services; and

WHEREAS, the City finds that utilizing the City of Beaumont's ordinances and regulations is efficient and convenient for the animal control enforcement officers who are already familiar with the relevant provisions of the City of Beaumont's ordinance and regulations; and

WHEREAS, the City's current animal control regulations, codified in Title 6 "Animals" of the Banning Municipal Code, have not been updated since their adoption in 1965. However, Title 6 "Animals" of the Beaumont Municipal Code was fully revised and updated in 2009 to comply with applicable state laws and regulations pertaining to animal control; and

WHEREAS, the City Council is hereby adopting by reference the entirety of Beaumont Municipal Code Title 6 provisions relating to animal control for the purposes of (i) facilitating consistency and ease of enforcement as between the rules that apply to Beaumont and Banning residents who wish to keep animals, and (ii) updating Banning's animal control regulations to bring them into compliance with existing law.

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

SECTION 1. Title 6 of the Banning Municipal Code relating to "Animals" is hereby amended by deleting the existing Title 6 (including Chapters 6.04, 6.08, 6.12, 6.16, 6.20, 6.24, 6.28, 6.32 and 6.36) in its entirety and adopting a new Title 6 to read as follows in its entirety:

"Title 6 -- ANIMALS

Chapter 6.04:

Sections

- | | |
|----------|--|
| 6.04.010 | Incorporation by Reference. |
| 6.04.020 | Definitions; Amendments to Adopted Animal Code. |
| 6.04.030 | Delegation of Authority to Other Municipality; Interpretation. |
| 6.04.040 | Roosters, Peacocks and Flocks Prohibited; Amendments. |
| 6.04.050 | Abandonment; Amendments. |
| 6.04.060 | Application Requirements; Amendments. |
| 6.04.070 | Violations – Penalties; Amendments. |
| 6.04.080 | Failure to Quarantine; Amendments. |
| 6.04.090 | Deletions. |

6.04.010 Incorporation by Reference.

A. Except as otherwise provided in this chapter, the following chapters of that certain document entitled, "Title 6. Animals, Beaumont Municipal Code," and all appendices, tables, and indices thereto, as the same existed on December 14, 2010, (hereafter "Animal Code"), are hereby adopted by reference and incorporated as if fully set out herein, and the provisions thereof shall be controlling within the limits of the city, pursuant to the provisions of Section 50022.1 *et seq.* of the California Government Code:

1. Chapter 6.02. Regulations Generally.
2. Chapter 6.04. Dogs and Cats – General Provisions.
3. Chapter 6.06. Animal Licenses.
4. Chapter 6.08. Seizure or Impoundment of Animals.
5. Chapter 6.10. Potentially Dangerous Dogs.
6. Chapter 6.12. Dangerous Animals.
7. Chapter 6.14. Rabid Animals.
8. Chapter 6.16. Kennels, Catteries, and Animal Rescue Facilities.
9. Chapter 6.18. Large Animal.
10. Chapter 6.20. Apiaries.
11. Chapter 6.22. Animal Control Hearings

B. One copy of the Animal Code, described in this Section, has been deposited in the office of the city clerk and shall be at all times maintained by the city clerk for use and examination by the public.

6.04.020 Definitions; Amendments to Adopted Animal Code.

Whenever any of the following names or terms are used in the Animal Code, each such name or term shall be deemed and construed to have the meaning ascribed to it in this section as follows:

- A. "Animal Services Officer" means any person or entity designated under this Chapter as the animal services officer for the City, including, but not limited to, any Beaumont animal services employee designated to enforce the animal control regulations of this Chapter.
- B. "City" is the City of Banning.
- C. "Chief of Police" or "Police Chief" means the Chief of Police for the City of Beaumont.
- D. "Planning Director" is the Director of the Community Development Department for the City of Banning or his/her designee.

6.02.030 Delegation of Authority to Other Municipality; Interpretation.

Section 6.02.020 of the Animal Code is amended in its entirety to read as follows:

The City reserves the right to delegate its authority over animal control administration and the enforcement of this Title to another duly-authorized and qualified municipality operating an animal control program or contractor. In the event of such a delegation of authority to another municipality or contractor, the provisions, terms and definitions established by this Title shall, to the extent reasonably possible, be construed in maximal consistency with any agreed, written contractual arrangements between the City of Banning and the municipality providing animal control services or the contractor. If this Title cannot be reasonably construed in consistency with a written contractual arrangement between the City of Banning and another municipality providing animal control services or contractor, then the written contract provisions shall control.

6.02.040 Roosters, Peacocks and Flocks Prohibited; Amendments.

Section 6.02.0160 of the Animal Code is amended in its entirety to read as follows:

No person, either as owner, agent or employee, shall keep any roosters, peacocks, or pigeons, doves, ducks, or other birds or fowl, domestic or otherwise within the City of Banning with the exception of the zoning districts in which the fowls are permitted by Chapter 17.40 of the Banning Zoning Code.

6.04.050 Abandonment; Amendments.

Section 6.02.0180 of the Animal Code is amended in its entirety to read as follows:

It is unlawful for any person to knowingly abandon any animal within the City. Any person violating this Section shall bear full costs and expenses incurred by the City, the Department or any other officer or agency designated by the City in the care of said abandoned animal and the person shall reimburse all costs therefore to the agency that incurred said costs as determined by the Animal Services Officer. Abandonment shall include the owner's failure to redeem animals seized or impounded after proper notification of the seizure or impoundment has been issued.

6.02.060 Application Requirements; Amendments.

The first sentence of the third paragraph in Section 6.16.020 of the Animal Code is amended to read as follows:

Notwithstanding any other provision of this Title, the Animal Services Officer is hereby authorized to enter upon and inspect the premises of any kennel or cattery located in the City for the purpose of determining whether such kennel or cattery is in compliance with the provisions of this Title and the conditions set forth in Title 17 "Zoning" of the Banning Municipal Code.

All other provisions of Section 6.02.060 remain unchanged.

6.02.070 Violation-Penalties; Amendments.

Section 6.12.080, Subpart B, of the Animal Code is amended to read as follows:

B. Violation-Penalties. In the discretion of the Enforcement Officer (as that term is defined in Section 1.20.020 of the Banning Municipal Code), any person violating the provisions of this Chapter shall be issued an Administrative Citation pursuant to Banning Municipal Code Chapter 1.20, or shall be guilty of criminal penalties as provided under Banning Municipal Code Chapter 1.28. Each such violation shall be deemed a separate offense.

6.02.080 Failure to Quarantine; Amendments.

Section 6.14.100 of the Animal Code is amended in its entirety to read as follows:

Failure to comply with quarantine requirements or failure to produce an animal for quarantine shall constitute a violation of this Chapter. Persons who violate a home quarantine, fail to produce an animal for quarantine upon demand, or in any other way interfere with rabies investigation, shall, in the discretion of the Animal Services Officer, be administratively cited under Chapter 1.20 of the Banning Municipal Code, or shall be guilty of the criminal penalties as provided under Banning Municipal Code Chapter 1.28, and/or pursuant to Section 121710 of the California Health and/or Safety Code and Section 9701 of the California Food and Agriculture Code, which is punishable by imprisonment in the County Jail for a period not to exceed one year, or by a fine of not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000) per day of violation, or both fine and imprisonment.

6.02.090 Deletions.

The Animal Code is amended by the following technical deletions:

- A. In Animal Code Section 6.06.130, subpart (d), the phrase “of Beaumont” is deleted.
- B. In Animal Code Section 6.10.040 the phrase “of Beaumont” is deleted.
- C. In Animal Code Section 6.16.030 the phrase “of Beaumont” is deleted.”

SECTION 2. Those amendments and deletions to the Animal Code set forth in Section 1 hereof are made solely for the purpose of facilitating consistency between the Animal Code adopted by reference herein and the existing Banning Municipal Code, its Titles, provisions and procedures.

SECTION 3. Violation of or failure to comply with any of the provisions of the Animal Code shall be subject to those penalty provisions set forth in Attachment “A” hereto. These penalty provisions are so set forth herein to meet the requirements of Government Code Section 50022.4; such penalty provisions are also adopted by reference pursuant to Section 1 without any revisions (unless otherwise specified above) and, therefore, such penalty provisions as printed in Attachment “A” need not be codified in the Banning Municipal Code.

SECTION 4. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portions thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences clauses, phrases or portions thereof be declared invalid or unconstitutional.

SECTION 5. This Ordinance shall be in full force and effective 30 days after its passage.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Banning, California, this 8th day of March, 2011.

Barbara Hanna, Mayor
City of Banning

ATTEST:

Marie Calderon, City Clerk
City of Banning

CERTIFICATION:

I, MARIE CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1437 was duly introduced at a regular meeting, on the 22nd day of February 2011, and adopted by the City Council of the City of Banning, California, at a regular meeting held on the 8th day of March 2011, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie Calderon, City Clerk
City of Banning

ATTACHMENT "A"

Penalty provisions applicable through Animal Code adopted by reference:

6.02.080 Mandatory Spay and Neutering. No person shall own, keep, or harbor an unaltered dog or cat in violation of this Section. An owner or custodian of an unaltered dog must have the dog spayed or neutered, or provide a certificate of sterility, or obtain an unaltered dog license in accordance with this Title. An owner or custodian of an unaltered cat must have the animal spayed or neutered, or provide a certificate of sterility.

Penalties issued for failure to spay or neuter a dog or cat shall be enforced as set forth below:

a. An administrative citation, infraction, or other such authorized penalty may be issued to an owner or custodian of an unaltered dog or cat for a violation of this section only when the owner or custodian is concurrently cited for another violation under state or local law pertaining to the obligations of a person owning or possessing a dog or cat. Examples of such state law or local violations include, but are not limited to, the following: failure to possess a current canine rabies vaccination of the subject dog; dog or cat at large; failure to license a dog; leash law violations; kennel or cattery permit violations; tethering violations; unhealthy or unsanitary conditions; failure to provide adequate care for the subject dog or cat in violation of the Penal Code; rabies quarantine violations for the subject dog; operating a business without a license and/or lack of State Tax ID Number; fighting dog activity in violation of Penal Code section 597.5; animals left unattended in motor vehicles; potentially dangerous, dangerous or vicious animals; and noisy animals.

b. Should the owner or custodian of an unaltered dog or cat be found in violation of a state or local law, as stated above, in subsection (1), the owner or custodian shall be required to spay or neuter the unaltered animal in accordance with this section.

6.02.180 Abandonment. It is unlawful for any person to knowingly abandon any animal within the City. Any person violating this Section shall bear full costs and expenses incurred by the City in the care of said abandoned animal and the person shall reimburse to the City all costs therefore as determined by the Animal Services Officer. Abandonment shall include the owner's failure to redeem animals seized or impounded after proper notification of the seizure or impoundment has been issued.

6.02.210 Recoupment of Enforcement Costs. The City is hereby authorized to recoup all administrative costs reasonably related to the enforcement of this Title, including costs of staff time.

6.06.130 Denial or Revocation of License for Unaltered Dogs. The Department may deny or revoke an unaltered dog license for one or more of the following reasons:

a. The owner, custodian, applicant or licensee is not in compliance with all of the requirements of this section;

b. The Department has received at least three complaints, verified by the Department, that the owner, custodian, applicant, or licensee has allowed a dog to be stray or run at large or has otherwise been found to be neglectful of his or her or other animals;

c. The owner, custodian, applicant, or licensee has been previously cited for violating a state law, other City or municipal provisions relating to the care and control of animals;

d. The unaltered dog has been adjudicated by a court or an agency of appropriate jurisdiction to be potentially dangerous, dangerous or vicious, or to be nuisance within the meaning of the City of Beaumont Titles or under state law;

e. An unaltered dog license held by the applicant has been revoked;

f. The license application is discovered to contain a material misrepresentation or omission of fact.

6.08.070 Cost of Seizure and Care – Owner Liable. If any animal is properly seized or impounded under this chapter, the owner or keeper shall be personally liable to the seizing/ impounding agency for the cost of the seizure/ impoundment and care of the animal(s). Furthermore, if the charges for the seizure or impoundment, and any other charges permitted under this chapter are not paid within fourteen (14) days of the seizure, or, if the owner, within fourteen (14) days of notice of availability of the animal(s) to be returned, fails to pay charges permitted under this chapter and take possession of the animal(s), the animal(s) shall be deemed to have been abandoned and may be disposed of by the impounding Officer. The cost of caring for and treating any animal properly seized under this chapter shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid, unless the hearing officer determines that the seizure was unjustified.

6.08.080 Noncompliance with Order to Provide Veterinary Care. If the animal requires veterinary care and the seizing agency is not assured, within fourteen (14) days of the seizure of the animal(s), that the owner will provide the necessary care, the animal(s) shall not be returned to its owner and shall be deemed to have been abandoned and may be disposed of by the impounding Officer. A veterinarian or properly trained Animal Services Officer may humanely destroy an impounded animal without regard to the prescribed holding period when it has been determined that the animal has incurred severe injuries or is incurably ill or crippled. A veterinarian or properly trained Animal Services Officer may also immediately humanely destroy an impounded animal afflicted with a serious contagious disease unless the owner or his or her agent immediately authorizes treatment of the animal(s) by a veterinarian at the expense of the owner or agent.

6.10.040 Pre-Hearing Seizure and Impoundment of Dog. If upon investigation it is determined by the Animal Services Officer that probable cause exists to believe the dog in question poses an immediate threat to public safety, then the Animal Services Officer may seize and impound the dog pending the hearings to be held pursuant to this Chapter. The owner or keeper of the dog shall be liable to the City of Beaumont where the dog is impounded for the costs and expenses of keeping the dog, if the dog is later adjudicated potentially dangerous.

6.12.060 Dangerous Animals-Disposition.

A. The owner of an animal which has bitten any person or a domestic animal, or has otherwise been determined, after a hearing, to be dangerous, may be required as a condition of the release of the animal from confinement or impoundment, in addition to paying all costs of any impoundment, to comply with the written disposition of the hearing officer which contains any or all of the following conditions requiring the owner:

1. Registration. To immediately register the animal that is found to be dangerous with the animal services officer, to comply with the animal services officers requirements for dangerous animals (including, but not limited to, requiring the animal to wear a visible, dangerous animal tag), and to keep such animal properly vaccinated at all times. The owner shall pay a fee to keep or maintain one dangerous animal for a twelve-month term and an additional fee for each additional dangerous animal. The fee shall be paid for each twelve-month term. Should the animal die in any four (4) month term, the owner shall notify the animal services officer of the death within two (2) working days of the death. The owner shall provide proof of the death to the satisfaction of the animal services officer. The amount of the fees shall be established from time-to-time by resolution of the City Council.

2. Confinement. To keep the animal securely confined on its premises in a locked enclosure approved by the hearing officer or the animal services officer from which the animal cannot escape and into which children cannot trespass. Such a kennel or structure must have secure sides and a secure top attached to the sides. All structures used to confine the animal must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure bottom or floor attached to the side of the pen or the sides of the pen must be embedded in the ground no less than two (2) feet. All structures erected to house an animal must comply with all zoning and building regulations of the City. All such structures must be adequately lighted, ventilated, and kept in a cleaned sanitary condition.

3. Confinement While on Leash. To keep the animal securely muzzled, restrained by a substantial leash of appropriate length and under the control of a responsible person eighteen (18) years of age or older who is physically capable of restraining the animal when the animal is not contained in a locked, secure enclosure.

4. Spay or Neuter the Animal. To have the animal spayed or neutered by a licensed veterinarian and to present proof to the animal services officer.

5. Insurance. To provide and maintain financial responsibility for injuries to the public by obtaining and showing proof of liability insurance in the form and amount deemed to be acceptable by the hearing officer in light of all the circumstances. Such insurance policy shall provide that no cancellation of the policy will be made unless thirty days written notice is first given to the Animal Services Officer and the City Clerk's office.

