

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

November 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

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.

PRESENTATIONS:

1. "Zorro" Retirement Presentation – Police Chief Purvis
2. Banning High School Solar Boat Team Presentation
3. Central School Mandarin Chinese Class Recognition – Mayor and Council

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 3

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

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

1.	Approval of Minutes – Joint Meeting – 10/25/11 (Closed Session).	1
2.	Approval of Minutes – Regular Meeting – 10/25/11.	2
3.	Resolution No. 2011-93, Amending Its Fiscal Budget Regarding the Purchase of Equipment for Utility Billing Services	10

- Open for Public Comments
- Make Motion

V. REPORTS OF OFFICERS

1.	Resolution No. 2011-92, Appropriating Funds and Amending the Project Budget for the Emergency Oil Spill Cleanup that originated from 553 E. Ramsey Street for a total amount not to exceed \$1,814,291.	
Staff Report		14

Recommendation: That the City Council adopt Resolution No. 2011-92:

- I) Amending the project budget for the Emergency Oil Spill Cleanup that originated from 553 East Ramsey Street for a total amount "Not to Exceed" \$1,814,291.00; and
- II) Authorizing the Administrative Services Director to make the necessary budget appropriations from General Fund Reserves and transfers in an amount "Not to Exceed" \$1,314,291.00 in order to cover expenses related to the emergency cleanup.

2.	Draft - Manual of Procedural Guidelines for the Conduct of City of Banning Legislative Body and Constituent Body/Commission Meetings. . .	18
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Recommendation: That the City Council review and comment on this draft of procedural guidelines and that it be brought back for adoption.

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. Review of Fees and Rates (*Jan.*)
3. Polices & Procedures for Applicant re. Projects and Applicants for Commissions & Committees
4. Report on the Five-Year Water Plan (*Feb.*)

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

10/25/2011
JOINT MEETING

A joint meeting of the Banning City Council and the Community Redevelopment Agency was called to order by Mayor Hanna on October 25, 2011 at 4:30 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: June Overholt, Administrative Services Dir./Deputy City Manager
David J. Aleshire, City Attorney/Agency Counsel
Zai Abu Bakar, Community Development Director
Duane Burk, Public Works Director
Marie A. Calderon, City Clerk/Secretary

CLOSED SESSION

City Attorney said that on the closed session agenda we have potential litigation in three matters pursuant to Government Code Section 54956.9 to give a status report and then there was a supplemental agenda which added the matter of Banning Airport Associates, et al. v. City of Banning, et al: (Riverside Superior Court Case No. RIC 497338) pursuant to the provisions of Government Code Section 54956.9(a).

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

Meeting went into closed session at 4:02 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 5:10 p.m.

Marie A. Calderon, City Clerk

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

10/25/11
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Hanna on October 25, 2011 at 5:10 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: June Overholt, Administrative Services Dir./Deputy City Manager
David J. Aleshire, City Attorney
Duane Burk, Public Works Director
Zai Abu Bakar, Community Development Director
Heidi Meraz, Community Services Director
Fred Mason, Electric Utility Director
Phil Holder, Lieutenant
John McQuown, City Treasurer
Marie A. Calderon, City Clerk

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

REPORT ON CLOSED SESSION

City Attorney Aleshire stated that the City Council and Agency Board met in closed session to discuss three matters of potential litigation and a status report was given on these matters and there was no reportable action taken.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

There were none.

CORRESPONDENCE - Nothing at this time.

CONSENT ITEMS

Councilmember Robinson pulled Consent Item No. 5 for discussion.

1. Approval of Minutes – Joint Meeting – 10/11/11 (Closed Session)

Recommendation: That the minutes of the joint meeting of October 11, 2011 be approved.

2. Approval of Minutes – Regular Meeting – 10/11/11

Recommendation: That the minutes of the regular meeting of October 11, 2011 be approved.

3. Ordinance No. 1442 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Setting Forth a Procedure for the Rotation of the Office of Mayor and Other Positions Held by Councilmember.

Recommendation: That Ordinance No. 1442 pass its second reading and be adopted.

4. Approve Amendment to Contract with Norman A. Traub Associates for Investigation Services for the City of Banning Police Department.

Recommendation: That the City Council amend the current limit on compensation for services (\$25,000) with Norman A. Traub Associates for Investigation Services for the City of Banning Police Department to \$50,000.

6. Resolution No. 2011-91, Authorizing the Submittal of an Application, Acceptance of An Allocation of Funds and Execution of a Grant Agreement with the California Department of Transportation, for an Airport Improvement Program Matching Grant.

Recommendation: That the City Council adopt Resolution No. 2011-91 and authorize the City Manager to execute any documents required to apply for and accept these subject funds on behalf of the City of Banning.

7. Notice of Completion for Project 2011-02EL Replacement of City of Banning Yard Office Building HVAC Duct Work System.

Recommendation: That the City Council accept Project 2011-02EL Replacement of City of Banning Yard Office Building HVAC Duct Work System as complete and direct the City Clerk to record the Notice of Completion.

Motion Machisic/Franklin to approve Consent Items 1, 2, 3, 4, 6 and 7. Mayor Hanna opened the item for public comments. There were none. **Motion carried, all in favor.**

5. Resolution No. 2011-90, Authorizing the Purchase and Installation of Thirteen (13) Bus Shelters, Forty (40) Bus Benches, and Thirteen (13) 32 Gallon Trash Receptacles in an Amount “Not to Exceed” \$145,590.18.

Councilmember Robinson said that he talked to Mt. San Jacinto College this morning to see how many people were actually using the bus to go to the college and it is about 100 people per week and he was hoping that there would be consideration for a bus shelter at our new college realizing when all this started we did not have a college but we do now and they definitely need some type of shelter there.

Community Services Director Meraz said that yes and actually they are replacing 11 existing and they do have a couple of extras for placement and Mt. San Jacinto College campus was one of them that they have identified as needing it and will figure out logically where they would like to have that placed.

Councilmember Machisic said he called Heidi about the bus shelter yesterday because he was concerned about solar.

Mrs. Meraz said that they are solar-powered and will be lit in the evenings and they are a huge improvement to what we currently have and hopefully be in place within 8 to 10 weeks after they are ordered.

Councilmember Botts said that this reminded him that we used to have a contract with the Banning Chamber of Commerce to sell advertising and so forth and is that contract still in existence and if it is not that is okay but if it is, is there any impact on new shelters.

Mrs. Meraz said the contract is not in effect. She did meet with the Chamber over a year ago with the staff at that time which was Ronna Kadow and the gentleman who was selling the ads just to let them know that we would be replacing the shelters and on the new shelters there would be no advertising space and they were okay with that. We have had this money for a little while but waited so that those contracts would be over and the Chamber would not have any loss.

Councilmember Franklin thanked Heidi and her staff for their hard work because we have talked about bus shelters for a long time and this is something that the public is really going to appreciate having especially along Ramsey Street.

Motion Robinson/Machisic to approve Consent No. 5, adopting Resolution No. 2011-90, Authorizing the purchase and installation of thirteen (13) ADA compliant bus shelters with DTD solar illumination in the shelter roof with 8' perforated metal benches (no back, three anti-vagrant bars) and forty (40) 8' perforated metal bus benches (no back, three anti-vagrant bars) and thirteen (13) 32 gallon perforated metal trash receptacles color RAL6005 (Moss Green) from Tolar Manufacturing Company of Corona, CA in an amount "Not to Exceed" \$145,590.18. Mayor Hanna opened the item for public comments. There were none. **Motion carried, all in favor.**

PUBLIC HEARINGS

1. City Business Permit for Lexxiom Medical Services, Inc.
(Staff Report - Phil Holder, Lieutenant)

Lt. Holder stated that this is a public hearing for a business permit for Lexxiom ambulance service. Lexxiom recently purchased the Riverside County Operations County Rescue Ambulance who is going to be working in Orange County and no longer will be in Riverside County. Lexxiom will be taking over all the operations for the city of Banning that County Rescue is providing including the contract for transportation out of San Gorgonio Memorial Hospital. He has checked with the Riverside County Board of Health and they have confirmed that Lexxiom does have all the proper licensing and the Department of Motor Vehicles has inspected the vehicles and they are all properly equipped and licensed. He is asking for Council approval for Lexxiom to have a business permit to operate in the city of Banning and take over County Rescue's contract with the hospital.

Councilmember Franklin said Lexxiom prior to coming to Banning was an ambulance service and there have not been any issues or complaints with any of their prior service.

Lt. Holder said they were an ambulance service prior to coming to Banning and they have not received or are aware of any complaints regarding their service.

Councilmember Robinson said he saw a couple of these ambulances today at the hospital and it looks like they are all new and have they replaced the fleet now.

Lt. Holder said it is a completely separate business and they are actually moving into the area and from what he understands they are not only in California so it is kind of a national ambulance service. From what he understands they are going to have state-of-the-art equipment. Right now they are operating under a memorandum of understanding with County Rescue to cover during the month of October but come November 1st County Rescue will no longer operate in Riverside County so we are not really adding an ambulance service to Banning; one will be leaving and one will be coming.

Mayor Hanna said they will not be providing emergency service responses and this is just for transportation services.

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

Jerry Boucher, Managing Director with Lexxiom addressed the Council stating that if you do have any questions he will be happy to answer them. He brought copies of the contract with San Gorgonio Memorial Hospital. In regards to the questions regarding if the units were all new, a third of the fleet has been brought in new and about half of the fleet was already two years old or less and three of them are 2003 but they have all been redone and those are mainly the critical care units which are not used as much. Mr. Boucher said that he was actually the Managing Director for County Rescue Ambulance for two years in Riverside so it is the management and the same staff.

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

Motion Robinson/Machisic that the City Council approve a City Business Permit for Lexxiom Medical Services, Inc. to provide medical transport services within the city limits of Banning. Motion carried, call in favor.

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

City Council

Councilmember Franklin –

- In regards to the Halloween Fest that was held Saturday provided by the Community Center was wonderful and the place was packed from 4:00 to 8:00 p.m. and in fact, they couldn't even take their booth down because there were still kids playing. It was really good to see so much community support and you couldn't find a place to park and people where walking to the event from the different streets so you knew this was truly a community event. There were a lot of sponsors such as Rio Ranch Market who provided a lot of pumpkins and the kids just had a ball. She thanked the Community Services staff and Heidi for all that they did to put this together.
- She sits on the Commission for the Community Action Partnership representing our City and they had their annual meeting with the Board of Supervisors last week and one of the things that came up and she doesn't know if people are aware but the federal government has cut Community Service Block Grants by 50% and what we have all been asked to do is to support talking to our legislators and sending letters asking them not to cut it anymore than that because the 50% is just a starting point. These are dollars that pay for weatherization, utility assistance for some of the programs we provide, community services, cool centers, and warm centers so there is a whole list of things that would be at risk of disappearing if they continue to cut these dollars. She would like to ask the Council if they would be in agreement to maybe doing a City letter asking that our legislators not cut any more than the 50% that they have already cut. **There was Council consensus.**

Also in regards to Community Action it is made up of three different parts: 1) the public sector; 2) private sector; and 3) low income representatives and this commission is the governing board for Community Action Partnership for Riverside County. There is an opening for the 5th District and we do have one person from Banning that has put in an application and there are 8 people running from the 5th District. There will be a meeting here in Banning on November 7, 2011 and they will be voting at that meeting and there is also a meeting in Moreno Valley because there are people that have applied throughout the 5th District so we do have one person and we will find out hopefully by the end of November whether or not we will have a representative for low income coming from our City. The person from Banning is Victoria Patton. If anyone is interested in going to the meeting it will be held on Nov. 7th from 6 to 8 p.m. at Canaan Church, 422 S. Hargrave and will be combined with a Resource Fair where they will be giving out utility assistance information, Individual Development Account Program where you can save a \$1 dollar and have it matched by \$2 dollars, and other information on assistance. It is open and free to the public.

There was an Energy Task Force Meeting that is made up of people throughout Riverside County and they actually had a tour of the windmills last week. The windmills started over 30 years ago with each one costing about \$1 million dollars and each one can service from 230 to 300 homes and they actually only run 3% of the time. Their season is February through the

end of the September and what they are telling us is that these are going to be the wave of the future. There are two basic issues: 1) inter-connectability; and 2) capacity.

- She attended the San Gorgonio Pass Water Agency meeting yesterday and they had a presentation from the General Manager for the Coachella Valley Water District. He had two main topics and one had to do with the State Water Project and the fact that the State has it set up right now where the bonds cannot be renegotiated and the end of the bond is 2035. That presents a problem because we are talking about \$110 to 140 million more dollars. The other thing he talked about was the cost is going to be increasing in purchasing water because the State has so many additional regulations about the different components that are in water and that is going to turn into how much it costs us to buy water. When she gets more information she will be sharing that with the Council.

Mayor Pro Tem Machisic –

- He said a week ago Monday he went to a meeting at the County Board of Supervisors and one of the things that they discussed at great length is to develop an emergency medical system county-wide that they don't have. They indicated that there are only three counties in the state with one of them being Alameda and Napa and what they want to do is to have a uniform method of handling for instance, strokes and heart attacks because there is no uniform method of doing it. They also talked about a county-wide contract for ambulances with AMR (American Medical Response). There was some discussion that came up from Murrieta, as well as, Canyon Lake and they seem to object to the contract with AMR. One of the things that he noticed as he listened to the presenter is that when they talked about a county-wide medical emergency system they had a committee and they mentioned who was on the committee and he thought is was rather ironic that there was one missing party and that was local government. When they did the ambulance contract it was the same thing and they left out the cities and he was a little concerned and he would like to follow through with the concurrence of the Council and talk to our Supervisor, if the services are for us, we need to be represented. **There was Council concurrence.**

Councilmember Robinson –

- Last week we had a meeting with the City of Beaumont and with Pardee Developers and he and Councilmember Franklin are on that committee for Highland Springs Avenue Improvements. The first thing that they talked about was a memorandum of understanding between Banning, Beaumont and Caltrans to control the lights on Highland Springs. This goes from First and Highland Springs all the way to Wilson and Highland Springs. We were very excited to hear that they are looking at getting this done, the synchronization, before the holiday shopping season starts. The date now is November 10th where these GPS devices will be installed at each signal and then there would be timing. He knows that Duane Burk has been very involved in this with the City, Caltrans and Pardee to get all this timing done on the same day if possible. This is what they are calling Phase I. The memorandum of understanding was signed and that part is done and the equipment is in the warehouse so that it can be done on Nov. 10th. Phase II of this project is to move Joshua Palmer from its existing u-turn location along the freeway up to between the Chevron Station and Subway where the vacant lot is. That will become a four-way intersection where you can turn either left into Food for Less or turn right and go behind the existing businesses (Chevron, Denny's, The Farmhouse) and then you will come out on the west side of the Hampton Inn where it will tie back in to Joshua Palmer.

So all of that existing roadway along the freeway that we have to make that u-turn now will be closed off and will become parking for those businesses along there. They say that they will have that into our City Engineer's hands by the middle of November for approval of that plan. It is all good news for that Highland Springs congestion.

- SCAG (Southern California Association of Governments) Transportation Committee we are meeting now every two weeks. There is a Regional Transportation Plan (RTP) that is due to the State by April of next year and we have to approve this in November and get it out to the public for comment between December 13th and April when it has to go to the State so you have about four to five months to comment on this and it will come to the City of Banning and other regional offices. He has requested a meeting tomorrow with WRCOG's (Western Riverside Council of Governments) representatives and the SCAG representatives in Riverside to discuss this further because he felt Western Riverside County was pretty well left out of this plan although we have to be a part of coming up with the budget shortfall of \$76 billion dollars so he thinks we ought to have more input at the table than kind of being left out. They really stop the plan at the 15 freeway and the plan includes truck routes on SR 60 and all kinds of things that are very expensive but they have not talked about how they are going to deal with traffic after it gets past the I-10 and the 15 freeways and he will keep the Council advised.

Mayor Hanna –

- She said that we need help and that in the Banning Unified School District a vast majority of children are from low income families and they are eligible for the subsidized breakfast and lunches and that is just the context. Every year just before Thanksgiving there is something called the "Turkey Trot" which is a competitive race in every grade level at every school below the high school level and the Boys and Girls Club also has a Turkey Trot and if you win the Turkey Trot in the classroom you can't compete in the Boys and Girls Club race. They had hoped to get turkeys from Morongo but that didn't happen this year and they need 76 turkeys. She would like to ask her fellow Councilmembers to consider providing either the money or the turkeys as you like. She is going to contribute 7 turkeys herself and she said her youngest daughter, Judy Sheldon, won every Turkey Trot she ever ran in so she feels that she needs to pay back. If it is something you can do, the checks can be written to Coombs School Parent Group and they are a 5013c and it is a charitable deduction. There are flyers at the back table. Turkeys can be delivered to Coombs or Central Elementary School on Nov. 17th or the morning of Nov. 18th and Veronica Topete is kind of in charge of this effort and she is happy to pick-up turkeys and you can call 951-488-4829. Any help would be appreciated.
- She said that Councilmember Franklin has done this in the past but we had five classrooms of third-graders come to the Council Chambers last week and they had a tour of city hall and she wrote a little script so they pretended they were the Mayor and Council Members and the Community Services Director Heidi and citizens spoke on comments and they did their script and they were thrilled. Most of them had decided that they were going to be Mayor when they grow up or the police chief. They also had a tour of the police station and they just loved it. She hopes whoever is Mayor next year will have an opportunity to do a similar kind of activity with these third graders.

City Committee Reports - None

Report by City Attorney – Nothing at this time.

Report by City Manager

Mayor Hanna said that our City Manager, Andy Takata is fulfilling his last responsibility as an official for Water Polo for the Pam American Games which are something like the Olympics for this hemisphere and so in his place is our Administrative Services Director June Overholt.

There was nothing to report at this time.

ITEMS FOR FUTURE AGENDAS

New Items – There were none.

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Review of Fees and Rates
3. Policy Discussion Re. Code Enforcement (*Nov. 8 –study session @ 3 p.m.*)
4. Policies & Procedures for Applicant re. Projects and Applicants for Commissions & Committees
5. Report on the Five-Year Water Plan

Mayor Hanna said it shows that on Nov. 8th will be having a study session at 3:00 p.m. regarding code enforcement policy discussion.

ADJOURNMENT

By common consent the meeting adjourned at 5:39 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.

COUNCIL AGENDA

DATE: November 8, 2011

TO: Mayor and Members of the City Council

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

SUBJECT: Adopt Resolution 2011-93 authorizing the purchase of the Creditron remittance processing system, computers and chairs for the Utility Billing area. And authorizing the Administrative Services Director to amend the budget and make any necessary budget adjustments and appropriations from the Utility Billing Services Fund.

RECOMMENDATION:

- Authorize issuing a purchase order for the purchase of equipment and software from Creditron for the purpose of implementing a remittance processing system.
- Authorize issuing purchase orders for the purchase of computers needed for compatibility with new scanning capabilities and the purchase of chairs to replace aging or damaged chairs.
- Authorize the Administrative Services Director to amend the budget and make any necessary budget adjustments and appropriations from the Utility Billing Services Fund 761 in the amount of \$38,500.

DISCUSSION:

For several months staff has been considering ways to improve the workflow and therefore customer service in the utility billing area. Staff in the utility billing area has participated in identifying issues and in evaluating options. Several needs have been identified in this staff report.

Currently, the checks received for utility payments are processed manually. This means that staff must key into the software each payment received. Depending on the day of the month, this manual process can take 8 hours or more per day to accomplish, assuming no interruptions to answer phones or help customers at the counter. The consequences of delays in getting mail processed are significant since it means customers may not get their payments processed quickly. Notices for delinquencies or shut offs then need to be delayed, which sometimes impacts the generation of the bills for the next month.

Staff considered several options for addressing this challenge, such as, staff time, out sourcing to a lock box solution and an on-site remittance processing system. The most efficient and economical solution identified is the use of a remittance processing system. Staff is recommending Creditron since they are the authorized provider of Sungard (H.T.E.), the software currently used by the City. As an authorized provider, the City receives a discount on

the purchase price. The cost for this project is approximately \$30,000, including maintenance costs. Annual maintenance costs will be offset by a reduction in bank fees. As a result of being an authorized provider, staff expects implementation and integration with Sungard software will be quicker.

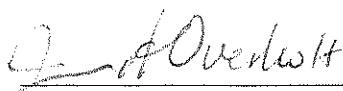
There are many benefits of implementing a remittance processing solution: staff processing time should be reduced to less than 2 hours per day, customer service should improve since information will be updated more quickly, multiple deposits can be made throughout the day electronically rather than being picked up by an armored car or delivered to the bank, and bank fees will be reduced due to method of transmitting batch deposits.

In addition, staff has been making efforts to implement streamlined procedures to improve the appearance of the work space and most importantly the efficiency of workflow. One of the efforts has been to implement scanning of key documents. This concept has been considered for many years without adequate implementation. Over the last few months, the implementation has begun in earnest. In order to fully implement the scanning strategies in the utility billing area, three new computers are needed. The cost for the computers and related equipment is approximately \$3,500.

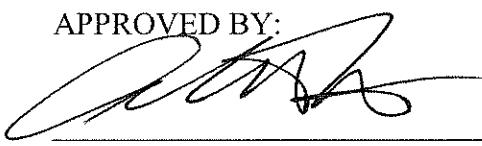
Finally, the chairs currently used by staff in the utility billing area are quite old. Some of the chairs no longer work, which often means the chairs sink while staff is working thus causing ergonomic concerns and interruptions with customers. Staff is recommending a budget of \$5,000 for the chairs and other ergonomic needs and equipment.