6. Notification. To immediately inform any City, county, postmaster and utility company meter reader and anyone-else that lawfully comes onto the property, of the animal's dangerousness and to inform the animal services officer and/or the hearing officer if the animal is moved to another location inside or outside the City limits as provided in Section 6.06.150 of this Chapter.

7. Signs. To display in a prominent place on the premises a sign easily readable by the public using the words "Beware of Dog" or "Beware of Animal" in letters at least three (3) inches high.

8. Identification. To have a registration number assigned to such animal tattooed by a licensed veterinarian on the animal's inner thigh or inserted by a licensed veterinarian under the animal's skin by means of an electronic identification device. The manner and method of identification to be used hereunder shall be determined by the hearing officer. For the purposes of this Section, "tattoo" shall be defined as any permanent numbering of an animal by means of indelible or permanent ink.

9. Inspection. To consent and agree to the entry upon the premises to any Animal Services Officer for the purpose of inspecting the animal and/or premises.

10. Payment of Costs. To make reasonable payment of one-half of the costs incurred by the City and the Animal Services Officer in the hearing process, not to exceed one thousand dollars (\$1,000.00).

11. Other. To take any other steps deemed reasonably necessary to prevent injuries to the public.

The owner of the animal shall comply with the conditions imposed by the hearing officer within the time limit specified in Section 6.12.070 of this Chapter.

B. No dangerous animal shall be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition. In addition, no such animal may be kept in a house or structure when the windows are open or screen doors are the only obstacle preventing the animal from exiting the structure.

C. If, following the hearing, the subject animal is found to be dangerous and such a threat to public safety that even if reasonable conditions were imposed to release the animal to the owner it would create a significant threat to the public health, safety, or welfare, such animal may be destroyed. Such remedy shall be in addition to all other remedies at law or in equity and shall not limit or restrict such other remedies, including, but not limited to, Section 6.12.080(A), which authorizes the hearing officer to order an animal destroyed for violation of this Chapter or failure to meet a condition imposed by the hearing officer.

D. Any decisions made by the hearing officer shall be final.

E. If, after notice, the owner of an impounded animal fails to appear or be represented at the required hearing, then the animal may be considered abandoned. If the subject animal does not appear to be validly licensed and no owner can be found, and if the animal has been determined to be dangerous, then the animal may be considered abandoned and may be handled in the same manner as any other unclaimed stray animal.

F. If such an unlicensed animal has not been determined to be dangerous, it shall be returned to the owner, subject to the issuance of a citation for failure to obtain a license. A non-dangerous stray animal will be handled as any other stray animal.

G. In such cases where an impounded licensed animal is found to be dangerous, the animal may be released subject to the conditions set forth in Subsection A of this Section.

6.12.080 Enforcement and Penalties.

A. Failure to Comply. It is unlawful for the owner of an animal deemed dangerous under this Chapter to fail to comply with the requirements and conditions set forth in this Chapter. Any animal found to be the subject of a violation of this Chapter or of any condition imposed by the hearing officer pursuant to Section 6.12.060 of this Chapter shall be subject to immediate seizure and impoundment. In addition, failure to comply will result in the destruction of the animal. No such animal however, may be destroyed until the owner of the animal has received written notice from the hearing officer that the animal will be destroyed unless, within fourteen (14) days from the date of the notice:

1. The owner has demonstrated to the satisfaction of the hearing officer that the owner has fully complied with the requirements and conditions set forth in this Chapter, including, but not limited to, the conditions imposed by the hearing officer pursuant to Section 6.12.060 of this Chapter; or
2. The owner has filed in a court of competent jurisdiction a petition that seeks to stay destruction of the animal and has served a copy of such petition upon the hearing officer.

The notice from the hearing officer shall be served upon the owner either personally or by prepaid first-class mail. If, after (14) fourteen days from the date of such notice, the owner has not complied with the provisions of Subdivisions 1 or 2 of this Subsection, the hearing officer may, without further notice or process, have the animal destroyed.

B. Violation-Penalties. In the discretion of the Enforcement Officer (as that term is defined in Section 1.20.020 of the Banning Municipal Code), any person violating the provisions of this Chapter shall be issued an Administrative Citation pursuant to Banning Municipal Code Chapter 1.20, or shall be guilty of criminal penalties as provided under Banning Municipal Code Chapter 1.28. Each such violation shall be deemed a separate offense.

Notwithstanding the above, a first offense may be charged and prosecuted as a misdemeanor. Payment of any penalty herein shall not relieve any person from the responsibility for correcting the violation

C. Ownership of Dangerous Animals. The owner of an animal determined to be dangerous under this Chapter shall be prohibited from owning, possessing, controlling or having custody of any other animal of the type, species, group or family to which the violation applies for a period of three years from the date of violation when it is found after the hearing conducted pursuant to Section 6.12.070 of this Chapter that ownership or possession of such animal by that person would create a significant threat to public health, safety or welfare.

D. Enforcement. Any provision of this Chapter may be enforced by the Police Department, Fire Department, the animal services officer or any authorized designee of the City Manager. Complaints of any violations of this Chapter which are subject to penalties under this Section may be presented to the District Attorney's office or to the City Attorney for prosecution.

E. Nuisance Abatement Lien. The costs of abating a public nuisance pursuant to the provisions of this Chapter may be recovered from the owner of the animal causing the public nuisance. If the owner fails to pay such costs within thirty days from the date of invoice or within an extended period of time agreed to in writing by the hearing officer, the costs may be collected by a nuisance abatement lien, as provided by Section 38773.1 of the California Government Code. Notice of the lien shall be given to the owner of record of the parcel of land on which the nuisance is maintained prior to recordation of the lien and in the manner specified in said Section 38773.1.

F. Penalties and Remedies Cumulative. The penalties and remedies specified herein shall not be exclusive but shall be cumulative with all other remedies at law or in equity. The City may, in its discretion, elect to pursue anyone or more of the penalties or remedies provided for herein or at law or in equity.

ATTACHMENT 3

**Title 6 “Animals” of the Beaumont
Municipal Code**

Title 6
Animals

Chapters:

- 6.02 Regulations Generally
- 6.04 Dogs and Cats – General Provisions
- 6.06 Animal Licenses
- 6.08 Seizure or Impoundment of Animals
- 6.10 Potentially Dangerous Dogs
- 6.12 Dangerous Animals
- 6.14 Rabid Animals
- 6.16 Kennels, Catteries, and Animal Rescue Facilities
- 6.18 Large Animal
- 6.20 Apiaries
- 6.22 Animal Control Hearings

Chapter 6.02
Regulations Generally

Sections:

- 6.02.005 Definitions
- 6.02.010 Fees by Resolution
- 6.02.020 (Reserved)
- 6.02.030 Provisions Supplementary to Other Laws
- 6.02.040 (Reserved)
- 6.02.050 Interference with Enforcement
- 6.02.060 Entry upon Private Property
- 6.02.070 Animal Keeping Requirements
- 6.02.080 Mandatory Spay and Neutering
- 6.02.090 Mandatory Spay and Neutering-Exemptions
- 6.02.100 Mandatory Micro-chipping of Dogs
- 6.02.105 Mandatory Micro-chipping of Cats
- 6.02.110 Mandatory Micro-chipping of Dogs and Cats-Exemptions
- 6.02.120 Transfer or Sale of Dogs, Cats or other Animals-Requirements
- 6.02.130 Transfer, Sale, and Breeding of Unaltered Dog or Cat
- 6.02.140 Transfer or Sales of Animals on Public Property Prohibited
- 6.02.150 Animals in Vehicles
- 6.02.160 Roosters, Peacocks and Flocks Prohibited
- 6.02.170 Wild Animals and Mammals, Poisonous Snakes and Other Reptiles
- 6.02.180 Abandonment
- 6.02.190 Duties and Powers of Officers
- 6.02.200 Transport of Injured Animals to Veterinarian
- 6.02.210 Recoupment of Enforcement Costs
- 6.02.220 Waiver of Fees
- 6.02.230 Severability

6.02.005 Definitions. For the purposes of Title 6 of the Beaumont Municipal Code, the following words and phrases shall have the meanings:

- a. "Abused" means any animal which is mistreated, beaten, tormented or teased; deprived of water, food or shelter; kept under unsanitary conditions; abandoned; or trained for fighting or attacking other animals or human beings.
- b. "Adoption" refers to the process of taking guardianship of and responsibility for a pet that a previous owner has abandoned or otherwise abdicated responsibility for.
- c. "Altered" means a male animal that has been neutered or a female animal that has been spayed. Also referred to as a sterile animal.
- d. "Animal Rescuer" means any individual possessing a rescue permit from the Department, who routinely obtains a dog or cat from the rightful owner of said animal, or any animal from an animal shelter that has been retained in accordance with this Title.
- e. "Animal Rescue Operation" means any building, structure, enclosure or premises run by an Animal Rescuer, whether or not a valid nonprofit corporation formed pursuant to the provisions of the California Corporations Code for the prevention of cruelty to animals, which meets all requirements and standards referred to in Chapter 6 of this Title."
- f. "Animal Services Officer" means any person or entity designated under this Chapter as the animal services officer for the City, including, but not limited to, any City employee designated to enforce the animal control regulations of this Chapter.
- g. "Apairy" means a place where bee colonies are kept.
- h. "Assistance Dog" refers to any dog as defined in Section 30508 (a) of the California Food and Agriculture Code.
- i. "At large" means any dog which is off the premises of its owner, custodian or caretaker and which is not under physical restraint by a leash of a size and material appropriate to the size and temperament of the dog and which is held by a person capable of restraining such dog, or is not otherwise physically restrained by some other device or instrumentality, except that such device or instrumentality shall not include voice control, eye control or signal control of the dog by any person, device or instrumentality. Also refers to any dog which is on the premises of its owner, custodian or caretaker which is not being maintained by physical restraint, fence, kennel, voice command, or in such a way that the animal may not leave the property of the owner; or that persons, without permission, may not wander into the confined area of the dog without intentional trespass.
- j. "Bee" means any stage of the common domestic honey bee, *Apis mellifera* species.
- k. "Cattery" refers to any building, structure, enclosure or premises whereupon, or within which, ten (10) or more cats, four (4) months of age or older, are kept or maintained.
- l. "City" is the City of Beaumont

m. "Class I Kennel" refers to any building, structure, enclosure, or premises whereupon, or within which, five (5) to ten (10) dogs, four (4) months of age or older, are kept or maintained. A Class I Kennel shall not include a Sentry Dog Kennel or an Animal Rescue Operation that meets the definition and requirements set forth in this Title.

n. "Class II Kennel" refers to any building, structure, enclosure or premises whereupon, or within which, eleven (11) to twenty-five (25) dogs, four (4) months of age or older, are kept or maintained.

o. "Class III Kennel" refers to any building, structure, enclosure or premises whereupon, or within which, twenty-six (26) to forty (40) dogs, four (4) months of age or older, are kept or maintained.

p. "Class IV Kennel" refers to any building, structure, enclosure or premises whereupon, or within which, forty-one (41) or more dogs, four (4) months of age or older, are kept or maintained.

q. "Colony" means a hive and its equipment and appurtenances including bees, comb, pollen, and brood.

r. "Custodian" means any person who intentionally provides care or sustenance for any animal, including but not limited to a dog or cat, on behalf of another, or represents the interests of the owner.

s. "Department" refers to the City of Beaumont Animal Services Department.

t. "Domestic Animals" refers to small and/or non-dangerous wild animals such as dogs, cats, rodents, birds, non-poisonous snakes, rabbits and similar species that do not constitute a public nuisance.

u. "Enclosure" means a fence or structure of at least six (6) feet in height forming or causing an enclosure suitable to prevent the entry of young children and suitable to humanely confine an animal with adequate exercise area, and posted with an appropriate warning sign, in conjunction with other measures which may be taken by the owner of the animal. The enclosure shall be designed in order to prevent the animal from escaping. The animal shall be housed pursuant to Section 597t of the California Penal Code.

v. "Exigent Circumstances" refers to circumstances in which the officer, in his/her reasonable judgment, determines that a life threatening or serious injury may occur if immediate action is not taken, i.e., animal may die if not immediately transported to a veterinarian, or animal may bite and seriously injure a human or animal if not immediately impounded, or animal may die if officer does not immediately enter property and rescue, etc.

w. "Exotic Animal" is defined as any animal which is not normally domesticated in the United States including, but not limited to, any lion, tiger, bear, non-human primate (monkey, chimpanzee, etc.), wolf, coyote, cougar, bobcat, ocelot, wildcat, skunk, boa, python, reptile, amphibian, bird, or venomous snake, irrespective of its actual or asserted state of docility, tameness or domesticity.

x. "Hearing officer" means the person appointed by the Chief of Police to serve as the hearing officer under this Title.

y. "Hybrid Animal" means any animal which is part wild animal and is capable of transmitting rabies, except livestock hybrids, and for which no rabies prophylaxis is recognized or authorized by the State of California.

z. "Impounded" means having been received into the custody of any animal control center, animal services officer, animal control vehicle, or peace officer duly authorized by the "City" to receive such animal.

aa. "Incapable of breeding" means any dog or cat which has been examined by a California licensed Veterinarian and determined to not be capable of reproducing. A certificate of sterility, signed by the Veterinarian must be provided upon demand."

bb. "Large Animals" means any livestock including, but not limited to, horses, donkeys, mules, pigs, and other equine cattle and cows.

cc. "Owner" means any person who intentionally provides care or sustenance for any animal, including but not limited to a dog or cat, for any period exceeding a total of thirty days.

dd. "Person" means any individual, firm, business, partnership, joint venture, corporation, limited liability company, profit or non-profit association, club, or organization.

ee. "Public entity" means any state, or any political subdivision, municipal corporation profit or non-profit or agency thereof.

ff. "Sentry dog" refers to any dog trained to work without supervision in a fenced facility and to deter or detain unauthorized persons found within the facility. The term "guard dog" shall also mean "sentry dog".

gg. "Sentry Dog Kennel" means any building structure, enclosure, or premises whereupon, or within which, five or more guard or sentry dogs are kept or maintained.

hh. "Tract" means a contiguous parcel of land under common ownership.

ii. "Unaltered and Unspayed" means a dog or cat, four (4) months of age or older, that has not been spayed or neutered. A condition that exists in an animal which permits the producing of offspring.

jj. "Underdeveloped property" means any idle land that is not improved or actually in the process of being improved with structures or improvements intended for human use occupancy. The term shall be deemed to include property developed exclusively as a street or highway or property used for commercial agricultural purposes.

kk. "Unlicensed" means any animal for which no valid license is currently in force.

ll. "Vaccination" means an inoculation against rabies of any dog or cat, four months of age or older, with any vaccine prescribed for that purpose by the California Department of Health Services.

mm. "Veterinarian" means a person holding a currently valid license to practice veterinary medicine issued by the state of California pursuant to Chapter 11 of the California Business and Professions Code.

nn. "Vicious dog/vicious cat" means any dog or cat which has bitten a person or animal without provocation or direction or which has a disposition or propensity to attack or bite any person or animal without provocation or direction. (Ord. 960, 10/20/09; Section 1)

6.02.010 Fees by Resolution. All fees authorized in this title shall be established, and may be amended from time-to-time, by resolution. (Ord. 960, 10/20/09; Section 1)

6.02.020 Reserved

6.02.030 Provisions Supplementary to Other Laws. The provisions of this Title shall be in addition to all other laws, or the provisions in other Titles of the City governing or regulating the keeping of animals and livestock in the City and not a limitation thereof. (Ord. 960, 10/20/09; Section 1)

6.02.040 Reserved

6.02.050 Interference with Enforcement. No person shall interfere with, oppose or resist an Animal Services Officer while engaged in the performance of the duties prescribed in this Title. (Ord. 960, 10/20/09; Section 1)

6.02.060 Entry upon Private Property. Unless otherwise prohibited by law, all persons whose duty it is to enforce the provisions of this Title, are hereby empowered to enter upon private property, where any dog, cat, or animal is kept or reasonably believed to be kept, for the purpose of ascertaining whether such animal is being kept in violation of any provision of this Title, other Title governing animals, or California State law relating to the regulation, care and/or keeping of animals.