FISCAL DATA: The items described in this staff report were not known at the time the budget was prepared. Therefore an appropriation is necessary. The appropriation request is for \$40,000 which includes some contingency. Funds of \$38,500 are available in the Utility Billing Services fund balance.

RECOMMENDED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

RESOLUTION NO. 2011-93

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AMENDING ITS 2011-12 FISCAL BUDGET REGARDING THE PURCHASE OF EQUIPMENT FOR UTILITY BILLING SERVICES.

WHEREAS, the budget for fiscal year 2011-2012 of the City of Banning has been adopted by this Council in its original form, and said budget will need to be amended at times to fulfill the goals of the City; and

WHEREAS, the City departments may not exceed their appropriations by character of expense, with character of expense being defined as personnel services, services and supplies, capital outlay, debt service and interfund transfers, without the consent of the City Manager; and

WHEREAS, the City may transfer appropriations, between departments and within their respective funds, as long as those appropriations do not exceed their fund total unless approved by Council; and

WHEREAS, the City Departments may not hire in excess of the approved number of positions in job classification as indicated by the budget detail without the consent of the City Council; and

WHEREAS, the Utility Billing area has struggled to meet deadlines due to manual processes and is in need of resources that will improve customer service.

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

SECTION 1: Authorize issuing a purchase order for the purchase of equipment and software from Creditron for the purpose of implementing a remittance processing system.

SECTION 2: Authorize issuing a purchase order for the purchase of computers needed for compatibility with new scanning capabilities and chairs to improve or replace damaged chairs.

SECTION 3: The Administrative Services Director is authorized to amend the budget and make any necessary budget adjustments and appropriations from the Utility Billing Services Fund 761 in the amount of \$38,500.

PASSED, APPROVED AND ADOPTED this 8th day of November 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 the foregoing Resolution No. 2011-93 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of November, 2011, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

CITY COUNCIL AGENDA

DATE: November 8, 2011

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2011-92, "Appropriating Funds and Amending the Project Budget for the Emergency Oil Spill Cleanup that originated from 553 East Ramsey Street for a total amount not to exceed \$1,814,291.00.

RECOMMENDATION: The City Council adopt Resolution No. 2011-92:

- I. Amending the project budget for the Emergency Oil Spill Cleanup that originated from 553 East Ramsey Street for a total amount "Not to Exceed" \$1,814,291.00.
- II. Authorizing the Administrative Services Director to make the necessary budget appropriations from General Fund Reserves and transfers in an amount "Not to Exceed" \$1,314,291.00 in order to cover expenses related to the emergency cleanup.

JUSTIFICATION: The emergency response cleanup was necessary in order to remediate unsafe and environmentally hazardous conditions which resulted from a significant oil spill of approximately 300 gallons that was illegally stored at a vacant property located at 553 E. Ramsey Street.

BACKGROUND: On or about July 25, 2011, drums containing a waste petroleum mixture described as used motor oil were stored by an unknown party on a vacant property located at 553 East Ramsey Street. Approximately 300 gallons of oil were spilled from the drums onto Ramsey Street into the City's storm drain system approximately eight-tenths of a mile in length, then into an open channel covered by riprap and concrete on properties owned by the California Department of Transportation (CalTrans) and Union Pacific Railroad.

The spill was discovered by the City on July 25, 2011 and was reported to the California Department of Fish and Game (DFG), the County of Riverside Department of Environmental Health, the California Regional Water Quality Control Board Colorado River Basin Region (RWQCB), and the Fire Department. The DFG directed the environmental response and cleanup in order to preserve property, infrastructure and public safety. Immediate remediation and repairs were necessary and were unavoidable as well as mandated by local, state and federal agencies.

City staff solicited HCI Environmental & Engineering Service (HCI), a reputable contractor that has successfully performed work for the City in the past, to assess the damages caused by the oil spill and to provide necessary oversight, cleanup, remediation and repairs.

On July 26, 2011 City Council approved Resolution 2011-69, "Declaring a Local Emergency caused by a Significant Oil Spill". Additionally, Resolution No.2011-70, "Declaring an Emergency Condition Existed Related to a significant oil spill, and Awarding an Emergency Cleanup/Remediation and Repairs Contract to HCI Environmental & Engineering Service in an amount 'Not to Exceed' \$500,000.00" was approved by City Council.

HCI provided emergency cleanup services throughout the City of Banning to include assessing the spill with local, state and Union Pacific representatives, preparing an action plan, gaining the necessary approvals as mandated as part of the decontamination and/or remediation process and all other necessary oversight and meeting participation relative to this incident.

The emergency cleanup was completed and signed off by the Field Team, which included the abovementioned agencies, on August 4, 2011. Upon completion of the project and compilation of expenses based on time and materials, HCI submitted to the City their final billing on October 11, 2011 for a total project cost amounting to 1,809,791.00.

Consequently, staff solicited a proposal from Erler & Kalinowski, Inc. (EKI) to provide general environmental engineering consulting services related to the spill. The scope of services included a technical review of available information regarding the response action conducted by HCI and its fees invoiced to the City including consistency of itemized invoices with backup information provided and reasonability of certain fees and rates based on experience with similar projects in California. In October of 2011, staff approved the award of a contract to EKI in the amount of \$4,500.00 for these services.

FISCAL DATA: City of Banning reserves for a total project amount "Not to Exceed" \$1,814,291.00 will be utilized for this project. This appropriation in the amount of \$1,314,291.00 is in addition to the \$500,000.00 previously approved under Resolution No. 2011-70.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

15

RESOLUTION NO. 2011-92

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROPRIATING FUNDS AND AMENDING THE PROJECT BUDGET FOR THE EMERGENCY OIL SPILL CLEANUP THAT ORIGINATED FROM 553 EAST RAMSEY STREET FOR A TOTAL AMOUNT NOT TO EXCEED \$1,814,291.00

WHEREAS, a significant oil spill occurred at 553 E. Ramsey Street in the City of Banning on or about July 25, 2011 resulting in unsafe conditions and damage to various locations throughout the City; and

WHEREAS, in order to preserve property, infrastructure and public safety, immediate repairs and cleanup were deemed necessary and were unavoidable; and

WHEREAS, City staff solicited HCI Environmental & Engineering Service, a reputable contractor that has successfully performed work for the City in the past, to assess the damages caused by the oil spill and to provide necessary cleanup/remediation and repairs; and

WHEREAS, HCI Environmental & Engineering Service provided various emergency repairs and cleanup at 553 E. Ramsey Street; and at other various locations for a total amount of 1,809,791.00; and

WHEREAS, Erler & Kalinowski, Inc. (EKI) provided general environmental engineering consulting services related to the spill including a technical review of available information regarding the response action conducted by HCI Environmental and its fees invoiced to the City including consistency of itemized invoices with backup information provided and reasonability of certain fees and rates based on experience with similar projects in California for a total amount of \$4,500.00; and

WHEREAS, City Council approval is necessary in order to appropriate funds and increase the total project budget amount to \$1,814,291.00 and to disburse payment to HCI Environment and EKI for services rendered; and

WHEREAS, City of Banning reserves for a total project amount “Not to Exceed” \$1,814,291.00 will be utilized for this project.

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

SECTTION 1. The City Council amends the Project Budget for the Emergency Oil Spill for a total project amount “Not to Exceed” \$1,814,291.00

SECTION 2. The Administrative Services Director is hereby authorized to make the necessary budget appropriations from General Fund Reserves and transfers in the amount of \$1,314,291.00.

SECTION 3. The City Manager is hereby authorized to disburse payment to HCI Environmental and Engineering for services rendered related to the Emergency Oil Spill in an amount "Not to Exceed" 1,809,791.00.

PASSED, ADOPTED AND APPROVED this 8th day November, 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 the foregoing Resolution No. 2011-92 was adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 8th day of November, 2011.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

MANUAL OF PROCEDURAL GUIDELINES FOR THE CONDUCT OF CITY OF BANNING LEGISLATIVE BODY AND CONSTITUENT BODY/COMMISION MEETINGS

ARTICLE I – SCOPE

Section 1. Application of Rules

This Manual shall establish the procedures for the conduct of all meetings of the City of Banning City Council, Banning Community Redevelopment Agency, Housing Authority and other constituent, governing bodies and commissions.

Section 2. Definitions

The following definitions shall apply to these rules and procedures:

- a) “Legislative Body” means any quorum of any council, board, commission or standing committee (as defined in Government Code § 54952), or other governing body of the City of Banning that is subject to the Brown Act (Government Code § 54950 *et seq.*). This includes the Banning City Council, Banning Community Redevelopment Agency Board, Banning Housing Authority Board, Planning Commission, Civil Service Commission and any standing committee subject to the Brown Act. The term “Legislative Body” does not include Non-Governing Bodies, as defined below.
- b) “Presiding Officer” means the chairperson of the Legislative Body. For example, this refers to the Mayor when read in the context of the City Council, The Board Chair in the cases of the Redevelopment Agency and/or the Housing Authority, and the Chair of the Planning Commission.
- c) “Vice Chair” means the vice chairperson to the Presiding Officer. For example, the Vice Chair means the Mayor Pro Tempore in the case of the City Council, the Vice Chairperson in the cases of the Redevelopment Agency and/or Housing Authority, and the Vice Chairperson of the Planning Commission.
- d) “Clerk/Secretary” means the person responsible for taking and maintaining the record of proceedings for all meetings, preparation of agendas, calendar clerk and custodian of rules, resolutions, ordinances and Legislative Body records. For example, the Clerk/Secretary refers to the City Clerk in the case of the City and the Agency Secretary in the cases of the Redevelopment Agency and/or Housing Authority.
- e) “General Counsel” means the legal advisor to the Legislative Body, such as the General Counsel in the case of a City Council meeting, or Agency Counsel in the cases of the Redevelopment Agency and/or Housing Authority.

f) "Non-Governing Bodies" means wholly advisory committees and bodies that are not subject to the provisions of the Brown Act.

These rules and procedures are enacted pursuant to authority granted by Government Code §§ 36813 and 54954. The purpose of this Manual is to provide that the Legislative Bodies' procedures will be consistent with the Brown Act and also to establish procedures which will be convenient for the public and contribute to the orderly conduct of any Legislative Bodies' business. The procedures herein are in addition to, and not in place of, applicable ordinances and statutes and in the event of conflict between this Manual and applicable ordinances or statutes, the latter shall govern.

ARTICLE II – MEETINGS

Section 1. Regular Meetings

Unless otherwise specified by a resolution or ordinance applicable to specific Legislative Body, the regular meetings of all Legislative Bodies shall be held on the second and fourth Tuesday of each month at the time designated by the Legislative Body, in the Council Chambers at City Hall, 99 East Ramsey Street, Banning, California 92220, or at such other locations as the Legislative Body may from time to time designate by resolution, in the order of adjournment, or in the notice of call of any special meeting. In the event a day of meeting shall be a legal holiday, said meeting shall be held on the next business day.