Notwithstanding any provision in this Title relating to entry upon private property for any purpose under this Title, no such entry may be conducted: (a) without the express or implied consent of the property owner or the person having lawful possession thereof, or (b) unless an inspection warrant has been issued and the entry is conducted in accordance with California Code of Civil Procedure, Sections 1812.50 through 1812.56, inclusive, or (c) except as may otherwise be expressly or impliedly permitted by law. (Ord. 960, 10/20/09; Section 1)

6.02.070 Animal Keeping Requirements. Any property where animals are kept shall comply with all the requirements of this Title, Title 8, and Title 17, in addition to any other applicable codes relating to the keeping of animals. (Ord. 960, 10/20/09; Section 1)

6.02.080 Mandatory Spay and Neutering. No person shall own, keep, or harbor an unaltered dog or cat in violation of this Section. An owner or custodian of an unaltered dog must have the dog spayed or neutered, or provide a certificate of sterility, or obtain an unaltered dog license in accordance with this Title. An owner or custodian of an unaltered cat must have the animal spayed or neutered, or provide a certificate of sterility.

Penalties issued for failure to spay or neuter a dog or cat shall be enforced as set forth below:

a. An administrative citation, infraction, or other such authorized penalty may be issued to an owner or custodian of an unaltered dog or cat for a violation of this section only when the owner or custodian is concurrently cited for another violation under state or local law pertaining to the obligations of a person owning or possessing a dog or cat. Examples of such state law or local violations include, but are not limited to, the following: failure to possess a current canine rabies vaccination of the subject dog; dog or cat at large; failure to license a dog; leash law violations; kennel or cattery permit violations; tethering violations; unhealthy or unsanitary conditions; failure to provide adequate care for the subject dog or cat in violation of the Penal Code; rabies quarantine violations for the subject dog; operating a business without a license and/or lack of State Tax ID Number; fighting dog activity in violation of Penal Code section 597.5; animals left unattended in motor vehicles; potentially dangerous, dangerous or vicious animals; and noisy animals.

b. Should the owner or custodian of an unaltered dog or cat be found in violation of a state or local law, as stated above, in subsection (1), the owner or custodian shall be required to spay or neuter the unaltered animal in accordance with this section. (Ord. 960, 10/20/09; Section 1)

6.02.090 Mandatory Spay and Neutering-Exemptions. This section shall not apply to any of the following:

a. A dog with a high likelihood of suffering serious bodily harm or death if spayed or neutered, due to age or infirmity. The owner or custodian must obtain written confirmation of this fact from a California licensed Veterinarian. If the dog is able to be safely spayed or neutered at a later date, that date must be stated in the written confirmation; should this date be later than thirty (30) days, the owner or custodian must apply for an unaltered dog license.

b. A cat with a high likelihood of suffering serious bodily harm or death if spayed or neutered, due to age or infirmity. The owner or custodian must obtain written confirmation of this fact from a California licensed Veterinarian. If the cat is able to be safely spayed or neutered at a later date; that date must be stated in the written confirmation.

c. Animals owned by city-licensed dog or cat breeders. (Ord. 960, 10/20/09; Section 1)

6.02.100 Mandatory Micro-chipping of Dogs. All dogs over the age of four months must be implanted with an identifying microchip. The owner or custodian is required to provide the microchip number to the Department, and shall notify the Department of any change of ownership of the dog or cat, or any change of address or telephone number. Nothing in this section supersedes, eliminates, or alters the requirements of any other licensing requirements of this Title. (Ord. 960, 10/20/09; Section 1)

6.02.105 Mandatory Micro-chipping of Cats. All cats who have been found at-large and have been transported to a shelter for redemption shall be implanted with an identifying micro-chip prior to release. The owner or custodian is required to provide the microchip number to the Department, and shall notify the Department of any change of ownership of the dog or cat, or any change of address or telephone number. Nothing in this section supersedes, eliminates, or alters the requirements of any other licensing requirements of this Title. (Ord. 960, 10/20/09; Section 1)

6.02.110 Mandatory Micro-chipping of Dogs and Cats-Exemptions. The mandatory microchipping requirements shall not apply to any of the following:

a. A dog or cat with a high likelihood of suffering serious bodily injury, if implanted with the microchip identification, due to the health conditions of the animal. The owner or custodian must obtain written confirmation of that fact from a California licensed Veterinarian. If the dog or cat is able to be safely implanted with an identifying microchip at a later date, the date must be stated in the written confirmation.

b. A dog or cat which would be impaired of its athletic ability or performance if implanted with the microchip identification. The owner or custodian must obtain written confirmation of that fact from a California licensed Veterinarian. If the dog or cat is able to be safely implanted with an identifying microchip at a later date, the date must be stated in the written confirmation.

c. A dog or cat that is kenneled or trained in the City, but is owned by an individual that does not reside in the City. The owner or custodian must keep and maintain the animal in accordance with the applicable laws of the jurisdiction in which the owner or custodian of the animal permanently resides, including but not limited to the applicable licensing and rabies vaccination requirements of that jurisdiction. (Ord. 960, 10/20/09; Section 1)

6.02.120 Transfer or Sales of Dogs, Cats or other Animals-Requirements. An owner or custodian who offers any dog, cat or other animal, over the age of four months, for sale, trade, or adoption must provide the microchip identification number and the valid license number where applicable with the offer of sale, trade or adoption. The license and microchip numbers must appear on a document transferring the animal to the new owner. The owner or custodian shall also advise the Department of the name and address of the new owner or custodian in accordance with this Title. An owner or custodian who offers any dog, cat, or other animal, over the age of four months, for sale, trade, or adoption and fails to provide the Department with the name

and address of the new owner is in violation of this Title and shall be subject to the penalties set forth herein.

When a puppy or kitten under the age of four months implanted with microchip identification is sold or otherwise transferred to another person, the owner or custodian shall advise the Department of the name and address of the new owner or custodian, and the microchip number of the puppy or kitten within ten days after the transfer. If it is discovered that an owner or custodian has failed to provide the Department with the name and address of the new owner and the microchip number of the puppy or kitten, the owner or custodian shall be subject to the penalties set forth in this Title.

Additionally, any person who within the City, or any business entity or other organization located in or doing business in the City which, advertises or offers in any manner, puppies or dogs for sale, trade, barter or to be given away for free, must display in such advertisements, announcement or flyer the following information:

- a. The license number and name of the licensing agency of each of the mother animals any of whose offspring are so offered (in the case of puppies under four months of age).
- b. The license number and name of licensing agency of each of the dogs (in the case of dogs four months or more of age).
- c. The kennel and/or rescue permit number and name of the permitting agency of the owner of each of the mother animals any of whose offspring are so offered (in the case of puppies under four months of age).
- d. The kennel permit and/or rescue number and name of the permitting agency of the owner of each of the dogs so offered (in the case of dogs four months or more of age).

This Section shall not apply to public animal shelters or nonprofit humane societies which are in compliance with Food and Agricultural Code Sections 30503 and 31751, nor shall it apply to persons who relinquish animals to such shelters or societies. (Ord. 960, 10/20/09; Section 1)

6.02.130 Transfer, Sale, and Breeding of Unaltered Dog or Cat. An owner or custodian who offers any unaltered dog for sale, trade, or adoption must include a valid unaltered dog license number with the offer of sale, trade or adoption, or otherwise state and establish compliance with this section. The unaltered license and microchip numbers must appear on a document transferring the animal to the new owner. An owner or custodian of an unaltered cat must notify the Department of the name and address of the transferee within ten days after the transfer. The microchip numbers must appear on a document transferring the animal to the new owner. (Ord. 960, 10/20/09; Section 1)

6.02.140 Transfer or Sales of Animals on Public Property Prohibited. No person shall, in the City, transfer, offer for sale, or sell any animal, cat, kitten, dog or puppy on any public street, public sidewalk or public park. This prohibition does not apply to animal shelters or authorized organizations who conduct adoptions within the City. (Ord. 960, 10/20/09; Section 1)

6.02.150 Animals in Vehicles. No person shall leave an animal in an unattended vehicle without adequate ventilation or in such a manner as to subject the animal to extreme temperatures which adversely affect the animal's health and welfare. If after a search of the area the owner cannot be found, the animal services officer/police officer feels the animal's health is in danger, the animal may be removed from the vehicle and transported to a veterinarian for treatment per Chapter 6.08 of this Title. (Ord. 960, 10/20/09; Section 1)

6.02.0160 Roosters, Peacocks and Flocks Prohibited. Except as provided in this Section, no person, either as owner, agent or employee, shall keep any roosters, peacocks, or flocks of 5 or more pigeons, doves, ducks or other birds or fowl, domestic or otherwise within the City of Beaumont. The keeping of such birds and other fowl is hereby declared to be a nuisance.

Roosters, peacocks, birds or other fowl shall be permitted on parcels of one (1) acre or larger in the Rural-Residential (R-R) Zone, provided that the number of roosters or peacocks shall not exceed one (1) per acre, and the number of other types of birds or fowl shall not exceed five (5) per acre. (Ord. 960, 10/20/09; Section 1)

6.02.170 Wild Animal and Mammals, Poisonous Snakes and Other Reptiles. A non-domestic animal which is wild and potentially dangerous in its natural state and as defined in Section 1406 of the Fish and Game Code of the state, shall not be kept or maintained within the City without complying with all requirements as set forth in this and any other Titles of the City, in addition to the following:

A. Such person desiring to keep or maintain a wild animal, poisonous snake or reptile shall first obtain a permit from the State pursuant to Section 1450 of the Fish and Game Code of the State and shall meet any and all conditions required by the permit.

B. In addition thereto, the possessor shall obtain public liability insurance in the amount of one million dollars (\$1,000,000.00) in which the City shall be named an additional insured.

C. The wild animal, snake or reptile may be transported through the City if it is confined in such a manner as to pose no threat, injury or harm to persons in this city. The animal must at all times be properly caged or tethered. In addition the person shall comply with all requirements as set forth in the Fish and Game Code of the State. (Ord. 960, 10/20/09; Section 1)

6.02.180 Abandonment. It is unlawful for any person to knowingly abandon any animal within the City. Any person violating this Section shall bear full costs and expenses incurred by the City in the care of said abandoned animal and the person shall reimburse to the City all costs therefore as determined by the Animal Services Officer. Abandonment shall include the owner's failure to redeem animals seized or impounded after proper notification of the seizure or impoundment has been issued. (Ord. 960, 10/20/09; Section 1)

6.02.190 Duties and Powers of Officers. It shall be the duty of the Animal Services Officer to enforce all of the provisions of this Title, and other local and State laws relating to the regulation, care and/or keeping of animals. Animal Services Officers shall be empowered to:

- a. Receive, take up and impound any dog or other animal found running at large in violation of this Title, any other Title or of any law of the State of California.
- b. Issue a warning notice for, citation for, or investigate any violation of any provisions of any City Title or California law regarding the care or keeping of animals.
- c. Investigate whether a dog is licensed in compliance with the requirements of this Title.
- d. Seize or impound any animal as authorized by this Title or any other laws. When the animal to be taken or seized is located inside a private residence or in its curtilage, judicial order directing seizure of the animal shall, absent exigent circumstances, be obtained prior to seizure.
- e. Regularly and adequately feed, water and otherwise care for any animals impounded under the provisions of this Title or any other law, or to provide for such feeding and/or watering and care.
- f. Humanely provide emergency care, or destroy as needed, sick or injured animals.

Any Animal Services Officer may arrest a person without warrant whenever he/she has reasonable cause to believe that the person to be arrested has committed an infraction or misdemeanor in his/her presence, or a felony which is in violation of this Title or any other laws governing animals or regulating the care and/or keeping of animals. In any case in which a person arrested, does not demand to be taken before a magistrate: 1) regarding any infraction, such officer or employee making the arrest shall prepare a written Notice to Appear and shall release the person on his/her promise to appear, as prescribed by Sec. 853.5 of the California Penal Code; 2) regarding a misdemeanor, such officer or employee may prepare a written Notice to Appear and may release the person on his/her written promise to appear, as prescribed by California Penal Code Section 853.6. Nothing in this Title shall prevent the Animal Services Officer from acting, when he/she deems it appropriate to do so, under the applicable provisions of California Penal Code, Section 597, et seq.

The City Council may enter into a written agreement or agreements with any veterinarian, organized humane society, association, person, corporation or organization which will undertake to carry out the provisions of this Title and maintain and operate a shelter, and which will license, take up, impound and dispose of animals. Any such veterinarian or society or association which shall enter into such an agreement shall carry out all of the provisions of this Title in the manner herein prescribed. (Ord. 960, 10/20/09; Section 1)

6.02.200 Transport of Injured Animals to Veterinarian. Any peace officer, humane society officer, or animal services officer shall convey all injured cats and dogs found without their owners in a public place directly to a veterinarian known by the officer to be a veterinarian who ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment. If the animal is treated and recovers from its injuries, the animal will be put up for adoption after the prescribed period of time and no owner is found. If an owner for the animal is found they will be liable to all cost incurred for the care and treatment of the animal. The costs for the care and treatment of the animal will be required to be paid prior to the animal being returned to the owner. No veterinarian shall be criminally or civilly liable for any decision which he or she makes or for services which he or she provides pursuant to this section. An animal services officer who takes possession of an animal pursuant to this section shall keep records of the whereabouts of the animal for a seventy-two (72) hour period from the time of possession, and those records shall be available for inspection by the public upon request. (Ord. 960, 10/20/09; Section 1)

6.02.210 Recoupment of Enforcement Costs. The CITY is hereby authorized to recoup all administrative costs reasonably related to the enforcement of this Title, including costs of staff time. (Ord. 960, 10/20/09; Section 1)

6.02.220 Waiver of Fees. At the discretion of the Animal Services Officer, the impoundment fees recoverable under this Title may be waived by the Animal Services Officer based upon indigent circumstances of the owner of the impounded animal that are verified by the Department of Animal Services, so long as the animal is being kept and maintained in accordance with all other provisions of this Title or any other applicable laws. (Ord. 960, 10/20/09; Section 1)

6.02.230 Severability. If any provision, clause, sentence or paragraph of this Title or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or applications of the provisions of this Title which can be given effect without the invalid provision or application, and to this end, the provisions of this Title are hereby declared to be severable. (Ord. 960, 10/20/09; Section 1)

Chapter 6.04
DOGS and CATS - GENERAL PROVISIONS

Sections:

- 6.04.010 Running at Large Prohibited
- 6.04.020 Running at Large-Citizens May Capture and Notify Proper Authority
- 6.04.030 Control of Unaltered Cats
- 6.04.040 Cat Trapping
- 6.04.050 Permitting Animal to Make Nuisance Prohibited
- 6.04.060 Permitting Animal to Make Nuisance Prohibited-Exemptions
- 6.04.070 Entering, Swimming in Ditches, Canals and Pools
- 6.04.080 Annoying or Barking Dogs Constitute a Nuisance
- 6.04.090 Guard or Sentry Dogs-Signage Requirements
- 6.04.100 Traps and Barking Control Devices-Rental Fees

6.04.010 Running at Large. No dog shall run at large in the City. No person owning or having the control or custody of any dog shall permit or allow such dog to run at large within the City. (Ord. 960, 10/20/09; Section 1)

6.04.020 Capture of Dogs Running at Large. In the interest of public health and safety, it shall be lawful for any person to capture, in a humane manner, any dog running at large in violation of this Title and to promptly deliver such dog to the Animal Services Officer who shall impound such dog. (Ord. 960, 10/20/09; Section 1)

6.04.030 Control of and Unaltered Cats. It shall be unlawful for any person who owns, harbors, or keeps any unaltered cat four (4) months of age or older within the City to allow or permit such unaltered cat to be or remain outdoors within the City. (Ord. 960, 10/20/09; Section 1)

6.04.040 Cat Trapping. It is unlawful for any person to set or maintain an operating trap for a cat unless a sign is posted on the property stating that such a trap is in use on the property. The sign shall be clearly visible from the road serving the property on which the trap is set or maintained and shall remain posted and visible at all times while the trap is in use. Trapping shall not continue for more than ten (10) days in a thirty (30) day period. If a person maintains a trap should trap a lactating female cat, the person shall immediately release the cat thereby eliminating the chance of removing a cat that may be nursing kittens. This section shall not apply when the trap is being used for rabies control as determined by the animal services officer. (Ord. 960, 10/20/09; Section 1)

6.04.050 Permitting Animal to Make Nuisance Prohibited. No person shall permit or allow an animal to make a nuisance on any public property or any private property without consent of the owner of the property.