Section 2. Special Meetings

The Presiding Officer may, when he or she deems it expedient, or upon the written request of a majority of the Legislative Body, call a special meeting of the Legislative Body for the purpose of transacting the business designated in the call. The means and method for calling such special meeting shall be as set forth in the Brown Act as it now exists or may hereafter be amended. At such special meeting, no business shall be considered other than as designated in the call.

Section 3. Special Emergency Meetings

A special emergency meeting may be called by the Presiding Officer or by a majority of the Legislative Body where an emergency exists:

- (i) A work stoppage, terrorist act or threat, crippling disaster or other activity which severely impairs public health or safety as determined by the majority of the Legislative Body; or
- (ii) Such other circumstance specified by State law as authorizing the conduct of an emergency meeting. Any special emergency meeting shall be called, noticed, and conducted only in accordance with the procedures set forth in state law.

Section 4. Attendance

A majority of members of the Legislative Body shall constitute a quorum. Less than a majority may adjourn from time to time, and may compel the attendance of absent members.

Section 5. Study Sessions

The Legislative Body may meet informally in conference sessions regarding concerns of the Legislative Body, to interchange information, provided that all discussions and conclusions shall be informal. Such meeting shall be called as for special meetings or adjourned meetings. Public notice of the meeting shall be provided as for special meetings or adjourned meetings. Each notice shall indicate that an opportunity for public comment shall be provided during the meeting. When a meeting has been designated a Study Session, the Legislative Body shall not take any action with respect to the matter under study except with prior public notice, appearing on a properly posted agenda, of such intent to take action.

ARTICLE III—NOTICE AND AGENDA

Section 1. Notice and Agenda for Regular Meetings

For every regular Legislative Body meeting, the Clerk/Secretary or his or her designee shall post a notice of the meeting, specifying the time and place at which the meeting will be held, and an agenda containing a brief description of all the items of business to be discussed at the meeting as set forth in Article VI. The notice and agenda may be combined in a single document.

The notice and agenda must be posted at least seventy-two (72) hours before the regular meeting in a location freely accessible to public twenty-four (24) hours a day during the seventy-two (72) hour period and where the notice and agenda is not likely to be removed or obscured by other postal material. Specifically, the notice and agenda shall be posted at the place indicated below, and/or at such other location(s) as the Clerk/Secretary may designate:

Section 2. Notice and Agenda for Special Meetings

For every special meeting, the Clerk/Secretary or his or her designee shall post a written notice specifying the time and place of the special meeting and the business to be transacted must be sent to each member of the Legislative Body (unless the member has filed a written waiver of notice with the Clerk/Secretary) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. The notice shall serve as the agenda for the special meeting and shall contain a brief description of all the items of business to be discussed at the meeting as set forth in Article VI.

The notice for a special meeting shall be conspicuously posted at least twenty-four (24) hours prior to the special meeting in a location that is freely accessible to the public twenty-four (24) hours a day and where the notice are not likely to be removed or obscured by other posted material. Specifically, the notice shall be posted at the place indicated below, and/or at such other location(s) as the Clerk/Secretary may designate:

Section 3. Affidavit of Posting

Immediately following the posting of the notice and agenda, the Clerk/Secretary or his or her designee shall complete an Affidavit of Posting, in a form to be developed by the Clerk/Secretary. The Affidavit of Posting shall indicate the time of the posting, the location(s) of the posting, and shall be signed under penalty of perjury. The Clerk/Secretary shall retain all such affidavits, together with a copy of each notice and agenda so posted, in his or her files. The affidavit, notice, and agenda shall be retained at

least two (2) years subsequent to the date of posting, and pursuant to Government Code § 34090, shall not be destroyed by the Clerk/Secretary thereafter without the written consent of the General Counsel.

ARTICLE IV– ADJOURNED MEETINGS

The Legislative Body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. If a quorum is not present, less than a quorum may so adjourn. If all members are absent from any regular or adjourned regular meeting, the Clerk/Secretary may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be delivered personally to each member of the Legislative Body at least twenty-four (24) hours before the adjourned meeting. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held, within twenty-four (24) hours after the time of adjournment. When a regular or adjourned regular meeting is adjourned as provided herein, the resulting adjourned regular meeting shall be a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings. If the subsequent meeting is conducted within five (5) days of the original meeting, matters properly placed on the agenda for the original meeting may be considered at the subsequent meeting. If the subsequent meeting is more than five (5) days from the original meeting, a new agenda must be prepared and posted pursuant to Government Code Section 54954.2.

ARTICLE V– CLOSED SESSIONS

Section 1. Generally

The Legislative Body may hold closed sessions during a regular or special meeting, or at any time otherwise authorized by law, to consider or hear any matter which it is authorized by state law to hear or consider in closed session. Public comment shall be permitted on closed session matters prior to the closed session. If a closed session is included on the agenda, the description of the item shall meet the requirements of and shall identify the statutory basis for the closed session. During closed session, the Legislative Body may exclude any person or persons which it is authorized by State law to exclude from a closed session. No minutes of the proceedings of the Legislative Body during a closed session are required. There shall be no closed session during any special emergency meeting. Closed session may not be held regarding a matter not listed on a properly posted agenda for closed session except upon the Legislative Body first taking action to place the item on the agenda as a closed session item as permitted by law.

Section 2. Persons Authorized

Persons present in the closed session shall be only those persons necessary to the making of the decision under consideration. All other persons shall be excused. The Clerk/Secretary shall attend each closed session of the Legislative Body and keep and enter into a minute book a record of topics discussed and decisions made at the meeting.

Section 3. Confidentiality

The minute book for any closed session is not a public record and shall be kept confidential. The minute book shall be available only to members of the Legislative Body or as otherwise provided by law. (Government Code § 54957.2(a).) No person attending a closed session shall publicly discuss or otherwise reveal the proceedings in the closed session unless such publication has been approved by the vote of the Legislative Body taken during the closed session or as otherwise required by law.

Section 4. Public Reports

Before recessing into closed session, the Presiding Officer or General Counsel shall announce that the Body is recessing into closed session and shall name each general closed session topic that will be discussed in closed session in at least as much detail as shown on the agenda.

Upon leaving closed session, the Presiding Officer or General Counsel shall report out any actions taken on a closed session item and, if any vote was taken, shall announce how the matter was voted upon, the results of the vote, and how each Legislative Body member voted.

ARTICLE VI - AGENDA CONTENTS

Section 1. Preparation of Agendas

Barring insurmountable difficulties, the agenda shall ordinarily be delivered to the members of the Legislative Body each Thursday preceding the meeting to which it pertains. The Agenda shall also be available to the general public at the time it is delivered to the members of the Legislative Body.

Any Legislative Body member may have placed on the agenda any business that he or she feels should be deliberated upon by the Legislative Body. These matters shall be placed on a future agenda for consideration. Any Legislative Body member desiring to present a subject for the Legislative Body's consideration shall advise the City Manager's office of that fact not later than 12:00 noon on the Tuesday of the week preceding the meeting at which he or she wishes the subject to be considered. The City Manager shall advise the Legislative Body member if staff preparation needs or other issues make inclusion of the requested item on the next agenda infeasible.

Section 2. Description of Matters

All items of business to be transacted or discussed at a meeting of the Legislative Body, including items to be discussed in closed session, shall be briefly described on the agenda. The description need not set out the specific action or alternatives which will be considered by the Legislative Body, but should contain sufficient detail so that a person

otherwise unaware could determine the general nature or subject matter of the item by reading the Agenda.

Section 3. Action Items

(i) With respect to the City Council only, and except where otherwise provided by law, any matter may formally be adopted as either an ordinance or a resolution. All other Legislative Bodies shall take action by resolution. A minute order may be adopted to evidence direction given to staff by consensus of the Legislative Body. The Legislative Body may by vote of its members recorded in the minutes of the meeting give an indication of its consensus regarding a matter of the opinion of the Legislative Body which does not rise to the level of a final action on the substantive (as opposed to procedural) matter being considered. Direction as to matters of procedure may also be acted on in this manner.

(ii) All resolutions, and ordinances as applicable, shall be presented to the Legislative Body in printed or typewritten form. This requirement does not prevent the Legislative Body from adopting a resolution, or ordinance as applicable, which has been amended by motion of the Legislative Body at the time of its presentation for adoption.

(iii) Approval of every ordinance or resolution shall require on final passage the affirmative vote of three members of the Legislative Body, unless State law imposes other voting requirements on the determination of the question.

Section 4. Resolutions

All resolutions shall be in writing and designated by number, reference to which shall be inscribed in the minutes and an approved copy of each resolution filed in the official book of resolutions of the Legislative Body. Resolutions shall require a majority vote of the members.

(i) *Definitions.* The term “resolution” in its general sense will denote any action taken affirmatively via a vote of the Legislative Body. As used in this City, however, three terms are in general used to denote such actions: “resolution,” “minute order,” and “motion” (thereafter recorded by minute entry). Technically, all three are equally as legally effective and binding; they just vary in the formality of respective memorialization. The most formal is referred to locally as a “resolution”. This, in addition to being referenced in the minutes, will be recorded by a separate document, numbered in sequence and preserved in a separate set of books. Such “resolutions” are used for various reasons, such as when specifically required by law, when needed as a separate evidentiary document to demonstrate findings or to be transmitted to another governmental agency, or where the frequency of future reference back to its contents warrants a separate document (with the additional “whereas” explanatory material it often recites) to facilitate such future reference and research.

A “minute order” as used locally denotes a Legislative Body action which is recorded simply by an item entry in the minutes of the meeting at which it was

accomplished, and no separate document is made to memorialize it. However, sequential numbering shall be assigned to each motion to facilitate indexing.

(ii) *Resolutions Prepared In Advance.* Where a resolution has been prepared in advance, the procedure shall be: motion, second, discussion, vote pursuant to methods prescribed in Article XII above, and result declared. It shall not be necessary to read a resolution in full or by title except to identify it. Any member may require that the resolution be read in full.

(iii) *Resolutions Not Prepared In Advance.* Where a resolution has not been prepared in advance, the procedure shall be to instruct the City Manager or the General Counsel to prepare a resolution for presentation at the next Legislative Body meeting, unless the matter is urgent in which case the Presiding Officer can have the General Counsel prepare an urgency resolution.

(iv) *Urgency Resolutions.* In matters of urgency, a resolution may be presented verbally in motion form together with instructions for written preparation for later execution. After the resolution has been verbally stated, the voting procedure in Article XII above shall be followed.

Urgency resolutions shall be avoided except when absolutely necessary. Where the resolution has been drafted in written form, either before or during the meeting, this paragraph shall not be deemed applicable.

Section 5. Ordinances (City Council Only)

(i) The City Council is the only Legislative Body empowered to legislate the Banning Municipal Code by adoption of ordinances.

(ii) Ordinances, other than urgency ordinances, introduced require at least two readings at different meetings.

(iii) A waiver of further readings requires a majority vote of the Council members present and voting. The waiver of further reading may be accomplished by one vote for all ordinances presented on the agenda of the present meeting.

(iv) The Clerk/Secretary shall prepare copies of all proposed ordinances for distribution to all members of the City Council at the meeting at which the ordinance is introduced, or at such earlier time as is expedient.

(v) An urgency ordinance is an ordinance adopted for the immediate preservation of the public peace, health and safety, containing a declaration of facts constituting the urgency. An urgency ordinance takes effect immediately and requires four-fifths vote of the City Council for passage pursuant to Government Code § 36937.

Section 6. Contracts and Agreements

When any contract or agreement is to be considered by the Legislative Body, the complete contract and agreement, if complete in form or execution, shall be made a part of the agenda package presented to the Legislative Body and shall be made available for viewing by the public within the time frames required under the Brown Act and/or the California Public Records Act (Government Code §§ 6250 through 6276.48).

Section 7. Limitation of Actions by Agenda

No action or discussion shall be taken by the Legislative Body, on any item not appearing on a posted agenda, subject only to the exceptions listed in Section 9 below. "Action taken" as used herein shall mean a collective decision made by a majority of the Legislative Body, a collective commitment or promise by a majority of the Legislative Body to make a positive or a negative decision, or an actual vote by a majority of the Legislative Body upon a motion, proposal, resolution, order, or ordinance.

Section 8. Public Comment Period

Pursuant to Government Code § 54954.3, every agenda posted for any shall contain an item entitled "Public Comment" in order to provide for an opportunity for the public to address the Legislative Body on items of interest to the public within the Legislative Body's subject matter jurisdiction.

Section 9. Exceptions to Agenda Requirement for Action Taken

The Legislative Body may take action at a meeting on an item not appearing on the agenda for that meeting only under one of the following circumstances:

(i) Upon a majority determination that an "emergency situation" that is either (a) a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, or (b) a dire crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting may endanger the public health, safety, or both. All discussion of such emergencies must be in open session.

(ii) Upon a determination by a two-thirds (2/3) vote of the Legislative Body, or if less than two-thirds of the Legislative Body are present by a unanimous vote of those members present, that the need to take action arose subsequent to the agenda posting. For the purposes of this subsection, the term "need to take action" shall mean those circumstances whose occurrence creates a situation which is materially different from that which existed at the time the agenda was posted, and which requires the immediate attention of the Legislative Body. The mere failure of any person to notify the Legislative Body or staff of a pre-existing situation requiring Legislative Body attention until after the time for the posting of the agenda shall not be deemed to constitute a "need to take action" hereunder. If the Legislative Body makes a determination pursuant to this subsection, the

minutes of the meeting at which the determination is made shall reflect what circumstances gave rise to the "need to take action" and why the item could not be placed on the agenda.

Before commencing discussion of any item not appearing on the properly posted agenda, the Legislative Body shall first determine whether it has jurisdiction over the item, the action proposed to be taken, and why such action must be taken immediately. The Legislative Body shall then require a clear statement of the facts upon which such action is proposed to be taken. The Legislative Body shall thereafter adopt each such finding as is required to agendize the item for action. The Legislative Body may then proceed to discuss and to take action on the item.

Section 10. Public Record Minutes

An account of all proceedings of Legislative Body in open meetings shall be kept by the Clerk/Secretary. The Clerk/Secretary shall prepare an abbreviated record of the meetings proceedings for approval by the Legislative Body. However, only the best and most complete available recording of the meeting shall constitute the official record of the Legislative Body.

Amendment of the minutes may be made only as to factual accuracy and not as to a change of intent. The minutes of the meeting need not be verbatim and shall constitute the official record of the Legislative Body meeting only under those circumstances where a verbatim record of the meeting is not available.

ARTICLE VII— ORDER OF BUSINESS

Section 1. Order of Business

The order of business of each meeting shall be as contained in the agenda prepared by the Clerk/Secretary unless the majority of the Legislative Body members consent to take items out of order. The order of business at meetings of the Legislative Body may be as follows, in accordance with the procedures specified below:

- (i) Call to Order.
- (ii) Report on Closed Session, if applicable.
- (iii) Public Comments, Correspondence, Presentations, Appointments.
- (iv) Consent Items. (See Section 3 below.)
- (v) Public Hearings.
- (vi) Announcements and Reports.
- (vii) Discussion Items.
- (viii) Items for Future Agendas.
- (ix) Adjournment.

Section 2. Call to Order

The meeting of the Legislative Body shall be called to order by the Presiding Officer, or the Vice-Chair in the Presiding Officer's absence. In the absence of both the

Presiding Officer and Vice Chair, the meeting shall be called to order by the Clerk/Secretary and the three Legislative Body members present shall elect by majority vote a Presiding Officer for that meeting.

Section 3. Consent Items

Items of a routine or generally uncontested nature and non-controversial, shall be placed on the Agenda as Consent Items and may be approved by the Legislative Body in a single motion by adoption of the Consent Items. The approval of the Consent Items shall signify the approval of each matter or recommendation included therein. All items on the consent calendar shall be subject to public comment. Upon the request of any member of the Legislative Body or upon the request of a member of the public made through the Presiding Officer, an item may be removed from the Consent Items for separate discussion and/or action. Any such item shall be considered as part of the Excluded Consent Items. Each item proposed for consideration as part of the Consent Items, including any recommended action, shall be described on the notice and agenda posted for the meeting.

Ordinances shall not be placed on the consent calendar for approval unless the ordinance has first been read or the reading of the ordinance has been waived as required by law. The Legislative Body shall not hold a separate vote on waiver of reading.

Section 4. Appointments (City Council Only)

The City Council shall have the power to establish advisory committees, commissions, other Legislative Bodies and Non-Governing Bodies. Except as otherwise provided herein or by law, including the Banning Municipal Code, all appointments of City Council members as representatives of the City on non-City boards or commissions (i.e., City representative on the board or commission of another agency or joint powers authority) shall be made by the Presiding Officer after consultation with the Legislative Body.

(i) *Council Committees.* The Council may, as the need arises, authorize the appointment of "ad hoc" Council committees composed of two members. Except where otherwise specifically provided by law, the Presiding Officer shall appoint the members of the Council committees, subject to the approval of the Council. Any committee so created shall cease to exist upon the accomplishment of the special purpose for which it was created or when abolished by a majority vote of the Council. Any Council committee which is (a) established by ordinance, resolution or other formal action, or (b) has a fixed regular meeting schedule, or (c) has continuing subject matter jurisdiction over a non-temporary issue, or (d) which continues to conduct business in excess of 180 days, or (e) has a majority membership of officials from other Legislative Bodies, shall be subject to the provisions of the Brown Act.

(ii) *Citizen Boards, Commissions, and Committees.* The Council may, subject to the Brown Act, create other committees, boards, and commissions, whether Legislative Bodies or Non-Governing Bodies, to assist in the conduct and operation of

the City government with such duties as the Council may specify not inconsistent with the Government Code. Memberships and selection of members shall be one appointment by each member to a term to coincide with the member's term unless otherwise expressed by the ordinance/resolution creating said subsidiary body. The procedure of filling vacancies will be subject to the provisions of the Maddy Act (Government Code §§ 54970-54974). Absent any other provision to the contrary, subsidiary body members may be removed by the Council member that made the appointment or by a two-thirds vote of the whole body. Any member of the City Council may place the question of removal on the agenda. Any committees, boards, or commissions so created shall cease to exist upon the accomplishment of the special purpose for which it was created, or when abolished by a majority vote of the Council. Any citizen-based committee, board, or commission which is (a) established by ordinance, resolution or other formal action, or (b) has a fixed regular meeting schedule, or (c) has continuing subject matter jurisdiction over a non-temporary issue, or (d) which continues to conduct business in excess of 180 days, or (e) has a majority membership of officials from other Legislative Bodies, shall be subject to the provisions of the Brown Act.

(iii) *General Restrictions and Rules.* Sub-Legislative Bodies, including Non-Governing Bodies, shall be responsible for reporting the Body's activities to the City Council. The agendas and subject-matter jurisdiction for all other committees, boards, and commissions, whether Legislative Bodies or Non-Governing Bodies, shall be set by the City Council in cooperation with the members of the applicable committee, board, or commission. The members of a sub-Legislative Body or Non-Governing Body shall not have authority to make further appointments unless specifically granted such authority by action of the full City Council. Staff members may be assigned to assist any Council-created committee by the Council or by the City Manager; staff members so assigned shall not be members of the committee unless specifically appointed as such by action of the full Council.

Section 5. Budgets

The City Council shall have the power to approve the City budget, and each Legislative Body shall have the power to approve the budget of funds specifically apportioned to control of that Legislative Body (e.g., the Redevelopment Agency Board shall approve the budget of the Agency and the Housing Authority Board shall approve the budget of the Authority). Approval of the budget constitutes approval of a proposed plan of expenditures and revenues. It does not constitute an authorization for expenditures. With respect to any given expenditure the applicable procedure shall be followed. Further adoption of the budget does not constitute authorization for any specific employment class or position.

ARTICLE VIII- PUBLIC COMMENT

Section 1. Public Comment

At the beginning of any Legislative Body meeting the public shall be afforded the right to comment on any and all issues (not on the agenda) within the subject matter

jurisdiction of the Legislative Body. Such general public comment on non-agendized issues shall be taken at the beginning of the meeting under a “General Public Comment” heading. With regard to matters not on the agenda, the Legislative Body may ask questions of persons who raise new matters during the General Public Comment period or otherwise, and the Presiding Officer should handle such matters as provided in Section 3, below. However, all Legislative Body questions must be limited to facts-only informational inquiries, and the Legislative Body may not discuss the merits, express any opinions or ask questions that convey opinions or thought processes with respect to any non-agendized issue.

The public shall also be afforded the right to comment on every item appearing on the agenda prior to the Legislative Body’s consideration of that item, as provided in Section 4 below.

Section 2. Time Limitations

The Legislative Body shall set the time limit for comment on any public item, whether or not the item appears on the agenda, and a time limit for any individual speaker on a given item. All such time limits shall be noticed on the agenda for the meeting. Any changes to public comment time limits should be reviewed and approved by the General Counsel before being implemented. If the time limits imposed by the Legislative Body prove overly burdensome upon a member of the public such that the speaker cannot reasonably express their message within the allotted amount of time, the Presiding Officer may extend the time for the speaker; any additional time allotted to a speaker will only be granted as necessary to reasonably allow the speaker’s message, without repetition or unnecessary tangents on the part of the speaker.

Section 3. Speaker Cards and Procedures

(i) Any member of the public desiring to address the Legislative Body must stand at the podium and wait to be recognized by the Presiding Officer. Upon being recognized, each speaker must identify the subject or subjects (whether agendized or not) upon which she or he intends to speak, and may state his or her name and address, but shall not be required to give any other information as a condition of speaking. All remarks and questions shall be addressed to the Presiding Officer and not to any individual Legislative Body member, staff member or other person.

(ii) The Legislative Body may, upon notice appearing on the agenda and proper preparation being made therefore, require each speaker to complete a card requesting to speak before the Legislative Body on which shall be indicated, at a minimum, the name of the speaker and the item on which they wish to be heard. Failure to complete such a card prior to commencement of the hearing of the item shall not constitute grounds on which to deny a speaker the right to be heard.