6.04.060 Permitting Animal to Make Nuisance Prohibited-Exemptions.

Persons with defective sight, while relying on a dog specifically trained as a Service Dog, shall be exempt from this section. (Ord. 960, 10/20/09; Section 1)

6.04.070 Entering, Swimming in Ditches, Canals and Pools. No

person shall allow or permit any dog belonging to, or under the control of such person to enter, swim or remain in any drainage ditch within the City, or in any settling tank, ditch, canal or reservoir within the City, or any public swimming pool within the City. (Ord. 960, 10/20/09; Section 1)

6.04.080 Annoying or Barking Dogs Constitutes a Nuisance. The

repeated barking of any dog within the City is declared to be a public nuisance. Every person who owns, keeps, maintains or permits to be maintained any dog on any premises within the City, whose repeated barking, whining, or creation of loud or unusual noises disturbs the peace and quiet of any neighborhood or of any person, shall be deemed guilty of a violation of this section if such person after having been requested to restrain such dog from creating such a public nuisance, suffers or permits such public nuisance to continue. (Ord. 960, 10/20/09; Section 1)

6.04.090 Guard or Sentry Dog-Signage Requirements. Any person or business using the services of a guard or sentry dog shall keep posted in a conspicuous place at or near the entrance of the premises, a sign having letters at least three (3) inches in height reading "Guard Dog or "Sentry Dog." (Ord. 960, 10/20/09; Section 1)

6.04.100 Traps and Barking Control Devices-Rental Fees. The Department shall make available for residents cat traps and barking control devices for rental for a fee and term as set by resolution. (Ord. 960, 10/20/09; Section 1)

Chapter 6.06
ANIMAL LICENSES

Sections:

- 6.06.010 Dog License Required
- 6.06.020 Optional Licensing of Cats
- 6.06.030 Issuance of Tags and Certificates
- 6.06.040 Transfer of License Prohibited
- 6.06.050 Tag-Replacement
- 6.06.060 Display of License Required
- 6.06.070 Tag-Removal Prohibited
- 6.06.080 Use of Unauthorized License, Tags, or Other Documents Prohibited
- 6.06.090 Term of License
- 6.06.100 Fees; Fee Exemptions
- 6.06.110 Anti-Rabies Vaccination Required
- 6.06.120 Transfer of Ownership
- 6.06.130 Denial or Revocation of License for Unaltered Dogs
- 6.06.140 Re-application for Unaltered Dog License
- 6.06.150 Appeal of Denial or Revocation of Unaltered Dog License

6.06.010 Dog License Required. No person within the City owning, possessing, controlling, harboring, or keeping any dog over four (4) months of age shall fail, refuse or neglect to procure a dog license tag for each dog, from the animal services officer or his authorized agent.

The owner shall state at the time application is made, and upon standard printed forms of application provided for such purpose, his/her name and address, the name, breed, color, age, and sex of each dog for which application is made, and the grounds for exemption from fees, if applicable.

When a person moves into the City from another community who owns a dog which is currently vaccinated against rabies and for which dog a license was issued by such other community, such license shall be deemed valid for a period of one (1) year from the date such person moves into the City or on the date of expiration of the license issued by such other community, whichever is earlier.

The owner shall notify the City within thirty (30) days of moving into the City, and a City license shall be issued for the remainder of the license period as indicated, at no cost. If an application for a license from the Animal Services Officer is made more than thirty (30) days after such license is required, the applicant shall pay, in addition to the applicable license fee, a late fee. (Ord. 960, 10/20/09; Section 1)

6.06.020 Optional Licensing for Cats. An owner of a cat may be issued a license and tag for such cat upon presentation to the Animal Services Officer of a certificate of vaccination signed by a veterinarian certifying that such a cat has been vaccinated, and upon the payment of a license fee. Said license shall be valid for the period of immunity indicated in the certificate of vaccination. (Ord. 960, 10/20/09; Section 1)

6.06.030 Issuance of Tags and Certificates. A metallic tag and license certificate with corresponding number shall be furnished by the Animal Services Officer upon compliance with all applicable requirements and payment of the appropriate fee. The Animal Services Officer shall keep a record of the owner or person making payment of the license fee and to whom a certificate and tag has been issued, and the number and date of the certificate and the tag. (Ord. 960, 10/20/09; Section 1)

6.06.040 Transfer of License Prohibited. No license or license tag issued to one dog shall be transferred to another dog. (Ord. 960, 10/20/09; Section 1)

6.06.050 Tag-Replacement. If a valid license tag is lost or destroyed, a duplicate thereof may be procured from the Animal Services Officer upon submission to the Animal Services Officer of a statement signed by the owner of the dog containing the date and circumstances of such loss or destruction and the payment of a fee. (Ord. 960, 10/20/09; Section 1)

6.06.060 Display of License Required. A valid license shall be displayed upon the dog's collar pursuant to Section 30951 (b) of the California Food and Agriculture Code.

Upon request of the Animal Services Officer, any owner of a dog which a license is required under the provisions of this Title shall present to the Animal Services Officer a currently valid certificate of rabies vaccination or license tag. (Ord. 960, 10/20/09; Section 1)

6.06.070 Tag-Removal Prohibited. No person shall remove from any dog any collar, harness, or other device to which is attached a registration tag for the current license year, or remove the tag there from without the express written permission of the Animal Services Officer. (Ord. 960, 10/20/09; Section 1)

6.06.080 Use of Unauthorized License, Tags, or other Documents Prohibited. It shall be unlawful for any person to make use of a stolen, counterfeit or unauthorized license, tag, certificate or any other document or thing for the purpose of evading the provisions of this Title. (Ord. 960, 10/20/09; Section 1)

6.06.090 Term of License. The term of each license issued shall terminate as of the termination date of the subject dog's most recent anti-rabies vaccination, and shall be renewed within thirty (30) days after such period terminates, except that where the current vaccination for the dog which is the subject of the license shall expire prior to the expiration date of the license being applied for, the Animal Services Officer may upon request of the owner or custodian of such dog, backdate such license so that its expiration date occurs concurrent with or prior to the expiration date of the vaccination; provided, however, that where such backdating is performed, there shall be no reduction or discount of the license fee applicable to the license applied for, and such license shall be renewed within thirty (30) days after the date of its expiration.

"Lifetime" license shall only refer to the waiver of licensing fees. Certificates of vaccinations as required by this Title shall be the determining factor if a license is valid as defined in this Title.

If an application for a license is made more than thirty (30) days after the date a dog license is required under this Title, the applicant shall pay, in addition to the applicable license fee, a late fee.

Whenever a dog validly licensed under this Title shall have died more than three (3) months before the expiration date of the license, the owner of such dog may return the license tag to the Animal Services Officer, accompanied by a statement signed by a veterinarian or a declaration signed under penalty of perjury by the owner, indicating that such dog is dead and specifying the date of death. In such event, the license shall be canceled and a pro-rata credit of the license fee by full calendar quarters of the original license period remaining after the death of the dog may be applied during said remaining period to the license fee for another dog acquired by the same owner.

The fees for a "lifetime" license shall be issued a pro-rata credit during only the first year of issuance. (Ord. 960, 10/20/09; Section 1)

6.06.100 Fees; Fee Exemptions. All license fees due and payable hereunder shall be fixed from time to time by resolution of the City Council. No fee shall be charged for:

a. No fee shall be required for a license for any "assistance dog" as defined in California Food and Agriculture Code, Section 30805 (a), if such dog is in the possession and under the control of, in the case of a guide dog, a blind person, or in the case of a signal dog, a deaf or hearing-impaired person, or in the case of a service dog, a physically disabled person, or where such dog is in the possession and under the control of a bona fide organization having as its primary purpose the furnishing and training of guide dogs for the blind, signal dogs for the deaf or hearing-impaired, or service dogs for the physically disabled. However this provision does not remove the owner's responsibility to vaccinate said dogs against rabies and attach a current license tag to the dog's collar. Whenever a person applies for an assistance dog identification

tag, the person shall sign an affidavit as defined in California Food and Agriculture Code, Section 30805 (b).

- b. No fee shall be required for a license for any dog owned by a public entity.
- c. Any dog owned by, or in the care of, any person who is a nonresident or who is traveling through the City, or who is temporarily sojourning therein, provided the dog is kept within the City for less than thirty (30) days.

6.06.110 Anti-Rabies Vaccination Required. It shall be unlawful for any person to own, harbor or keep any dog, four (4) months of age or older, within the incorporated area of the City, for a period longer than thirty (30) days, which has not been vaccinated against rabies. Any person in the City who owns, harbors or keeps any dog over four (4) months of age for a period longer than thirty (30) days shall have such dog vaccinated against rabies as provided herein, by a veterinarian of his choice and such vaccination shall be renewed in accordance with the applicable laws and regulations of the State of California.

Each veterinarian after vaccinating any dog shall sign a certificate of vaccination in triplicate in the form required by the Animal Services Officer. The veterinarian shall keep one (1) copy, shall give one (1) copy to the owner of the vaccinated dog and shall send one (1) copy to the Department within thirty (30) of vaccination.

The Animal Services Officer shall issue a license only upon presentation of a certificate of vaccination indicating therein that the date of expiration of the vaccination immunity is not earlier than the date of expiration of the license being issued or renewed, and upon payment of the applicable license fee as specified in this Title; provided, however, that where the vaccinated dog is between the ages of four (4) months and twelve (12) months, the period of vaccination immunity required for licensing shall be as specified by State law.

In the event a dog has a short-term illness, is pregnant, or suffers from a long-term debilitating illness which in the opinion of a veterinarian contraindicates vaccination for rabies, such dog shall not be required to undergo vaccination during the period of such illness or pregnancy where a request for vaccination deferral has been approved by the Animal Services Officer. Such request shall specify the duration of the requested deferral, the reason for the requested deferral, and shall be signed by a veterinarian. The Animal Services Officer shall issue a license for such dog upon approval of the request for vaccination deferral and payment for the applicable license fee. The owner or person having custody of such dog shall confine and shall keep such dog confined, for the duration of the deferral. Within fourteen (14) days after the expiration of the deferral, the owner or person having custody of such dog shall present to the Animal Services Officer a certificate of vaccination in accordance with the provisions of this Title. (Ord. 960, 10/20/09; Section 1)

6.06.120 Transfer of Ownership. Upon transfer of ownership of any dog validly licensed under this Title, the new owner shall notify the Animal Services Officer of such transfer within thirty (30) days of such transfer, on a form prescribed by the Animal Services Officer, accompanied by a transfer fee. (Ord. 960, 10/20/09; Section 1)

6.06.130 Denial or Revocation of License for Unaltered Dogs. The Department may deny or revoke an unaltered dog license for one or more of the following reasons:

- a. The owner, custodian, applicant or licensee is not in compliance with all of the requirements of this section;
- b. The Department has received at least three complaints, verified by the Department, that the owner, custodian, applicant, or licensee has allowed a dog to be stray or run at large or has otherwise been found to be neglectful of his or her or other animals;
- c. The owner, custodian, applicant, or licensee has been previously cited for violating a state law, other City or municipal provisions relating to the care and control of animals;
- d. The unaltered dog has been adjudicated by a court or an agency of appropriate jurisdiction to be potentially dangerous, dangerous or vicious, or to be nuisance within the meaning of the City of Beaumont Titles or under state law;
- e. An unaltered dog license held by the applicant has been revoked;
- f. The license application is discovered to contain a material misrepresentation or omission of fact. (Ord. 960, 10/20/09; Section 1)

6.06.140 Re-application for Unaltered Dog License. When an unaltered dog license is denied, the applicant may re-apply for a license upon changed circumstances and a showing that the requirements of this Title have been met. The Department shall refund one-half of the license fees when the application is denied. The applicant shall pay the full fee upon re-application.

When an unaltered dog license is revoked, the owner or custodian of the dog may apply for a new license after a thirty (30) day waiting period upon showing that the requirements of this Title have been met. No part of an unaltered dog license fee is refundable when a license is revoked and the applicant shall pay the full fee upon reapplication. (Ord. 960, 10/20/09; Section 1)

6.06.150 Appeal of Denial or Revocation of Unaltered Dog License. The Department shall mail to the owner, custodian, licensee, or applicant a written notice of its intent to deny or revoke the license for an unaltered dog which includes the reason(s) for the denial or revocation. The owner, custodian, licensee or applicant may request a hearing to appeal the denial or revocation. The hearing shall be conducted in accordance with Chapter 6.22 of this Title. If the dog is moved before or during the appeal process, the owner, custodian, licensee, or applicant shall provide the Department with information as to the dog's whereabouts, including the current owner or custodian's name, address, and telephone number.

Chapter 6.08
Seizure or Impoundment of Animals

Sections:

- 6.08.010 Seizure or Impoundment of Animals
- 6.08.020 Capture of Animals Running At-Large-Private Persons
- 6.08.030 Notice of Impoundment-Requirements
- 6.08.040 Length of Confinement
- 6.08.050 Post-Seizure/ Impound Hearing
- 6.08.060 Hearing Prior to Seizure of Animal(s)
- 6.08.070 Cost of Seizure and Care – Owner Liable
- 6.08.080 Noncompliance with Order to Provide Veterinary Care
- 6.08.090 Return to Owner – Conditions
- 6.08.100 Authority of the Hearing Officer

6.08.010 Seizure or Impoundment of Animals.

A. Emergency Seizure or Impoundment: When the Animal Services Officer has reasonable grounds to believe that prompt action is required to protect the health or safety of an animal, or the health or safety of others, the Officer shall immediately seize the animal and comply with the procedure established in Section 6.08.050.

B. Non-Emergency Seizure: In all other cases, the officer shall comply with the provisions of Section 6.08.060. (Ord. 960, 10/20/09; Section 1)

6.08.020 Capture of Animals Running At-Large-Private Persons. In the interest of public health and safety, it shall be lawful for any person to take up, in a humane manner, any animal running at-large in violation of this Title and to promptly deliver such animal to the Animal Services Department. (Ord. 960, 10/20/09; Section 1)

6.08.030 Notice of Impoundment-Requirements. In the event that there is attached to any impounded animal a current license tag of the City, or if the animal has a micro-chip inserted, it shall be the duty of the Animal Services Officer to give notice of the impoundment of such animal to the owner or person claiming to own such animal, or to the person to whom such tag shall have been issued, or micro-chip registered as shown by the records of the City. This notice shall be accomplished within three (3) business days after impoundment, and given by mailing, postage pre-paid, stating the fact that the animal has been impounded and the manner in which the animal may be redeemed. (Ord. 960, 10/20/09; Section 1)

6.08.040 Length of Confinement. The Animal Services Officer shall cause for the confinement of the animal as required by this Title for the period of time as required by statute. (Ord. 960, 10/20/09; Section 1)

6.08.050 Post-Seizure/ Impound Hearing. Whenever an Animal Services Officer seizes, impounds, or receives an animal based on a reasonable belief that prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall, prior to the commencement of any enforcement proceedings, provide the owner or keeper of the animal, if known or ascertained after reasonable investigation, with the opportunity for a post-seizure hearing as hereinafter provided to determine the validity of the seizure or impoundment, or both.