(iii) At the close of the speaker’s comments, the Presiding Officer may ask staff to respond to the speaker’s comments. Thereafter, the Presiding Officer shall make one of the following determinations:

- a) The subject(s) raised do not require investigation or response.
- b) The subject(s) raised should be referred to staff for investigation and/or response.
- c) The subject(s) raised should be placed on the agenda for a subsequent meeting for action by the Legislative Body.

(iv) Any person who unreasonably interferes with the ongoing conduct of the meeting may be removed from the meeting.

Section 4. Additional Procedures for Public Comment on Agenda Items

(i) Members of the public shall have the opportunity to address the Legislative Body on each and every item listed on the agenda. Public comment on agenda items must be heard prior to the Legislative Body's consideration/discussion of the item. Public comments on an agenda item may be heard either in combination with the General Public Comment period at the start of the meeting, or at the time the Legislative Body opens the item, or both.

(ii) The Legislative Body shall hear all public comments on an agenda item prior to undertaking any discussions amongst Legislative Body members. Members of the Legislative Body should not formulate or discuss opinions on the agenda item until public comment and questions of staff are complete.

(iii) After a motion has been made, no member of the public shall address the Legislative Body without first securing permission by a majority of the Legislative Body.

Section 5. Items from Members

In addition to receiving comments from the public, there is a specific item on the agenda for receiving general comments, announcements, and/or suggestions from members of the Legislative Body. These matters may not be discussed, opined upon or deliberated, and if they do not concern an item on the agenda, shall be handled by the Presiding Officer according to the same procedures set out for Public Comment in this Article VIII. No action may be taken on such matters without being placed on a subsequent agenda.

ARTICLE IX- PUBLIC HEARINGS

Matters which are required to be heard in a noticed public hearing shall be conducted in the following manner:

Section 1. Time for Consideration; No Bias

Matters noticed to be heard by the Legislative Body shall commence at the time specified in the notice of hearing, or as soon thereafter as is reasonably possible, and shall

continue until the same has been completed or until other disposition of the matter has been made.

Legislative Body members should avoid expressing a conclusive opinion or divulging their thought process on a matter set for public hearing until after the public hearing has been completed.

Section 2. Continuance of Hearings

Any hearing being held or noticed or ordered to be held by the Legislative Body may, by order or, notice of continuance, be continued or re-continued to any subsequent meeting in the manner provided for adjourned meetings.

(i) When it is the decision of the Legislative Body to continue an item which appears on the agenda, prior to hearing any report, testimony or taking evidence on the item, the Legislative Body may make such intent known at the beginning of the meeting. At that time the public shall be offered the opportunity to speak regarding the intent to continue the item. At the time regularly scheduled for the hearing of the item, the Legislative Body shall then take action to continue the item after again informing the public of the intent to continue the matter. No testimony or evidence shall be taken at that time.

(ii) When the Legislative Body determines to continue the public hearing on an item after its commencement, persons testifying at the first public hearing shall be permitted to again address the Legislative Body on the item at the renewed hearing subject to the finding of the Presiding Officer that the testimony is redundant. Upon such finding the time allotted for testimony by the individual may be summarily reduced.

(iii) All continuances of a public hearing shall be to a date certain.

Section 3. Conduct of Hearing

(i) When a matter for public hearing comes before the Legislative Body, the Presiding Officer shall request that staff present the staff report and any other relevant evidence, but the presentation of the staff report prior to the formal opening of the public hearing shall not prevent its consideration as evidence. Any such evidence shall be made a part of the record of the public hearing. The Presiding Officer shall permit members of the Legislative Body to ask questions of staff, but should prevent expressions of opinion by members of the Legislative Body before the conduct of the hearing. The Presiding Officer shall thereafter open the public hearing and inquire if there are any persons present who desire to address the Legislative Body on the matter. Any person desiring to speak or present evidence shall then make his or her presence known to the Presiding Officer and upon being recognized, may speak or present evidence relevant to the matter being heard. Any testimony shall be truthful. No person may speak without first being recognized by the Presiding Officer.

(ii) Members of the Legislative Body who wish to ask questions of the speakers or each other, during the public hearing portion, may do so. Members should be mindful that the purpose of the public hearing is to obtain testimony, and not to debate the merits of the item under consideration. Members should avoid debate and expressions of personal opinion until after the close of the public hearing. The Presiding Officer shall conduct the hearing in such a manner as to afford due process to all affected persons.

(iii) All persons interested in the matter being heard by the Legislative Body shall be entitled to submit written evidence or remarks, as well as other graphic evidence. All such evidence presented shall be retained by the Clerk/Secretary as part of the record. Each speaker may only speak once during the public hearing unless the Legislative Body requests additional clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the Presiding Officer reopens the public hearing for a limited and specific purpose.

(iv) Upon closing of the public hearing by the Presiding Officer, no additional public testimony shall be solicited or received by the Legislative Body without reopening the public hearing. If, however, the Legislative Body receives relevant new evidence after the close of the public hearing and such new evidence may impact the Legislative Body motion or vote, the Legislative Body shall re-open the public hearing to obtain public comments upon such new evidence.

Section 4. Extra-Meeting Contacts on Matters Set for Public Hearing

While Legislative Body members should minimize their contacts with developers, applicants, or other persons who will be the subject of a matter to be heard before the Legislative Body, this is particularly important in the case of a public hearing item. Legislative Body members should avoid extra-meeting contacts with persons who will be the subject of a public hearing before the Body. If a Legislative Body member is contacted directly by such person outside the meeting setting, the member shall refrain from expressing any viewpoints or thought processes to the person until after the public hearing. The Legislative Body member may explain that they are unable to express any viewpoint on the matter until all evidence has been heard in the course of a public hearing. At the commencement of the public hearing, the Legislative Body member must disclose publicly any extra-meeting contacts or discussions he/she has had which may be relevant to the decision.

The limitations set forth in this Section shall not be read as preventing a Legislative Body member from inspecting a site that will be relevant to a public hearing, although such sight inspection should be disclosed on the record at the beginning of the public hearing.

Section 5. Records and Recordings

Any tape or film record of a meeting made by or at the direction of the Legislative Body is a public record that must be retained and made available to the public for at least

30 days. The Legislative Body must provide to the public, without charge, equipment to review the record. Any person may record a meeting by audio or videotape, or by still or motion picture camera, unless the members of Legislative Body make a reasonable finding the recording cannot continue because such recording constitutes disruption of the proceedings.

ARTICLE X - OFFICERS

Section 1. Presiding Officer

The meeting shall be presided over and chaired by the Presiding Officer, or, in the Presiding Officer's absence, the Vice Chair. The Presiding Officer shall have the authority to rule any speaker out of order, including speakers during the public comment period if the subject raised is not within the subject matter jurisdiction of the Legislative Body, or during a public hearing if the speaker is not presenting testimony or evidence relevant to the matter which is the subject of the public hearing. The Presiding Officer shall have the responsibility for the conduct of meetings in an orderly manner and to prevent the obstruction of business, and in carrying out this responsibility shall have the authority to give the floor to any member of the Legislative Body or public by recognizing them, to prevent the misuse of legitimate forms of motions or privileges, to take matters up out of order, to caution speakers as to disruptive behavior, and to order any persons willfully interrupting the meeting to be removed from the room.

The Mayor is the designated representative of the City and the City Council for purposes of presenting and expressing the official City position on an issue. If individual members of the Council or other Legislative Bodies are contacted by the media for a statement of official City position, the Legislative Body member should refer such inquiries to the Mayor. Otherwise public or media statements by a Legislative Body member should be clearly characterized as comments upon a personal viewpoint.

Section 2. Substitution for Presiding Officer

The Presiding Officer may call any other member to take his or her place as Presiding Officer; such substitution not to continue beyond adjournment.

Section 3. Clerk/Secretary

The Clerk/Secretary or his/her deputy shall attend all meetings of the Legislative Body unless excused, and shall keep the official minutes and perform such other duties as may be requested by the Legislative Body.

Section 4. City Manager

The City Manager, or his/her designee, shall attend all meetings of the Legislative Body unless excused. He/she may make recommendations to the Legislative Body and shall have the right to take part in all discussions of the Legislative Body, but shall have no vote. The City Manager, or his/her staff designee, shall provide the Legislative Body with a staff report of items to be acted upon by the Legislative Body at its meeting. Any

officer or employee of the City, when requested, shall attend any meeting of the Legislative Body. If requested to do so by the City Manager, they may present information relating to matters before the Legislative Body.

Section 5. General Counsel

(i) *Duties.* The General Counsel, or his/her deputy, shall attend all meetings of the City Council unless excused and shall upon request of any member give an opinion, either written or oral, on questions of law. The General Counsel, or his/her deputy, shall attend all meetings of such other Legislative Bodies as directed by the City Council or City Manager. The General Counsel serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. Final rulings on parliamentary procedure are made by the Presiding Officer, subject to the appeal of the full Legislative Body pursuant to Section 3 of Article XI, below. All ordinances and resolutions shall be approved as to form and legality by the General Counsel. In any case of ambiguity or uncertainty in the interpretation or application of this Manual to any procedure, the Presiding Officer may direct such question to the General Counsel for a ruling.

(ii) *Request for Opinion.* Any member of the Legislative Body may request from the General Counsel a legal opinion regarding any matter related to the interests of the City. Where a legal opinion involves substantial cost, the request for the opinion must first be approved by a majority of the Legislative Body. The General Counsel is the legal representative of the City acting through its Legislative Body. There is a continuing legal question as to whether the General Counsel may have an attorney-client relationship with any individual member of the Legislative Body or the City staff. As a consequence any discussion with the General Counsel which leads to the conclusion that the interests of the City are at risk must be revealed to all relevant members of the Legislative Body and the City staff by the General Counsel. The General Counsel is required to maintain the confidentiality of such communications from persons outside the City to the extent required or permitted by law and the code of ethics.

(iii) *Conflict of Interest Opinions.* The General Counsel has no statutory duty or authority under the Political Reform Act to provide Political Reform Act advice to any Legislative Body member. Further, a Legislative Body member may not rely on advice from the General Counsel to provide him or her with immunity from FPPC enforcement or prosecution. Such immunity may be obtained only through a written advice letter obtained from the FPPC, on the question in issue, by the Legislative Body member. A Legislative Body member enjoys no privilege of attorney/client confidentiality in reviewing these matters with the General Counsel. In the event that facts come to the attention of the General Counsel which lead him or her to believe that a member of the Legislative Body must disqualify themselves from participation in a decision, he or she shall advise the Legislative Body of this belief. If, after receipt of an opinion of the General Counsel, the Legislative Body member wishes to participate in the decision making process with immunity from prosecution or enforcement, the General Counsel shall assist the Legislative Body member in making direct contact with the FPPC for informal or formal advice upon which the Legislative Body member can rely.