A. The Animal Services Department shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice of the seizure or impoundment, or both, to the owner or keeper within 48 hours, excluding weekends and holidays. The notice shall include all of the following:

1. The name, business address, and telephone number of the officer providing the notice;
2. A description of the animal(s) seized, including any identification upon the animal(s);
3. The authority and purpose for the seizure, or impoundment, including the time, place and circumstances under which the animal was seized;
4. A statement that, in order to receive a post-seizure hearing, the owner or person authorized to keep the animal, or his or her agent, shall request the hearing by signing and returning an enclosed declaration of ownership or right to keep the animal to the animal control officer within ten (10) days, including weekends and holidays, of the date of the notice. The declaration may be returned by personal delivery or mail;
5. A statement that the cost of caring for and treating any animal properly seized under this section is a lien on the animal and that the animal shall not be returned to the owner until the charges are paid, and that failure to request or to attend a scheduled hearing shall result in liability for this cost.

B. The post-seizure hearing shall be conducted pursuant to Chapter 6.22 of this Title.

C. Failure of the owner or keeper, or of his or her agent, to request a hearing within the prescribed time period, or to attend a scheduled hearing, shall result in forfeiture of any right to a post-seizure hearing or right to challenge his or her liability for costs incurred.

D. The City shall be responsible for the costs incurred for caring and treating the animal(s), if it is determined in the post-seizure hearing that the seizing officer did not have reasonable grounds to believe prompt seizure of the animal(s), was required to protect the health or safety of the animal or the health or safety of others. If it is determined the seizure was justified, the owner or keeper shall be personally liable to the City for the cost of the seizure and care of the animal(s), and the animal(s) shall not be returned to its owner until the charges are paid and the City or hearing officer has determined that the animal(s) is physically fit or the owner demonstrates to the City's or the hearing officer's satisfaction that the owner can and will provide the necessary care.

6.08.060 Hearing Prior to Seizure of Animal(s). Where the need for immediate seizure is not present and prior to the commencement of any criminal proceedings, the animal services officer shall provide the owner or keeper of the animal(s), if known or ascertained after reasonable investigation, with the opportunity for a hearing prior to any seizure or impoundment of the animal(s). The owner shall produce the animal(s) at the time of the hearing unless, prior to the hearing, the owner has made arrangements with the animal services officer to view the animal(s) upon request of the animal services officer, or unless the owner can provide verification that the animal was humanely destroyed. It is a violation of this Section if such person willfully fails to produce the animal or provide the verification.

A. The Animal Services Officer shall cause a notice to be affixed to a conspicuous place where the animal(s) was situated or personally deliver a notice stating the grounds for believing the animal(s) should be seized. The notice shall include all of the following:

1. The name, business address, and telephone number of the Officer providing the notice;
2. A description of the animal(s) to be seized, including any identification upon the animal(s);
3. The authority and purpose for the possible seizure or impoundment;
4. A statement that, in order to receive a hearing prior to any seizure, the owner or person authorized to keep the animal(s), or his or her agent, shall request the hearing by signing and returning the enclosed declaration of ownership or right to keep the animal(s) to the officer providing the notice within two (2) days, excluding weekends and holidays, of the date of the notice;

5. A statement that the cost of caring for and treating any animal properly seized is a lien on the animal, that any animal seized shall not be returned to the owner until the charges are paid, and that failure to request a hearing within the prescribed time period, or to attend a scheduled hearing shall result in a conclusive determination that the animal(s) may properly be seized and that the owner shall be liable for the charges.

B. The pre-seizure hearing shall be conducted pursuant to Chapter 6.22 of this Title.

C. Failure of the owner or keeper, or his or her agent, to request a hearing within the prescribed time period or to attend a scheduled hearing, shall result in a forfeiture of any right to a pre seizure hearing or right to challenge his or her liability for costs incurred to this chapter. (Ord. 960, 10/20/09; Section 1)

6.08.070 Cost of Seizure and Care – Owner Liable. If any animal is properly seized or impounded under this chapter, the owner or keeper shall be personally liable to the seizing/ impounding agency for the cost of the seizure/ impoundment and care of the animal(s). Furthermore, if the charges for the seizure or impoundment, and any other charges permitted under this chapter are not paid within fourteen (14) days of the seizure, or, if the owner, within fourteen (14) days of notice of availability of the animal(s) to be returned, fails to pay charges permitted under this chapter and take possession of the animal(s), the animal(s) shall be deemed to have been abandoned and may be disposed of by the impounding Officer. The cost of caring for and treating any animal properly seized under this chapter shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid, unless the hearing officer determines that the seizure was unjustified. (Ord. 960, 10/20/09; Section 1)

6.08.080 Noncompliance with Order to Provide Veterinary Care. If the animal requires veterinary care and the seizing agency is not assured, within fourteen (14) days of the seizure of the animal(s), that the owner will provide the necessary care, the animal(s) shall not be returned to its owner and shall be deemed to have been abandoned and may be disposed of by the impounding Officer. A veterinarian or properly trained Animal Services Officer may humanely destroy an impounded animal without regard to the prescribed holding period when it has been determined that the animal has incurred severe injuries or is incurably ill or crippled. A veterinarian or properly trained Animal Services Officer may also immediately humanely destroy an impounded animal afflicted with a serious contagious disease unless the owner or his or her agent immediately authorizes treatment of the animal(s) by a veterinarian at the expense of the owner or agent. (Ord. 960, 10/20/09; Section 1)

6.08.090 Return to Owner – Conditions. No animal properly seized under this chapter shall be returned to its owner until, in the determination of the seizing agency or hearing officer, the animal is physically fit or the owner can demonstrate to the seizing agency's or hearing officer's satisfaction that the owner can and will provide the necessary care, and that the owner has complied with all requirements of this and any other Titles in this Code. (Ord. 960, 10/20/09; Section 1)

6.08.100 Authority of the Hearing Officer. All hearings conducted pursuant to this chapter shall be conducted in accordance with the provisions of Chapter 6.22 of this Title. In the event a sufficient quantum of evidence presented at the hearing supports a determination for seizure, impoundment and/or termination of the owner's rights of the animal(s), the hearing officer as a part of his decision may order, but is not limited to ordering, that one or more of the following actions be undertaken:

1. That the owner's and/or custodian's rights in and to the dog, cat or other animal(s) is terminated;
2. That the owner or custodian of the dog, cat or other animal(s) shall remove the animal(s) from the premises by a specified date;
3. That animal control personnel, after a specified date, shall impound the animal(s).
4. That animal control personnel shall sell, give away, or otherwise dispose of, the animal(s) with the owner or custodian of the animal(s) being responsible to reimburse the city or agency as designated by the City for all costs and expenses including, but not limited to, board, care, veterinary services, and costs of disposal. If the animal(s) are sold, the proceeds from the sale shall go to the City or agency designated by the City.

A decision upholding seizure or impoundment shall become effective upon issuance. A decision terminating an owner's rights in the animal(s) shall become effective thirty (30) days from the date the decision is mailed unless a stay of execution is granted. (Ord. 960, 10/20/09; Section 1)

Chapter 6.10
Potentially Dangerous Dogs

Sections:

- 6.10.010 Definitions
- 6.10.020 Applicability
- 6.10.030 Procedure for Declaring a Dog Potentially Dangerous
- 6.10.040 Pre-Hearing Seizure and Impoundment of Dog
- 6.10.050 When a Dog May Not Be Declared Potentially Dangerous

6.10.010 Definitions. For the purposes of this Chapter, the following words and phrases shall have the meanings:

a. “**Potentially Dangerous Dog**” means any of the following:

(1) Any dog which, when unprovoked, on two separate occasions within the prior six-month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are off the property of the owner or keeper of the dog.

(2) Any dog which, when unprovoked, bites a person causing a less severe injury than as defined in subparagraph B below.

(3) Any dog which, when unprovoked, on two separate occasions within the prior six month period, has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal off the property of the owner or keeper of the dog.

b. “**Severe Injury**” means any physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery. (Ord. 960, 10/20/09; Section 1)

6.10.020 Applicability. This chapter does not apply to licensed kennels, humane society shelters, animal control facilities, or veterinarians; or any dogs while utilized by any police department or any law enforcement officer in the performance of police work. (Ord. 960, 10/20/09; Section 1)

6.10.030 Procedure for Declaring a Dog Potentially Dangerous.

a. If the Animal Services Officer has investigated and determined that there exists probable cause to believe that a dog is potentially dangerous, the Officer shall prepare and serve a “Notice of Hearing” on the owner or keeper of such dog.

b. The “Notice of Hearing” shall be served on the owner or keeper of the dog, by personal service or by first-class mail with return receipt requested.

c. Any and all complaints received from a member of the public which serves as an evidentiary basis for the Animal services officer’s finding of probable cause shall be signed by the complainant and served concurrently with the Notice of Hearing.

d. The hearing shall be held pursuant to Chapter 6.22 of this Title. The hearing officer may find, upon a preponderance of the evidence, that the dog is potentially dangerous and may make such orders as are necessary to protect the public health, safety and welfare. (Ord. 960, 10/20/09; Section 1)

6.10.040 Pre-Hearing Seizure and Impoundment of Dog. If upon investigation it is determined by the Animal Services Officer that probable cause exists to believe the dog in question poses an immediate threat to public safety, then the Animal Services Officer may seize and impound the dog pending the hearings to be held pursuant to this Chapter. The owner or keeper of the dog shall be liable to the City of Beaumont where the dog is impounded for the costs and expenses of keeping the dog, if the dog is later adjudicated potentially dangerous. (Ord. 960, 10/20/09; Section 1)

6.10.050 When A Dog May Not Be Declared Potentially Dangerous. No dog may be declared potentially dangerous if the following conditions exist:

- a. If any injury or damage is sustained by a person who, at the time of the injury or damage was sustained, was committing a willful trespass or other tort upon premises occupied by the owner or keeper of the dog, or was teasing, tormenting, abusing, or assaulting the dog, or was committing or attempting to commit a crime.
- b. If the dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault.
- c. If an injury or damage was sustained by a domestic animal which at the time of the injury or damage was sustained was teasing, tormenting, abusing, or assaulting the dog.
- d. If the injury or damage to a domestic animal was sustained while the dog was working as a hunting dog, herding dog or predator control dog on the property of, or under the control of, its owner or keeper, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog.

Chapter 6.12
DANGEROUS ANIMALS

Sections:

- | | |
|----------|--|
| 6.12.010 | Purpose |
| 6.12.020 | Inspection |
| 6.12.030 | Animals at Large |
| 6.12.040 | Temporary Impoundment or Confinement |
| 6.12.050 | Hearing Procedures |
| 6.12.060 | Dangerous Animals-Disposition |
| 6.12.070 | Transfer and Training of Dangerous Animals |
| 6.12.080 | Enforcement and Penalties |
| 6.12.090 | Exemptions |

6.12.010 Purpose. The keeping of an animal defined as dangerous shall be declared a public nuisance and shall be abated in accordance with the provisions of this Chapter. The procedure for abatement set forth in this Chapter shall not be exclusive and shall not in any manner limit or restrict the City from enforcing other City Titles or abating public nuisances in any other manner provided by law including, but not limited to, California Civil Code Section 3062.5. Further, this Chapter shall not preempt or preclude a person from filing a private lawsuit seeking to abate as a private nuisance an animal that is dangerous. (Ord. 960, 10/20/09; Section 1)

6.12.020 Inspection. Whenever it is necessary to make an inspection to enforce any of the provisions of or perform any duty imposed by this Chapter, or whenever an Animal Services Officer has probable cause to believe that there exists in any building or upon any premises any violation of the provisions of this Chapter or other applicable law, an Animal Services Officer is authorized to enter such property at any reasonable time and to inspect the same and perform any duty imposed upon the Animal Services Officer by this Code or other applicable law; provided that:

A. If such property is occupied, he/she shall first present proper credentials to the occupant and request entry explaining the reasons therefore. If such entry is refused, the Animal Services Officer shall have recourse to every remedy provided by law to secure lawful entry and inspect the property, including an inspection warrant.

B. If such property is unoccupied, he/she shall first make a reasonable effort to locate the owner or other person having charge or control of the property and request entry, explaining the reasons therefore. If such entry cannot be obtained because the owner or other person having charge or control of the property cannot be found after due diligence, the Animal Services Officer shall have recourse to every remedy provided by law to secure lawful entry and inspect the property, including an inspection warrant.

C. Notwithstanding the foregoing, if an Animal Services Officer has probable cause to believe that the keeping or maintaining of any animal is so dangerous as to require immediate inspection to safeguard the life or safety of the animal, other animals, or the public, he/she shall have the right immediately to enter and inspect such property, and may use any reasonable means required to effect such entry and make such inspection, whether such property be occupied or unoccupied and whether or not permission to inspect has been obtained. If the property be occupied, he/she shall first present proper credentials to the occupant and demand entry, explaining the reasons therefore and purpose of the inspection.

D. No person shall interfere with, hinder, fail or refuse, after proper demand has been made upon him or her as provided in Subsection C of this Section, to permit any Animal Services Officer to make any inspection provided by Subsection C of this Section. Any person violating this Section may be charged with a misdemeanor. (Ord. 960, 10/20/09; Section 1)

6.12.030 Animals at Large.

A. A person who owns or is in charge of or controls or who possesses an animal who permits, allows, or causes the animal to run, stray, be uncontrolled or in any manner be in, upon, or at large upon a public street, sidewalk, park or other public property or in or upon the premises or private property of another person shall be guilty as provided in Subsection B of Section 6.12.080 of this Chapter if such animal bites, attacks or causes injury to any human being or other animal.

B. Any person who convicted of violating Subsection A of this Section shall not own, possess, control or have custody of any animal of the type, species, group or family which caused the bite, attack or injury for a period of three (3) years after the date of conviction. (Ord. 960, 10/20/09; Section 1)

6.12.040 Temporary Impoundment or Confinement.

A. The Animal Services Officer shall have the power to summarily and immediately impound an animal where there is evidence that the animal is an immediate danger to public safety pending:

1. Any court proceeding; or
2. A hearing to be held pursuant to Chapter 6.22 of this Title. The owner of the animal shall be liable for the costs and expenses of impounding and keeping the animal if the animal is later determined to be dangerous.

B. Failure to surrender to the Animal Services Officer upon demand an animal which is subject to being impounded pursuant to this Section shall be penalized as provided in Subsection B of Section 6.12.080.

C. An animal impounded pursuant to the authority of this Section shall be returned to the owner as provided by Section 6.12.060 of this Chapter, or when the animal is no longer required as evidence, or if a notice of a hearing pursuant to Section 6.12.050 of this Chapter to declare the animal a dangerous animal has not been served on the owner or custodian within fifteen (15) working days after the impoundment.

D. In lieu of impounding and if not contrary to public safety, the Animal Services Officer may permit the animal to be confined at the owner's expense in an Animal Services Officer-approved kennel or veterinary facility or at the owner's residence provided the owner:

1. Shall not remove the animal from the kennel, veterinary facility, or residence without the prior written approval of the Animal Services Officer; and

2. Shall make the animal available for observation and inspection by the Animal Services Officer or members of law enforcement or their authorized representatives. The Animal Services Officer shall dictate to the owner the exact way the animal is to be restrained while awaiting the hearing.

E. The Animal Services Officer may have an animal that has been impounded or confined permanently identified by means of photo identification prior to release from impoundment or confinement.

F. If there is no reasonable method available to determine ownership of the animal, then the animal may be considered a stray. (Ord. 960, 10/20/09; Section 1)

6.12.050 Hearing Procedures.

A. Petition. If the animal services officer has investigated and determined that there exists probable cause to believe that an animal is dangerous, the Animal Services Officer shall petition the Chief of Police for a hearing for the purpose of determining whether the animal should be declared dangerous. The hearing shall be conducted pursuant to the provisions of Chapter 6.22 of this Title.

B. Determinations of Dangerous Animals-Evidence. In making a determination that an animal is or is not dangerous, evidence of the following shall be considered:

1. Any previous history of the animal attacking, biting or causing injury to a human being or other domestic animal;
2. The nature and extent of injuries inflicted and the number of victims involved;
3. The place where the bite, attack or injury occurred;

4. The presence or absence of any provocation for the bite, attack or injury;
5. The extent to which property has been damaged or destroyed;
6. Whether the animal exhibits any characteristics of being trained for fighting or attack or other evidence to show such training or fighting;
7. Whether the animal exhibits any characteristics aggressive or unpredictable temperament or behavior in the presence of human beings or other domestic animals;
8. Whether the animal can be effectively trained or retrained to change its temperament or behavior;
9. The manner in which the animal had been maintained or cared for by its owner;
10. Any other relevant evidence concerning the maintenance or care of the animal; and;
11. Any other relevant evidence regarding the ability of the owner or the animal services officer, to protect the public safety in the future if the animal is permitted to remain in the City.

C. Dangerous Animal Declared. After the hearing, the hearing officer may find, upon a preponderance of the evidence, that the animal is dangerous and may make other orders authorized by this Chapter and other law.

6.12.060 Dangerous Animals-Disposition.

A. The owner of an animal which has bitten any person or a domestic animal, or has otherwise been determined, after a hearing, to be dangerous, may be required as a condition of the release of the animal from confinement or impoundment, in addition to paying all costs of any impoundment, to comply with the written disposition of the hearing officer which contains any or all of the following conditions requiring the owner:

1. Registration. To immediately register the animal that is found to be dangerous with the animal services officer, to comply with the animal services officers requirements for dangerous animals (including, but not limited to, requiring the animal to wear a visible, dangerous animal tag), and to keep such animal properly vaccinated at all times. The owner shall pay a fee to keep or maintain one dangerous animal for a twelve-month term and an additional fee for each additional dangerous animal. The fee shall be paid for each twelve-month term. Should the animal die in any four (4) month term, the owner shall notify the animal services officer of the death within two (2) working days of the death. The owner shall provide proof of the death to the satisfaction of the animal services officer. The amount of the fees shall be established from time-to-time by resolution of the City Council.

2. Confinement. To keep the animal securely confined on its premises in a locked enclosure approved by the hearing officer or the animal services officer from which the animal cannot escape and into which children cannot trespass. Such a kennel or structure must have secure sides and a secure top attached to the sides. All structures used to confine the animal must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure bottom or floor attached to the side of the pen or the sides of the pen must be embedded in the ground no less than two (2) feet. All structures erected to house an animal must comply with all zoning and building regulations of the City. All such structures must be adequately lighted, ventilated, and kept in a cleaned sanitary condition.
3. Confinement While on Leash. To keep the animal securely muzzled, restrained by a substantial leash of appropriate length and under the control of a responsible person eighteen (18) years of age or older who is physically capable of restraining the animal when the animal is not contained in a locked, secure enclosure.
4. Spay or Neuter the Animal. To have the animal spayed or neutered by a licensed veterinarian and to present proof to the animal services officer.
5. Insurance. To provide and maintain financial responsibility for injuries to the public by obtaining and showing proof of liability insurance in the form and amount deemed to be acceptable by the hearing officer in light of all the circumstances. Such insurance policy shall provide that no cancellation of the policy will be made unless thirty days written notice is first given to the Animal Services Officer and the City Clerk's office.
6. Notification. To immediately inform any City, county, postmaster and utility company meter reader and anyone-else that lawfully comes onto the property, of the animal's dangerousness and to inform the animal services officer and/or the hearing officer if the animal is moved to another location inside or outside the City limits as provided in Section 6.06.150 of this Chapter.
7. Signs. To display in a prominent place on the premises a sign easily readable by the public using the words "Beware of Dog" or "Beware of Animal" in letters at least three (3) inches high.
8. Identification. To have a registration number assigned to such animal tattooed by a licensed veterinarian on the animal's inner thigh or inserted by a licensed veterinarian under the animal's skin by means of an electronic identification device. The manner and method of identification to be used hereunder shall be determined by the hearing officer. For the purposes of this Section, "tattoo" shall be defined as any permanent numbering of an animal by means of indelible or permanent ink.

9. Inspection. To consent and agree to the entry upon the premises to any Animal Services Officer for the purpose of inspecting the animal and/or premises.

10. Payment of Costs. To make reasonable payment of one-half of the costs incurred by the City and the Animal Services Officer in the hearing process, not to exceed one thousand dollars (\$1,000.00).

11. Other. To take any other steps deemed reasonably necessary to prevent injuries to the public.

The owner of the animal shall comply with the conditions imposed by the hearing officer within the time limit specified in Section 6.12.070 of this Chapter.

B. No dangerous animal shall be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition. In addition, no such animal may be kept in a house or structure when the windows are open or screen doors are the only obstacle preventing the animal from exiting the structure.

C. If, following the hearing, the subject animal is found to be dangerous and such a threat to public safety that even if reasonable conditions were imposed to release the animal to the owner it would create a significant threat to the public health, safety, or welfare, such animal may be destroyed. Such remedy shall be in addition to all other remedies at law or in equity and shall not limit or restrict such other remedies, including, but not limited to, Section 6.12.080(A), which authorizes the hearing officer to order an animal destroyed for violation of this Chapter or failure to meet a condition imposed by the hearing officer.

D. Any decisions made by the hearing officer shall be final.

E. If, after notice, the owner of an impounded animal fails to appear or be represented at the required hearing, then the animal may be considered abandoned. If the subject animal does not appear to be validly licensed and no owner can be found, and if the animal has been determined to be dangerous, then the animal may be considered abandoned and may be handled in the same manner as any other unclaimed stray animal.

F. If such an unlicensed animal has not been determined to be dangerous, it shall be returned to the owner, -subject to the issuance of a citation for failure to obtain a license. A non-dangerous stray animal will be handled as any other stray animal.

G. In such cases where an impounded licensed animal is found to be dangerous, the animal may be released subject to the conditions set forth in Subsection A of this Section. (Ord. 960, 10/20/09; Section 1)

6.12.070 Transfer and Training of Dangerous Animals.

A. Sale or Transfer within City. No person shall sell, transfer or in any other way dispose of an animal deemed dangerous under this Chapter to any person within the City, including, but not limited to, temporary housing in privately-owned and commercial kennels unless the recipient person resides permanently in the same household and on the same premises as the owner of such animal.

B. Sale or Transfer Outside City. The owner of an animal that has been deemed dangerous under this Chapter may sell, transfer, or otherwise dispose of such animal or the offspring thereof to persons who do not reside within the City, provided the owner first notifies the hearing officer and the Animal Services Officer of the proposed sale or transfer. Such notice shall be given not less than fifteen (15) days in advance of the sale or transfer and shall specify the name and address of the recipient person. Upon receipt of such notice, the hearing officer or the Animal Services Officer may notify the governmental jurisdiction in which the recipient person is located or resides. Failure to comply with these notification provisions shall be grounds for immediate impoundment of the animal by the Animal Services Officer.

C. Sale or Transfer Into City. It is unlawful for a person to possess, own or control any animal for the purpose of either temporary or permanent care in the City limits that has been deemed by another governmental jurisdiction to be potentially dangerous, dangerous, vicious, or a threat to the safety of human beings or domestic animals. The animal services officer may order the person having possession, ownership or control of the animal to remove the animal immediately from the City. Should such person fail to comply with the Animal Services Officer's order, the Animal Services Officer may summarily and immediately impound the animal. The owner of the animal shall be liable for the costs and expenses of impounding and keeping the animal. Such impounded animals may then be disposed of in accordance with the provisions of this Chapter.

D. Fight Training and Animal Abuse Prohibited. It is unlawful to use, train, keep, harbor, own or in any way possess or transport through the City an animal for the purpose of animal fight exhibitions. Scars and wounds are rebuttal evidence of participation in animal fight exhibitions or training. "Fight training" is defined to include, but not limited to:

1. The use or possession of treadmills for fight training;
2. Actions designed to torment, badger or bait any animal for purpose of encouraging said animal for fight exhibitions;
3. The use of weights on the animal for fight training;
4. The use of other animals for blood sport training;

5. Any other activity, the primary purpose of which is the training of animals for animal fight exhibitions.

It is further unlawful for anyone to knowingly abuse any animal within the City limits.

E. Rewards. Subject to the budgetary and fiscal provisions of this Code, the City is authorized to offer rewards not exceeding two hundred fifty dollars (\$250.00) to any person providing information leading to the arrest of any person for violations of prohibitions against the training of an animal for fight exhibitions. The City Council may authorize said rewards by resolution upon the request of the City Manager, Animal Services Officer or the Mayor. (Ord. 960, 10/20/09; Section 1)

6.12.080 Enforcement and Penalties.

A. Failure to Comply. It is unlawful for the owner of an animal deemed dangerous under this Chapter to fail to comply with the requirements and conditions set forth in this Chapter. Any animal found to be the subject of a violation of this Chapter or of any condition imposed by the hearing officer pursuant to Section 6.12.060 of this Chapter shall be subject to immediate seizure and impoundment. In addition, failure to comply will result in the destruction of the animal. No such animal however, may be destroyed until the owner of the animal has received written notice from the hearing officer that the animal will be destroyed unless, within fourteen (14) days from the date of the notice:

1. The owner has demonstrated to the satisfaction of the hearing officer that the owner has fully complied with the requirements and conditions set forth in this Chapter, including, but not limited to, the conditions imposed by the hearing officer pursuant to Section 6.12.060 of this Chapter; or
2. The owner has filed in a court of competent jurisdiction a petition that seeks to stay destruction of the animal and has served a copy of such petition upon the hearing officer.

The notice from the hearing officer shall be served upon the owner either personally or by prepaid first-class mail. If, after (14) fourteen days from the date of such notice, the owner has not complied with the provisions of Subdivisions 1 or 2 of this Subsection, the hearing officer may, without further notice or process, have the animal destroyed.

B. Violation-Penalties. In the discretion of the Enforcement Officer, any person violating the provisions of this Chapter shall be issued an Administrative Citation pursuant to Beaumont Municipal Code Sections 1.17.100 et seq., or shall be guilty of an infraction pursuant to Beaumont Municipal Code Section 1.06.010. In either case, the amount of the fine shall be in the appropriate amount set forth in Section 1.06.030 of this Code. Each such violation shall be deemed a separate offense as specified in Beaumont Municipal Code Section 1.06.010.

Notwithstanding the above, a first offense may be charged and prosecuted as a misdemeanor. Payment of any penalty herein shall not relieve any person from the responsibility for correcting the violation

C. Ownership of Dangerous Animals. The owner of an animal determined to be dangerous under this Chapter shall be prohibited from owning, possessing, controlling or having custody of any other animal of the type, species, group or family to which the violation applies for a period of three years from the date of violation when it is found after the hearing conducted pursuant to Section 6.12.070 of this Chapter that ownership or possession of such animal by that person would create a significant threat to public health, safety or welfare.

D. Enforcement. Any provision of this Chapter may be enforced by the Police Department, Fire Department, the animal services officer or any authorized designee of the City Manager. Complaints of any violations of this Chapter which are subject to penalties under this Section may be presented to the District Attorney's office or to the City Attorney for prosecution.

E. Nuisance Abatement Lien. The costs of abating a public nuisance pursuant to the provisions of this Chapter may be recovered from the owner of the animal causing the public nuisance. If the owner fails to pay such costs within thirty days from the date of invoice or within an extended period of time agreed to in writing by the hearing officer, the costs may be collected by a nuisance abatement lien, as provided by Section 38773.1 of the California Government Code. Notice of the lien shall be given to the owner of record of the parcel of land on which the nuisance is maintained prior to recordation of the lien and in the manner specified in said Section 38773.1.

F. Penalties and Remedies Cumulative. The penalties and remedies specified herein shall not be exclusive but shall be cumulative with all other remedies at law or in equity. The City may, in its discretion, elect to pursue anyone or more of the penalties or remedies provided for herein or at law or in equity. (Ord. 960, 10/20/09; Section 1)

6.12.090 Exemptions. The provisions contained in this Chapter shall not apply to:

- A. Any dog while utilized by any police department or any law enforcement officer in the performance of police work;
- B. Any animal shelter owned, operated or maintained by the animal services officer; or
- C. Any humane society shelter, animal control facility or veterinarian.

Chapter 6.14
RABID ANIMALS

Sections:

- 6.14.010 Destruction of Rabid Dog or Animal
- 6.14.020 Suspect Animal - Confinement and Treatment
- 6.14.030 Quarantine of Rabid Animals
- 6.14.040 Animals Bitten by Rabid Animals-Confinement by Owners
- 6.14.050 Animals Bitten by Rabid Animals-Quarantine by Animal services officer
- 6.14.060 Immunization for Dogs Over Four Months
- 6.14.070 Immunization Method
- 6.14.080 Certificate of Rabies Vaccination-Issuance
- 6.14.090 Certificate of Rabies Vaccination-Prerequisite to Issuance of License
- 6.14.100 Failure to Quarantine

6.14.010 Destruction of Rabid Dog or Animal. If it appears to the animal services officer, upon examination, that any dog or other animal has rabies, he/she shall cause such animal to be destroyed forthwith. (Ord. 960, 10/20/09; Section 1)

6.14.020 Suspect Animal-Confinement and Treatment.

A. Officers or persons capturing a dog or other animal which is suspected of being afflicted with rabies may separately confine such dog or other animal in some safe place and report the capture to the chief of police or his representative and submit such a dog or other animal to the chief of police or his representative for examination.

B. The Animal Services Officer, when called upon, shall examine or have examined every such animal and ascertain whether such animal is infected with rabies.

C. Owners of animals impounded for quarantine at a City or county facility shall be charged a daily quarantine fee in addition to the regular daily boarding fee.

D. Animal Services Officers investigating and authorizing a home quarantine shall collect a fee from the owner or custodian of the animal in an amount established from time-to-time by resolution of the City Council. (Ord. 960, 10/20/09; Section 1)

6.14.030 Quarantine of Rabid Animals.

A. Whenever it is shown that any dog or other animal has bitten any person, the owner or person having custody or possession of such biting dog or other animal shall, upon order of the Animal Services Officer, quarantine it and keep confined for a period not to exceed fourteen days, and shall allow the animal services officer to make an inspection or examination of such dog or other animal at any time during such period; provided, that upon request of the owner, who shall assume any charges therefore, any dog or other animal with a valid vaccination may be confined by a licensed veterinary for observation, and a written release from such veterinary shall be required.

B. It is unlawful for any person knowing or suspecting a dog has rabies to allow such dog to be taken off his premises or beyond the city limits without the written permission of the Animal Services Officer. Every owner or other person having custody or control of the dog or other animal knowing the same is rabid shall immediately notify the animal services officer or a police officer who shall make the determination to remove the dog or animal from the premises, leave it, or destroy it. (Ord. 960, 10/20/09; Section 1)

6.14.040 Animals Bitten by Rabid Animals - Confinement by Owners.

Whenever any animal has been bitten by another animal having or suspected of having rabies, the owner or person having the custody or possession of the animal so bitten shall immediately notify the animal services officer and shall restrain or confine such animal so as to make it impossible for such animal to bite any other animal or person. (Ord. 960, 10/20/09; Section 1)

6.14.050 Animals Bitten by Rabid Animals - Quarantine by Animal services officer. The animal services officer shall have the power to quarantine any animal bitten or suspected of having been bitten by a rabid animal. Any animal of a species subject to rabies which has been bitten by a known rabid or suspected rabid animal or has been in intimate contact with a rabid or suspected rabid animal shall be quarantined in a place and manner approved by the animal services officer, for a period of up to six months or destroyed, with the exception that the following alternatives are permitted in the case of dogs and cats as follows:

A. If a dog over one year of age has been vaccinated against rabies within eight (8) months but not less than 30 days with a rabies vaccine of a type approved by the animal services officer for a maximum immunity duration of at least eight (8) months, the dog may be revaccinated immediately (within 48 hours) in a manner prescribed by the animal services officer and quarantined in a place and manner approved by the animal control officer for a period of 30 days following revaccination.