Whenever a Legislative Body member or the General Counsel determines that a potential conflict of interest exists because there is a foreseeable impact on the value of real property owned by the Legislative Body member as a consequence of an action in which he or she wishes to participate, the General Counsel shall obtain the services of an appraiser in assessing such impact under the regulations of the Political Reform Act.

(iv) *Amicus (City Council Only).* It often happens that other jurisdictions will ask the City to participate in the filing of a brief before a court in a matter deemed to be of concern to all or a great many cities. These "friend of the court" briefs have the effect of informing the court how widespread will be its opinion and how that opinion will affect cities. Such participation is normally without direct cost to the City.

Upon receipt of the request, the General Counsel shall make the request available in a "friend of the court" or "Amicus" file to be maintained in the office of the City Council. Any City Council member may review the file. Upon a determination by any Council member that there is an interest in participating in the action in the manner proposed, the Council member shall inform the General Counsel who shall place the matter as an item for discussion in closed session on the agenda of the next Legislative Body meeting. The General Counsel may otherwise place an amicus request on the agenda on his or her initiative.

ARTICLE XI – PROCEDURES FOR THE CONDUCT OF MEETINGS

Section 1. Conflicts of Interest

All Legislative Body members are subject to the provisions of California Law, such as Chapter 1, Title 9, of the California Government Code, relative to conflicts of interest, and to conflicts of interest codes adopted by the Legislative Body. Any Legislative Body member prevented from voting because of a conflict of interest shall refrain from in any way participating in the matter giving rise to the conflict. Where abstention from a matter is made on the basis of a conflict of interest arising from a financial interest in the decision, the Legislative Body member shall announce their abstention from the matter when it is first opened, and then shall set forth the reason for the abstention with the degree of specificity at least equal to the disclosure of the Legislative Body member's financial interests on the Legislative Body member's annual statement of financial interests; immediately after such announcements, the Legislative Body member shall leave the room. The Legislative Body member shall not overhear the staff report, participate in the discussion or deliberations and shall not otherwise make or participate in making the decision or in any way attempt to use his or her official position to influence the decision. This shall not prevent the conflicted Legislative Body member from coming before the Legislative Body solely during the public comment period as an affected citizen to state his/her opinion on how the matter impacts their disqualifying interests.

Where a Legislative Body member seeks to abstain from voting because of a financial interest in the contract under consideration, such contract shall be null and void

and the Legislative Body shall not have the authority to enter into any such contract. (Government Code § 1090 *et seq.*)

Section 2. No Bias or Promised City Action

In all matters before a Legislative Body, whether public hearing or otherwise, the Body must judge the matter fairly and without unobjective personal bias. Although every Legislative Body member has a right to their own personal opinions and may lean toward a particular viewpoint on an issue, Legislative Body members must demonstrate some reasonable willingness to consider all sides of an issue before them.

Legislative Body members shall not overtly or implicitly promise a particular action by City staff or by any Legislative Body. Where a Legislative Body member is contacted about an issue that will be presented to any Legislative Body of the City, it is appropriate to give a brief overview of City policy and to refer to City staff for further information.

Section 3. Motion to Appeal the Ruling

Any determination made by the Presiding Officer may be appealed by the making of a Motion to Appeal the Ruling by any other member of the Legislative Body. The Presiding Officer's determination will stand unless a majority of the Legislative Body members vote in favor of the Motion to Appeal the Ruling, in which case the ruling of the Presiding Officer will be overridden. The Motion to Appeal the Ruling is debatable, and the Presiding Officer may participate in the debate and the voting on the motion. A vote upon a Motion to Appeal the Ruling is purely a procedural matter, and shall not constitute "action taken" on any substantive question.

Section 4. Decorum and Order – Legislative Body Members

(i) Any member of the Legislative Body wishing to speak, or any member of the public wishing to address the Legislative Body must first obtain the floor by being recognized by the Presiding Officer. The Presiding Officer must recognize any member of the Legislative Body who seeks the floor when appropriately entitled to address the Legislative Body. The Legislative Body member shall confine himself or herself to the question under debate.

(ii) Any member of the Legislative Body, including the Presiding Officer, may bring a matter of business properly before the Legislative Body for decision by making a motion. Any Legislative Body member, including the Presiding Officer, except the Legislative Body member making the motion, may second a motion. Once a motion is seconded, it may be opened for discussion and debate.

(iii) The Presiding Officer shall determine all points of order, subject to the right of any member to appeal to the majority Legislative Body.

(iv) A Legislative Body member, once recognized, shall not be interrupted while speaking unless called to order by the Presiding Officer, unless a Point

of Order is raised by another Legislative Body member, or unless the speaker chooses to yield to questions from another Legislative Body member.

(v) Any Legislative Body member called to order while he or she is speaking shall cease speaking immediately until the question of order is determined. If ruled to be in order, he or she shall be permitted to proceed. If ruled to be not in order, he or she shall remain silent or shall alter his or her remarks so as to comply with rules of the Legislative Body.

(vi) Legislative Body members shall accord the utmost courtesy to each other, to City or Legislative Body employees, and to the public appearing before the Legislative Body and shall refrain at all times from rude and derogatory remarks, reflections as to integrity, abusive comments and statements as to motives and personalities.

(vii) Any Legislative Body member may move to require the Presiding Officer to enforce the rules and the affirmative vote of a majority of the Legislative Body shall require him or her to so act.

(viii) The members of the Legislative Body shall not engage in communications between themselves during the Legislative Body meeting (including breaks) regarding matters being considered on the agenda unless and until the Legislative Body has opened that agenda item. In order to minimize exposure to a Brown Act violation, Legislative Body members are discouraged from discussing any City business during breaks or before and after meetings; City business may only be discussed by a quorum of Legislative Body members when it is opened as a duly-noticed agenda item.

(ix) Except where specifically authorized by Legislative Body action or for purely ceremonial purposes, no Legislative Body member attending a meeting of another City commission or committee shall make any statement or, give the appearance or indicate in any way that he or she, is representing the Legislative Body. When making a comment at such a meeting, the Legislative Body member should make it clear that he or she is speaking solely as an individual. Unless officially appointed to participate on a committee, Legislative Body members should make an effort not to insert themselves into or take positions on matters which will be decided upon by the Legislative Body after considering the entire issue.

(x) The Legislative Body may punish its own members for misconduct pursuant to Section 8 of this Article.

Section 5. Decorum and Order – Employees

(i) Members of administrative staff and employees of the Legislative Body shall observe the same rules of procedure and decorum applicable to Legislative Body members. The City Manager shall ensure that all Legislative Body employees observe such decorum. Any staff members, including the City Manager, desiring to address the Legislative Body or members of the public shall first be recognized by the

Presiding Officer. All remarks shall be addressed to the Presiding Officer and not to anyone individual Legislative Body member or member of the public.

(ii) Questions of City staff and/or requests for follow-up or additional background information should be directed only to the City Manager, General Counsel, Assistant City Manager, or Department Heads. The Office of the City Manager should be copied on any request, except those to the General Counsel. When in doubt about what staff contact is appropriate, Legislative Body members should ask the City Manager for direction. Materials supplied to a Legislative Body member in response to a request will be made available to all members of the Legislative Body so that all have equal access to information.

(iii) Legislative Body members should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

Section 6. Decorum and Order – Public

Members of the public attending Legislative Body meetings shall observe the same rules of order and decorum applicable to the Legislative Body. All remarks and questions should be addressed to the Presiding Officer and not to any individual Legislative Body member, staff member or other person. Any person conducting their public remarks or behavior before the Legislative Body in such a way as to actually cause disruption to the conduct of the meeting shall be removed from the room by the sergeant-at-arms as directed by the Presiding Officer. Unauthorized remarks from the audience, stamping of feet, whistles, yells and similar disruptive demonstrations shall not be permitted by the Presiding Officer, who may direct the sergeant-at-arms to remove such offenders from the room or call a recess of the meeting. Aggravated cases may be prosecuted on appropriate complaint signed by the Presiding Officer.

Members of the public shall be allowed to video or audio record a public meeting unless such recording becomes an actual and unreasonable disruption to the Legislative Body's ability to carry-out the meeting.

Section 7. Enforcement of Decorum

The Banning Police Chief or his/her designee shall be ex-officio sergeant-at-arms of the Legislative Body. He shall carry out all orders and instructions given him by the Presiding Officer for the purpose of maintaining order and decorum in the Legislative Body meeting. Upon instructions from the Presiding Officer, it shall be the duty of the sergeant-at-arms or his representative to eject any unruly person from the Legislative Body meeting chamber or place him or her under arrest or both for conduct actually disrupting to the Legislative Body proceedings. Such person may be barred from further participation in the meeting.

As set forth in Government Code § 54957.9, in the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct

of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the Legislative Body members may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Duly accredited representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this Section. Nothing in this Section shall prohibit the Legislative Body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

Section 8. Censure of Legislative Body Members

(i) It shall be a violation of this section for any sitting member of a Legislative Body to violate any general law or regulation, and any, rule, law, ordinance or resolution of the City of Banning. It shall also be a violation of this section for any sitting member of a Legislative Body to violate an administrative policy of the City which has been adopted following a vote of the Legislative Body or the City Council on the matter and which by its terms is expressly made applicable to the Legislative Body.

(ii) Any violation of the foregoing paragraph by a Legislative Body member may be punished through the administration of a public censure of the member by the member's Legislative Body. Such censure may be in addition to any other punishment applicable to the violation.

a) For purposes of this section, "censure" shall mean the adoption of a motion setting forth a strong statement of disapproval of a Legislative Body member's conduct.

b) When evaluating a request for defense or indemnification made by the censured member in litigation arising from the censured conduct, the record of the censure shall be considered by the Legislative Body. Such record shall not be determinative. And, failure of the Legislative Body to censure the conduct of a member does not constitute waiver of the Body's right to refuse to indemnify or defend the member in an action.

(iii) A Legislative Body member may not be made the subject of a motion for censure without first being given notice of the violation and an opportunity to correct the violation, if it can reasonably be corrected. Upon a continued violation or failure to correct, the violating member shall be given notice and an opportunity to be heard as follows:

a) Only a sitting member of the Legislative Body whose member commits the violation may initiate proceedings for the censure of one of its members.

b) Proceedings shall be commenced by the presentation of a written statement of charges to the subject Legislative Body member by the member initiating the charge. Initiation shall not require the

prior approval of the Legislative Body. The statement of charges shall be given at least two meetings prior to the meeting at which the censure motion is proposed to be brought. The notice shall contain, at a minimum, the designation of the specific rule, law regulation, etc. which the member is claimed to have violated and a statement of the date, place and time at which the violation occurred. The statement shall further contain a description of the conduct of the member which is alleged to constitute the violation.