B. If a dog under one year of age has been vaccinated against rabies within 04 months but not less than 30 days with a rabies vaccine of a type approved by the animal services officer, the dog may be revaccinated immediately (within 48 hours) in a manner prescribed by the animal services officer and quarantined in a place and manner approved by the animal control officer for a period of 30 days.

All costs of quarantine shall be paid for by the owner. (Ord. 960, 10/20/09; Section 1)

6.14.060 Immunization for Dogs Over Four Months. All dogs over four (4) months of age shall be immunized against rabies in the manner set forth in Sections 6.14.070 through 6.14.090. (Ord. 960, 10/20/09; Section 1)

6.14.070 Immunization Method. Immunization or vaccination with the canine rabies vaccine, one injection or other approved method may be performed by any duly qualified, licensed physician or veterinarian. (Ord. 960, 10/20/09; Section 1)

6.14.080 Certificate of Rabies Vaccination-Issuance. The person vaccinating each dog described in Section 6.16.070 shall issue a certificate of rabies vaccination. (Ord. 960, 10/20/09; Section 1)

6.14.090 Certificate of Rabies Vaccination-Prerequisite to Issuance of License. At the time of issuing the license required under Section 6.06.010 for all dogs in the city, the license collector or other proper official shall require the applicant for such a license to produce a certificate of rabies vaccination. The validity of such rabies certificate must extend through the license period. (Ord. 960, 10/20/09; Section 1)

6.14.100 Failure to Quarantine. Failure to comply with quarantine requirements or failure to produce an animal for quarantine shall constitute a violation of this Chapter. Persons who violate a home quarantine, fail to produce an animal for quarantine upon demand, or in any other way interfere with rabies investigation, shall, in the discretion of the Animal Services Officer, be administratively cited under section 1.17.100 et seq., or shall be guilty of a misdemeanor, pursuant to Section 041710 of the California Health and Safety Code and Section 9701 of the California Food and Agriculture Code, which is punishable by imprisonment in the County Jail for a period not to exceed one year, or by a fine of not less than one hundred dollars (\$100.00), nor more than one thousand dollars (\$1,000) per day of violation, or both fine and imprisonment. (Ord. 960, 10/20/09; Section 1)

Chapter 6.16
KENNELS, CATTERIES and ANIMAL RESCUE FACILITIES

Sections:

- 6.16.010 Commercial Kennel/ Cattery License Required
- 6.16.020 Application Requirements
- 6.16.030 Fees, Fee Exemptions
- 6.16.040 Animal Rescue Facilities
- 6.16.050 Denial, Suspension, Revocation and Appeal of License

6.16.010 Commercial Kennel/ Cattery License Required. In addition to a business license as required, every person engaged in the business of operating or maintaining a Class I Kennel, Class II Kennel, Class III Kennel, Class IV Kennel, Sentry Dog Kennel, or cattery shall obtain an appropriate license from the Animal Services Department. Such license shall be valid for a period of either one (1) or two (2) years from the date of issuance. Said license shall be renewed within thirty (30) days after the date of expiration. Where a kennel license has been issued and is in effect, the dogs contained in such kennel shall be exempt from the requirements of individual license tags as required by this Title. (Ord. 960, 10/20/09; Section 1)

6.16.020 Application Requirements. An application for a kennel or cattery license shall be filed with the Animal Services Officer on a form prescribed by him/her not later than ten (10) days after obtaining written verification from the City planning department that the operation of the kennel or cattery is in compliance with the applicable zoning regulations. Said application form, when completed, shall contain such information as may reasonably be required by the Animal Services Officer for the purposes of enforcement of this Title, including but not limited to the current home telephone number of the caretaker of the subject kennel or cattery and another current telephone number for emergency use or messages when such caretaker is absent from the subject kennel or cattery. Where a kennel or cattery is sought to be operated upon leased or rented premises, a letter of consent from the owner of the premises to the effect that the kennel or cattery may be maintained and operated on such premises shall be submitted to the Animal Services Officer at the time the application for the kennel or cattery license is submitted.

After receipt of a kennel or cattery license application, the Animal Services Officer shall make an inspection of the premises of the kennel or cattery for which a license is requested. No kennel or cattery license shall be issued, nor shall any such license be renewed, unless and until the kennel or cattery, in the opinion of the Animal Services Officer, satisfies the applicable laws and regulations of the State of California, the applicable Titles of the City and any other applicable conditions as set forth in this Chapter or any other applicable Chapters. Notwithstanding any other provision of this Title, the Animal Services Officer or the Planning Director may, in their respective discretion, limit the numbers of dogs or cats over the age of four (4) months which are

kept or maintained in any kennel or cattery, and such limitation may be imposed at such time as an application for an initial kennel or cattery license is considered or at such time as an application for renewal of a kennel or cattery license is considered.

Notwithstanding any other provision of this Title, the Animal Services Officer is hereby authorized to enter upon and inspect the premises of any kennel or cattery located in the CITY for the purpose of determining whether such kennel or cattery is in compliance with the provisions of this Title and the conditions set forth in Chapter 17.09 of the Municipal Code. As a condition of the issuance of a kennel or cattery license, each owner and operator of a kennel or cattery shall agree to allow such entry and inspection and such agreement shall be made a part of the license application. Such inspections shall be made during reasonable hours at times when the owner or operator of the kennel or cattery is present on the kennel or cattery premises, and with such frequency as the Animal Services Officer shall deem appropriate, and such inspections may, at the discretion of the Animal Services Officer, be made without prior notice to the owner or operator of the subject kennel or cattery. Willful refusal on the part of a kennel or cattery owner or operator to allow such inspection shall be grounds for summary denial of an application for a kennel or cattery license or for summary suspension or revocation of a kennel or cattery license. (Ord. 960, 10/20/09; Section 1)

6.16.030. Fees, Fee Exemptions. The Class I Kennel, Class II Kennel, Class III Kennel, Class IV Kennel, Sentry Dog Kennel, cattery, and Animal Rescue Facility license fees, and late fees, shall be as set by separate Resolution of the City Council of the City of Beaumont. If an application for a license or renewal of a license is made more than thirty (30) days after the date such license is required or such previous license has expired, a late fee shall be added.

A nonprofit corporation formed pursuant to the provisions of the California Corporations Code commencing with Section 10100 for the prevention of cruelty to animals, shall not be required to pay a fee for the licenses required by this Title; provided, however, that all other provisions of this Title shall be applicable to any such nonprofit corporation, as well as the provisions of Section 6.16.040 of this Title if the nonprofit corporation is an animal rescuer. (Ord. 960, 10/20/09; Section 1)

6.16.040. Animal Rescue Facilities. Any person engaged in the rescue of animals, shall first obtain a rescue permit from the Department and shall meet all requirements and standards for a kennel/cattery license.

a. For an animal rescuer that is not a valid nonprofit corporation formed pursuant to the provisions of the California Corporations Code commencing with Section 10100 for the prevention of cruelty to animals, the animal rescuer may keep two (2) dogs with a rescue permit and no minimum land requirement so long as all other requirements and standards for a kennel license, referred in this Title, are met.

b. For an animal rescuer that is a valid nonprofit formed pursuant to the provisions of the California Corporations Code commencing with Section 10100 for the prevention of cruelty to animals, the animal rescuer may maintain up to ten (10) dogs with a rescue permit and no minimum land requirement so long as all other requirements and standards for a kennel license are met. Such animal rescuer shall not need to obtain a Class I Kennel permit.

c. For an animal rescuer maintaining eleven (11) or more dogs a Class II Kennel License is required, and the minimum land requirement shall be one acre.

d. For an animal rescuer maintaining ten (10) or more cats, a cattery license is required; and the minimum land requirement shall be one acre.

e. An animal rescuer may keep a maximum of four (4) personal (not for adoption or sale) dogs and nine (9) personal (not for adoption or sale) cats and must include these animals as "personal pets" on the animal rescue permit application.

f. Personal dogs (not for adoption or sale) shall be individually licensed in accordance with this Title.

g. All rescued dogs and rescued cats older than four (4) months must be spayed/ neutered prior to releasing to an adopting party. In any event, the animal must be altered within 30 days of receipt by the rescuer.

h. Accurate and complete records of all animals shall be maintained by the animal rescuer on forms which will be made available to Department for inspection upon request.

i. An animal rescuer may recoup, from the adopting party, the cost of any inoculations, the cost incurred by having the animal altered prior to adoption, and any costs related to the treatment of illness or injury. (Ord. 960, 10/20/09; Section 1)

6.16.050 Denial, Suspension, Revocation and Appeal of License. The Animal Services Officer may, in his/her discretion, deny any application for a kennel, cattery or rescue facility license whether such application is for an original license or renewal of a license, and may suspend or revoke any license if it is found that the kennel, cattery or rescue facility fails to meet any or all of the Standards as set forth in this Title, or is in violation of any law of the State of California or any provision of this Title, any provision of any other CITY Title or provision of a Conditional Use Permit.

When such denial, suspension or revocation occurs, the Animal Services Officer shall prepare a written notice of such denial, suspension or revocation which shall contain a brief statement of the reason or reasons for such denial, suspension or revocation. The Animal Services Officer shall serve such notice upon the applicant or licensee by hand-delivery or by registered or certified mail, postage prepaid, return receipt requested. Denial, suspension or revocation shall be effective thirty (30) days after service of such notice. Where an application for a kennel or cattery license is denied or where a kennel or cattery license issued pursuant to this Title is revoked, no application for a new license for such kennel or cattery shall be considered for a period of one (1) year from the effective date of such denial or revocation; provided, however, that for good cause shown the City Council may direct that there be a lesser period of time before such application will be considered.

Any person whose application has been denied or whose license has not been renewed, or whose license has been suspended or revoked, may appeal such denial, nonrenewal, suspension or revocation by filing with the City Clerk of the within fifteen (15) days after notice of such denial, suspension or revocation, a written notice of appeal briefly setting forth the reasons why the appellant alleges such denial, non-renewal, suspension or revocation is improper. Within five (5) days of the receipt by the said Clerk of such notice of appeal, the Clerk shall set a hearing date for the appeal and shall give written notice of the date, time and place of such hearing to the appellant, and such notice shall be sent by registered or certified mail, postage prepaid, return receipt requested. The date of hearing shall be not less than twenty (10) days from the date of mailing of the notice of the date, time and place of the hearing, and the hearing shall be conducted not later than forty-five (45) days from the date of mailing of the notice of denial, non-renewal, suspension or revocation; provided, however, that at the request of the appellant, the City Clerk may extend the hearing date for a reasonable period beyond the aforementioned forty-five (45) day limit. The appeal shall be heard by the City Council which may affirm, modify, or reverse the denial, non-renewal, suspension or revocation. In conducting the hearing, the City Council shall not be limited by the technical rules relating to evidence & witnesses, as applicable in courts of law. To be admissible, evidence shall be of the type upon which responsible persons are accustomed to rely in the conduct of serious affairs. During the pendency of the appeal, there shall be in effect an automatic stay of the denial, non-renewal, suspension or revocation; provided, however, that during said period of pendency the Animal Services Officer may take such action as he/she deems appropriate under this Title, or any other provision of law respecting the subject kennel or cattery, including but not limited to the abatement of public nuisances, inspection of the kennel or cattery premises, or the prosecution of any violation of this Title, or any other provision of law not related to the failure of the subject kennel or cattery to be currently and otherwise validly licensed. (Ord. 960, 10/20/09; Section 1)

Chapter 6.18
LARGE ANIMALS

Sections:

- 6.18.010 Running at Large—Impoundment
- 6.18.020 Notice of Impoundment - Required
- 6.18.030 Fees and Charges - Impounded Animals -Redemption
- 6.18.040 Right to Redeem
- 6.18.050 Sale of Impounded Animal - Terms - Time
- 6.18.060 Sale of Impounded Animal - Bill of Sale
- 6.18.070 Sale of Impounded Animal - Proceeds
- 6.18.080 Records

6.18.010 Running at Large—Impoundment. No person owning or having the care, custody, or control of any horse, mule, jack, cow, sheep, goat, or other domestic animal or livestock shall permit the same to be at large and not be under the immediate control of some person. No person shall picket such animal in such a manner that the animal can go upon any of the streets, alleys, or public parks, or public grounds within the city. It shall be the duty of the animal services officer to impound any animal that may be found running at large. (Ord. 960, 10/20/09; Section 1)

6.18.020 Notice of Impoundment - Required. Within not less than two (2), nor more than five (5) days from the impoundment of any animal under this Chapter, it shall be the duty of the animal services officer to give notice of the impounding of such animal to the owner or person claiming to own such animal. If the owner cannot be ascertained, a notice shall be posted for five days in a conspicuous place in the City therein giving a description of each animal impounded and stating that if such animal is not sooner redeemed, the animal services officer will at a time and place named in such notice, sell such animal at public auction to pay the charges and costs provided for in this Chapter.

6.18.030 Fees and Charges - Impounded Animals-Redemption. Any person owning or claiming to own any animal under the provisions of this Chapter may redeem such animal by payment of the fees and charges established in amounts by resolution of the City Council:

a. Impoundment. The City shall charge a fee for impoundment, plus the actual costs of transporting the animal, veterinary care and related services rendered to the animal while impounded, the actual costs for the animal services officer, as well as any other agencies involved, the actual costs of sale incurred, actual costs of any extraordinary measures required in or for the handling and maintaining of the animal while impounded. Upon impounding any bovine animal, horse, mule or burro, the animal services officer shall comply with Food and Agriculture Code Section 17003 and immediately notify the Secretary of Food and Agriculture.

b. Feeding and Keeping. For feeding and keeping any animal, a fee for each day or fraction thereof the same shall remain in the animal services officer's custody. (Ord. 960, 10/20/09; Section 1)

6.18.040 Right to Redeem. Any animal impounded under this Chapter may at any time be redeemed upon payment to the animal services officer of such fees and charges as may have already been incurred per Section 6.20.030. (Ord. 960, 10/20/09; Section 1)

6.18.050 Sale of Impounded Animal - Terms - Time. At the time and place set forth in the notice of sale, the animal services officer shall cause the sale of the impounded animal at public sale, to the highest bidder, for cash. If no bid is offered for such animal, the animal services officer may cause the sale of such animal at private sale or humanely destroy such animal, or otherwise dispose of it as permitted by law. (Ord. 960, 10/20/09; Section 1)

6.18.060 Sale of Impounded Animal - Bill of Sale. The animal services officer, upon receiving the purchase money for an animal sold under this Chapter shall provide the purchaser with a bill of sale signed by the animal services officer. (Ord. 960, 10/20/09; Section 1)

6.18.070 Sale of Impounded Animal - Proceeds. All money received for the sale of an animal under the provisions of this Chapter shall be deposited in the general fund of the City. (Ord. 960, 10/20/09; Section 1)

6.18.090 Records. It shall be the duty of the animal services officer to maintain accurate records on all animals impounded, redeemed or sold under the provisions of this Chapter. (Ord. 960, 10/20/09; Section 1)

Chapter 6.20 APIARIES

Sections:

- 6.20.010 Purpose and Intent
- 6.20.020 Hives
- 6.20.030 Fencing of Flyways
- 6.20.040 Water
- 6.20.050 General Maintenance
- 6.20.060 Queens
- 6.20.070 Colony Densities
- 6.20.080 Marking Hives, Presumption of Beekeeping
- 6.20.090 Inspection
- 6.20.100 Compliance

6.20.010 Purpose and Intent. The city Council finds that honey bees are of benefit to mankind by providing agriculture, fruit, and garden pollination services and by furnishing honey, wax, and other useful products. The City Council recognizes that gentle strains of honey bees can usually be maintained within populated areas within reasonable densities without causing a nuisance if the bees are properly located and carefully managed. The purpose of this Chapter is to establish certain requirements of sound beekeeping practices, which are intended to avoid problems that may otherwise be associated with the keeping of bees in populated areas. (Ord. 960, 10/20/09; Section 1)

6.20.020 Hives. All bee colonies shall be kept in Langstroth type hives with removable frames, which shall be kept in sound and useable condition. (Ord. 960, 10/20/09; Section 1)

6.20.030 Fencing of Flyways. In each instance in which any colony is situated within twenty-five (25) feet of a public or private property line of the tract upon which the apiary is situated, as measured from the nearest establishment, the beekeeper shall maintain a flyway barrier at least six (6) feet in height consisting of a solid wall, fence, dense vegetation, or combination thereof that is parallel to the property line and extends ten feet beyond the colony in each direction so that all bees are forced to fly at an elevation of at least six (6) feet above ground level over the property lines in vicinity of the apiary. It is a defense to prosecution under this section that the property adjoining the apiary tract in the vicinity of the apiary is undeveloped property for a distance of at least twenty-five (25) feet from the property line of the apiary tract. (Ord. 960, 10/20/09; Section 1)

6.20.040 Water. Each beekeeper shall ensure that a convenient source of water is available at all times to the bees so that the bees will not congregate at swimming pools, bibcock, pet watering bowls, bird baths, or other water sources where they may cause human, bird, or domestic pet contact. (Ord. 960, 10/20/09; Section 1)

6.20.050 General Maintenance. Each beekeeper shall ensure that no bee comb or other materials are left upon the grounds of the apiary site. Upon their removal from the hive all such materials shall promptly be disposed in a sealed container or placed within a building or other bee proof enclosure.

6.20.060 Queens. In any instance in which a colony exhibits unusually aggressive characteristics by stinging or attempting to sting without due provocation or exhibits an unusual disposition towards swarming, it shall be the duty of the beekeeper to promptly requeen the colony. Queens shall be selected from stock bred for gentleness and non-swarming characteristics. (Ord. 960, 10/20/09; Section 1)

6.20.070 Colony Densities.

A. It shall be unlawful to keep more than the following number of colonies on any tract within the City, based upon the size of configuration of the tract on which the apiary is situated:

1. One quarter acre or less tract size two (2) colonies.
2. More than one-quarter acre but less than one-half acre tract size four (4) colonies.
3. One-half acre but less than one acre tract size six (6) colonies.
4. One acre or larger tract size eight (8) colonies.

Regardless of tract size, where all hives are situated at least two hundred (100) feet in any direction from the property lines of the tract on which the apiary is situated, there shall be no limit to the number of colonies.

Regardless of tract size, so long as all property, other than the tract upon which the hives are situated, that is within a radius of at least two hundred (200) feet from any hive remains undeveloped property, there shall be no limit to the number of colonies.

B. For each two (2) colonies authorized under Colony densities (Subsection A) there may be maintained upon the same tract one nucleus colony in a hive structure not exceeding one standard 9 5/8 inch depth ten-frame hive body with no supers attached as required from time to time for management of swarm. Each such nucleus colony shall be disposed of or combined with an authorized colony within thirty (30) days after the date it is acquired.

6.20.080 Marking Hives, Presumption of Beekeeping.

A. In apiaries, name and telephone numbers shall be branded, painted, or otherwise clearly marked upon the structure of at least two (2) hives at opposite ends of the apiary. Instead of marking the hives, the beekeeper may conspicuously post a sign setting forth the name and telephone number of the beekeeper. It is a defense to prosecution under this subsection that a colony is kept upon the same tract upon which the owner resides.

B. Unless marked in accordance with Subsection (A) it shall be presumed for purposes of this article that the beekeeper is the person or persons who own or otherwise have the present right of possession and control of the tract upon which a hive or hives are situated. The presumption may be rebutted by a written agreement authorizing another person to maintain the colony or colonies upon the tract setting forth the name, address, and telephone number of the other person who is acting as the beekeeper. (Ord. 960, 10/20/09; Section 1)

6.20.090 Inspection. The Animal services officer shall have the right to inspect any apiary between the hours of 8:00 a.m. and 5:00 p.m. Where practicable, prior notice shall be given to the beekeeper if he resides at the apiary or if his name is marked on the hives. (Ord. 960, 10/20/09; Section 1)

6.20.100 Compliance.

A. Upon receipt of information that any colony situated within the City is not being kept in compliance with this Title, the Department shall cause an investigation to be conducted. If he finds that grounds exist to believe that one or more violations have occurred he shall cause a written notice of hearing to be issued to the beekeeper.

B. The notice of hearing shall set forth:

1. The date, time and place at which the hearing will be conducted.
2. The violation(s) alleged,
3. That the beekeeper may appear in person or through counsel, present evidence, cross examine witnesses, and request a court reporter.
4. That the bees may be ordered destroyed or removal from the City if the hearing officer finds that they have been kept in violation of this article.

Notice shall be given by certified United States Mail or personal delivery. However, if the City is unable to locate the beekeeper, then the notice may be given by publication one time in a newspaper of general circulation at least five (5) days prior to the date of the hearing.

C. The hearing shall be conducted by the Hearing Officer . The burden shall be on the city to demonstrate by a preponderance of credible evidence that the colony or colonies have in fact been kept in violation of this Title. If the hearing officer finds that the colony or colonies have been kept in violation of this Chapter, then he may order that the bees be destroyed or removed from the City, not to exceed twenty (10) days, and that bees not thereafter be kept upon the tract for a period of two (2) years. In instances where the hearing officer finds that the violations were not intentional and that the beekeeper has employed corrective actions that will probably be effective to cure the violations alleged, then he may issue a warning in lieu of ordering the bees be removed or destroyed. Upon failure of the beekeeper to comply with the order, the officer may cause the bees to be destroyed and the hive structures to be removed. In each instance in which a bee colony is destroyed all usable components of the hive structure that are not damaged or rendered unhealthy by the destruction of the bees shall upon the beekeeper's request be returned to the beekeeper, provided that the beekeeper agrees to bear all transportation expense for their return.

D. The decision of the hearing officer may be appealed to the City Council by filing a notice to appeal with the City within ten (10) days following the date that the hearing officer announces his decision, or if the decision is not announced at the conclusion of the hearing, then within fifteen (15) days following the date that the hearing officer places written notice of his decision in the mail to the beekeeper. An appeal shall not sway the hearing officer's decision, and it shall be the responsibility of the beekeeper to remove the bees from the City pending the determination of the appeal.

E. The provisions of the section shall not be construed to require a hearing for the destruction of (1) any bee colony not residing in a hive structure intended for beekeeping or (2) any swarm of bees or (3) any colony residing in a standard or man-made hive, which by virtue of its condition, has obviously been abandoned by the beekeeper.

Chapter 6.22
Animal Control Hearings

Section:

- 6.22.010 Purpose
- 6.22.020 Neutral Hearing Officer
- 6.22.030 Scheduling the Hearing
- 6.22.040 Hearing Procedures
- 6.22.050 Recording
- 6.22.060 Hearing Officer's Decision
- 6.22.070 Appeal to the Riverside County Superior Court
- 6.22.080 Failure to Appeal

6.22.010 Purpose. It is the purpose of this Chapter to provide standardized animal control hearing procedures concerning the seizure and impoundment of animals. Specifically, the hearings required by Chapter 6.08 regarding seizure and impoundment, Chapter 6.10 regarding potentially dangerous dogs and Chapter 6.12 regarding dangerous animals, shall be conducted in accordance with the procedures set forth in this Chapter 6.22. (Ord. 960, 10/20/09; Section 1)

6.22.020 Neutral Hearing Officer. All hearings conducted pursuant to this Chapter shall be conducted by the Chief of Police or his designee who shall not have been directly involved in the subject action and shall not be subordinate in rank to the person seizing or impounding the animal(s). The name of the candidate hearing officer shall be promptly communicated to the owner of the animal, and the owner shall have 24 hours to disqualify the candidate on the grounds that the owner reasonably believes that the candidate is prejudiced against the owner or the interests of the owner. (Ord. 960, 10/20/09; Section 1)

6.22.030 Scheduling the Hearing. The designated hearing officer shall schedule the hearing, and the hearing shall be conducted, within 10 business days of the date the hearing officer is appointed; provided, however, that the hearing officer may continue the hearing for a reasonable period of time if he/she deems such continuance to be necessary and proper, or if the owner or custodian of the animal shows good cause for such continuance. (Ord. 960, 10/20/09; Section 1)

6.22.040 Hearing Procedures. To the extent applicable and feasible, the hearing officer shall conduct the hearing in compliance with the following guidelines:

A. The Animal Services Officer shall have the burden of proof to establish, by a preponderance of the evidence, the existence of the condition or conditions which gave rise to the need for seizure or impoundment or otherwise.

B. The Animal Services Officer shall present its case first, following by the party against whom the seizure or impoundment is being proposed. The Animal Services Officer may present rebuttal in the discretion of the hearing officer.

C. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any other matter relevant to this issue even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called the witness, and to rebut evidence.

D. Oral evidence shall be taken only on oath.

E. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be irrelevant and unduly repetitious evidence shall be excluded.

6.22.050 Recording. The hearing may be recorded if ordered by the hearing officer or requested by the owner or custodian of the animal. A stenographic report shall also be made of the proceedings if ordered by the hearing officer or requested by the owner or custodian, with the costs thereof to be borne by the person making the order or request. A copy of the recording or transcript of the proceeding shall be made available to person upon request and upon payment of the cost of the preparation thereof.

6.22.060 Hearing Officer's Decision. Within 3 business days after the conclusion of the hearing, the hearing officer shall render, in writing, his/her findings, decision and order thereon, and shall give notice, in writing, of the determination and orders issued, either personally or by first-class mail, postage prepaid. Specific findings that shall be made by the hearing officer, and a more complete statement of the hearing officer's disposition authority may be found in Chapters 6.08, 6.10 and 6.12 of this Title.

6.22.070 Appeal to the Riverside County Superior Court. If the owner or custodian of the animal contests the hearing officer's determination, he/she may, within 5 days of the receipt of the notice of determination, appeal the decision to the Riverside County Superior Court and shall pay a fee for filing such appeal to the Clerk of the Court, as provided in Section 70826(b) of the Government Code.

The owner or custodian of the dog shall serve personally, or by first-class mail, postage prepaid, the notice of appeal on the Chief of Police.

The Court hearing the appeal shall conduct a hearing in accordance with the provisions of Section 30612(b) of the Flood and Agriculture Code. The determination of the Court hearing the appeal shall be final and conclusive upon all parties.

6.22.080 Failure to Appeal. If the owner or custodian of the animal fails to appear at the hearing, the hearing officer, and the Superior Court hearing the appeal, may decide all issued for or against such absent owner or custodian.

ATTACHMENT 4

Public Hearing Notice

NOTICE OF PUBLIC HEARING

PURSUANT TO LAW, NOTICE IS HEREBY GIVEN of a Public Hearing before the City Council of the City of Banning, to be held at a regular City Council Meeting on Tuesday, March 8, 2011, at 5:00 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider the following:

Ordinance No. 1437: Amendment to Title 6 of the Banning Municipal Code by Adopting by Reference the Entirety of Title 6 of the Beaumont Municipal Code, Entitled "Animals", Relative to Animal Control and Regulation.

Copies of Title 6 of the Beaumont Municipal Code are on file with the Banning City Clerk and open to public inspection.

Information regarding the foregoing can be obtained by contacting the City's Planning Department at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning.

All parties interested in speaking either in support of or in opposition to any item are invited to attend said meeting, or to send their written comments to the City Clerk of the City of Banning at P.O. Box 998, Banning, California 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the City Council makes its decision on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the meeting body at, or prior to, the hearing (California Government Code, Section 65009).

**BY ORDER OF THE CITY CLERK OF THE CITY OF BANNING,
CALIFORNIA.**

Marie A. Calderon
City of Banning

Date: February 14, 2011
Publish: February 18, 2011
And February 25, 2011

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**CITY COUNCIL AGENDA
PUBLIC HEARING**

Date: **February 22, 2011**

Continued from Meeting of
Feb. 22, 2011 to March 8, 2011

TO: **City Council**

FROM: **Heidi Meraz, Community Services Director**

SUBJECT: **Resolution No. 2011-10, A Resolution of the City Council of the City of Banning Approving Adoption of the Banning Parks and Recreation Master Plan Update**

RECOMMENDATION: The Council adopt Resolution No. 2011-10, Approving Adoption of the Banning Parks and Recreation Master Plan Update.

JUSTIFICATION: The proposed Parks and Recreation Master Plan encompassed an extensive process to identify both current and future needs for recreation facilities, parks and programs and provides a strategy for addressing these needs in a fiscally responsible manner. This Plan will become a working document for City Staff, the Parks and Recreation Advisory Committee, Planning Commission and City Council.

BACKGROUND: The City of Banning Parks and Recreation Master Plan was created and adopted in 1990. The document had a fifteen year plan for the development of the park system. However, sufficient funding to implement the plan was not identified and the plan essentially not implemented. In 2006 City Council directed staff to move forward with an update to the existing Master Plan.

In fall of 2008 Council approved a proposal from RJM Design Group, Inc to develop an update of the Master Plan. The kick-off meeting for the update was held with City Staff and Consultants in February 2009 and a project schedule was set. The update process included the following elements:

- Workshop with City Staff and Parks and Recreation Advisory Committee
- Compilation of existing recreation programs offered to residents
- Consultant/City Staff tour of city park and recreation facilities and school district sites
to inventory existing facilities.
- Recreation Needs Assessment conducted through telephone survey and Sports Organization Questionnaires
- Community Workshop
- Joint Meeting of the City Council, Planning Commission and Parks and Recreation Advisory Committee with a presentation of the draft Master Plan Update.
- For review and comment, Draft Master Plan distributed to member of the Banning Unified School Board through the office of the Superintendent

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Parks and Recreation Advisory Committee's Recommendation

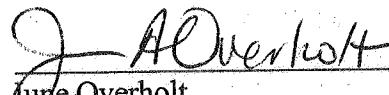
On October 20, 2010 at the regularly scheduled meeting of the Parks and Recreation Advisory Committee the Committee recommended that City Council approve the adoption of the proposed Parks and Recreation Master Plan.

FISCAL DATA: The adoption of the Parks and Recreation Master Plan has no immediate fiscal impact. Any future projects and programs that are proposed in accordance with the Master Plan will be taken to Council for consideration and approval before implementation, at which the funding source for such would be identified.

RECOMMENDED BY:


Heidi Meraz
Community Services Director

REVIEWED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

RESOLUTION NO. 2011-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING ADOPTION OF THE BANNING PARKS AND RECREATION MASTER PLAN UPDATE

WHEREAS, The current Banning Parks and Recreation Master Plan was created and adopted in 1990; and

WHEREAS, the Banning City Council approved funding and selected RJM Design Group, Inc. to prepare an update of the current Parks and Recreation Master Plan; and

WHEREAS, RJM Design Group, Inc has prepared a Parks and Recreation Master Plan Update, which identifies both current and future needs for recreation facilities, parks and programs; and

WHEREAS, This Plan will become a working document for City Staff, the Parks and Recreation Advisory Committee, Planning Commission and City Council.

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

The Council adopts Resolution No. 2011-10, Approving Adoption of the Banning Parks and Recreation Master Plan Update.

PASSED, APPROVED, AND ADOPTED this 8th day of March, 2011.

Barbara Hanna, Mayor
City of Banning

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

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

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-10, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of March, 2011.

AYES:

NOES:

ABSTAIN:

ABSENT:

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