- c) The statement of charges shall be delivered to all other Legislative Body persons and made a part of the public record at the meeting next occurring after date of its delivery.
- d) The motion for censure shall be considered at the second regularly scheduled meeting following that at which the statement of charges was entered into the public record. The hearing may not be continued except upon the absence from the meeting of a member of the Legislative Body other than the member bringing the charge or the member who is the subject of the charge.
 - i. The hearing shall be conducted in an open session.
 - ii. If the Presiding Officer is a party to the action, the Vice Chair or some other member shall conduct the proceedings.
 - iii. The hearing shall generally proceed by a reading of the charges by the charging member. The reading shall be followed by a statement in rebuttal by the member so charged. After the reading of the charges each member may present witnesses in support of their case. The member bringing the charge and the member charged shall be allowed to make a closing statement. The member being charged shall be allowed to speak last.
 - iv. Vote on the motion shall be by the 3 non-party members of the Legislative Body. It shall require a unanimous vote of the 3 members to sustain a motion for censure. The voting members shall not go into closed session for deliberation.

4. If the motion for censure does not pass the proceedings shall be at an end. A new motion for censure on the same grounds of violation may not thereafter be commenced against the same Legislative Body member for a period of 1 calendar year from date of the vote. However, new proceedings may be commenced on the same charges within the 1 year period on the vote of 4 members of the Legislative Body.

5. If the motion for censure does pass, such motion shall become a part of the public record a copy of which shall be made available upon demand to any member of

the public and notice of same shall be placed in the administrative file of the Legislative Body member.

Section 9. Persons Authorized To Be Within Platform/Dais

No person except Legislative Body officials or authorized Legislative Body staff shall be permitted behind the Legislative Body dais without permission or consent of the Presiding Officer.

Section 10. Personal Privilege

If a Legislative Body member is personally offended by the remarks of another member, the offended Legislative Body member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other member to justify or apologize for the language used. The Presiding Officer will maintain control of this discussion. The right of a member to address the Legislative Body on a question of personal privilege shall be limited to cases in which his integrity, character, or motives are assailed, questioned or impugned.

Section 11. Procedures In Absence Of Rules

Unless otherwise specified in this Manual or by ordinance or resolution, meetings of the Legislative Body shall be conducted in accordance with the most recently revised edition of Robert's Rules of Order. In the event of any conflict between Robert's Rules and this Manual, the provisions of this Manual shall govern.

Section 12. Motions & Precedence of Motions

Motions, motion procedures and precedence of motions shall be conducted in accordance with Attachment "A" hereto.

ARTICLE XII- VOTING PROCEDURES

Section 1. Voting

After a full opportunity for debate, any Legislative Body member of the Legislative Body may call for a vote by a Motion to Call the Question. If it appears that there is a consensus of opinion among the members of the Legislative Body on the matter to be voted upon, the Presiding Officer may state the consensus of the Legislative Body and ask if there is any objection. If there is no objection, the consensus as so stated shall become the order of the Legislative Body.

Otherwise, all votes of the Legislative Body shall be taken by electronic vote. In the event the electronic voting machine is not functioning or otherwise unavailable, vote shall be by roll call vote. The order voting shall be alphabetical with the Presiding Officer voting last. The Clerk/Secretary shall call the names of all members seated when a roll call vote is ordered or required. Members shall respond 'aye', 'no' or 'abstain.' After every vote the Legislative Body shall declare the result and, on all but consensus

votes, shall note for the record the number of votes for or against the question. The ayes and noes shall be taken upon the passage of all ordinances and resolutions and entered upon the official record of the Legislative Body.

Section 2. Votes Needed

(i) Usually, in the absence of a contrary statutory provision (such as urgency measures), a majority of a quorum which constitutes a simple majority of the Legislative Body may act for that body. However, resolutions, orders for the payment of money, and all ordinances require a recorded majority vote of the total membership of a Legislative Body.

(ii) State law may dictate certain instances in which the number of votes required is greater than a majority of all Legislative Body members. As a matter of convenience, questions on which the voting requirement is varied by the State statutes and these rules, include, without limitation, the following:

- A. Levying Taxes - Ordinances providing for the Assessment and collection of taxes require the approval of two-thirds of the members of the whole Council.
- B. Assessment - Assessments require a two-thirds vote of the whole Council.
- C. Bonds and Certificates of Participation - Authorizing these financial instruments the issuing requires a two-thirds vote of the total Council.
- D. Eminent Domain - The exercise of Eminent Domain requires a two-thirds vote of the total Council.
- E. Certain Parliamentary Motions - Motions requiring a supermajority vote are noted in the Motions Chart attached hereto.

(iii) Any official with a conflict of interest is not counted for purposes of establishing a quorum, and must not vote on, make, participate in any way in, or attempt to influence the decision. A Legislative Body member abstaining on any other grounds than a conflict under the Political Reform Act shall be counted as present for purposes of a quorum and such abstentions are counted with the majority. The Legislative Body member who leaves the dais solely to avoid participating in a specific item shall, in absence of a conflict, be counted as if they were present but abstaining and such abstentions are also counted with the majority.

Section 3. Rescind

Any Legislative Body member who voted with the majority may move to rescind any action at the same meeting or, within two (2) calendar days, request in writing to the City Manager or Clerk/Secretary that it be agendized for consideration at the following

meeting. If the two (2) calendar day falls on a holiday, then the deadline shall be the next business day. In the event that the subject of the reconsideration is a motion that failed as the result of a tie vote, any Legislative Body member who voted against the earlier motion may move for reconsideration at the following meeting. If the motion to reconsider passes, then the original item may be reconsidered at that time or agendized for the next meeting which meets, any applicable noticing requirements. After a motion for reconsideration has once been acted upon, no other motion for reconsideration thereof shall be made without unanimous consent of the Legislative Body.

Section 4. Tie Votes

Tie Votes shall be lost motions unless an additional Motion is made which obtains a majority vote to break the tie. When all Legislative Body members are present, a tie vote on whether to grant an appeal from official action shall be considered a denial of such appeal. If a tie vote results at a time when less than all members of the Legislative Body are present, the matter shall automatically be continued to the agenda of the next regular meeting of the Legislative Body, unless otherwise ordered by the Legislative Body. Notwithstanding the above, if a tie vote results at a time when one or more Legislative Body member(s) are abstaining for reasons other than conflict of interest then, in that instance, the abstention vote shall be counted in favor of the motion thereby breaking the tie vote.

Section 5. Abstention On Appeals Not Required

A Legislative Body member who has appealed the action of any person or body of the City on a matter which does not constitute a conflict of interest for the member under any law, shall not be required to abstain from participation in the hearing on the appeal, unless such member is unable to remain neutral, or as may be otherwise advised by the General Counsel.

Section 6. Votes Of Members Previously Absent

(i) A Legislative Body member who was not present at a meeting shall not vote on the approval of minutes for that meeting.

(ii) A Legislative Body member may vote on a continued item after an absence from the earlier public hearing of the matter if, prior to the vote, the member affirms on the record that they have familiarized themselves with the record of the earlier meeting and are prepared to vote on the issue. If the member shall abstain from the vote, the member shall be counted towards the quorum on the issue and the abstention shall be counted with the vote of the majority of the quorum.

(iii) The forgoing shall not apply to the matter of a vote on the minutes of a meeting at which the member was not in attendance. In that instance, the member abstaining on the grounds of non-attendance at the meeting to which the minutes pertain shall not be counted towards the quorum on the issue and the abstention shall not be counted with the votes of the majority of the quorum.

Section 7. Findings

Decisions of a Legislative Body, whether on a matter of public hearing or otherwise, should be framed in terms of "findings" of fact. The Legislative Body members must consider any legally-mandated findings applicable to a matter and consider the evidence presented to them in light of such findings.

ARTICLE XIII- PROCEDURES FOR CONSIDERATION OF DEMANDS FOR CORRECTIVE ACTION

Section 1. Requirement of Written Demand

Prior to any person commencing a judicial action for injunction or mandamus to declare any action taken by the Legislative Body void because of failure to observe Brown Act requirements, such person must first serve upon the Clerk/Secretary a written demand clearly describing the challenged action, the nature of the claimed violation, and the corrective action sought. Such demand must be served upon the Clerk/Secretary within ninety (90) days of the alleged violation or thirty (30) days if the action was taken in open session but in violation of § 54952.2 of the Government Code. Failure to serve any such demand within this thirty (30) day period shall result in the loss of any right to challenge any action alleged to have been taken in violation of §§ 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 of the Government Code.

If the written demand is timely served, the Legislative Body has up to thirty (30) days to cure and correct its action. If the Legislative Body does not act, any lawsuit must be filed within the next fifteen (15) days.

Section 2. Consideration of Corrective Action

Upon receipt of such a demand, consideration of the demand shall immediately be placed on the agenda for the next meeting of the Legislative Body. If the demand is received less than 72 hours prior to the time set for the next meeting, the Legislative Body may determine that the notice constitutes the initiation of litigation, and that the need to take action on the threatened litigation arose subsequent to the posting of the agenda, and may consider it at that meeting pursuant to Article VI Section 9, above. A description of any item so placed on the agenda shall include both consideration of the demand, and the possibility of corrective action by the Legislative Body.

In considering such demands, the Legislative Body shall first determine by motion whether corrective action should be taken. If no motion to take corrective action is carried the Clerk/Secretary shall inform the demanding party in writing of the Legislative Body's decision not to cure or correct the challenged action.

Section 3. Implementing Corrective Action

If a motion to take corrective action passes, the presiding Officer may entertain a motion implementing corrective action. Any motion implementing corrective action shall address the concerns raised in the consideration of corrective action. The motion

implementing corrective action may include a motion to rescind prior action taken, as appropriate. Passage of a motion to rescind invalidates prior action only as of the time of the passage of the motion, and not from the date of the initial action. A motion implementing corrective action resulting from a written demand is out of order if the action complained of:

- (i) was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness, or any contract, agreement, or incident thereto;
- (ii) gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied; or
- (iii) was taken in connection with the collection of any tax. In any event, the Legislative Body shall notify the party making the demand in writing of its decision to take corrective action, and shall describe any corrective action taken. This notice shall be given to the demanding party as soon as possible after the meeting, but in no event more than 30 days after receipt of the demand.

ARTICLE XIV – INTERPRETATION

This Manual shall be liberally construed to effectuate its purpose and no ordinance, resolution, proceeding or other action of the Legislative Body shall be invalidated or the legality thereof otherwise affected by the failure or omission of the Legislative Body to technically comply with, observe or follow the within rules. The City Council may, by resolution, adopt further rules of interpretation or practice.

ARTICLE XV – AMENDMENTS

This Manual may be amended from time to time as necessary by resolution passed by a majority vote of the City Council at any regular or special meeting, provided that no such amendment shall be adopted unless at least seven days' written notice thereof has been previously given to all Legislative Body members serving the City. Such notice shall identify the section or sections of the Manual proposed to be amended.

ARTICLE XVI- SUSPENSION OF RULES

Any provision of these rules not governed by the Government Code may be temporarily suspended by a two-thirds vote of all members of the Legislative Body. Such suspension may be moved at any time by a member. The vote on any such suspension shall be taken by yeas or nays and entered upon the record.

