

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

April 23, 2013  
**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**

- . Pledge of Allegiance
- . Invocation – Reverend Tate Crenshaw, Life Point Church
- . Roll Call - Councilmembers Botts, Miller, Peterson, Welch, Mayor Franklin

**II. REPORT ON CLOSED SESSION**

**III. PUBLIC COMMENTS/CORRESPONDENCE/INTRODUCTIONS/APPOINTMENTS**

**PUBLIC COMMENTS – On Items Not on the Agenda**

A three-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. 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 for future study, research, and appropriate Council Action.) See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

**CORRESPONDENCE:** Items received under the category may be received and filed or referred to staff for future research or a future agenda.

**INTRODUCTION:**

1. Juan Campos, Lead Field Service Representative *(Oral)*

*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.*

## APPOINTMENTS:

1.	Appointment to Planning Commission .....	1
2.	City Council Committee Assignments .....	6

## **IV. CONSENT ITEMS**

*(The following items have been recommended for approval and will be acted upon simultaneously, unless a member of the City Council wishes to remove an item for separate consideration.)*

**Motion: That the City Council approve Consent Item 1 through 9**

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

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

1.	Approval of Minutes – Special Meeting (Workshop) – 04/09/13.....	8
2.	Approval of Minutes – Special Meeting (Closed Session) – 04/09/13 .....	15
3.	Approval of Minutes – Regular Meeting – 04/09/13 .....	16
4.	Approval of Accounts Payable and Payroll Warrants for the Month of February, 2013 .....	26
5.	Settlement and Release Agreement with the County of Riverside Regarding Property Tax Administration Fees .....	29
6.	Approve Amendment to Contract with Norman A. Traub Associates for Investigation Services for the City of Banning Police Department ....	38
7.	Resolution No. 2013-27, Authorizing the Banning Police Department to Destroy Internal Affairs Records in Excess of Five Years From Date of Completion Per California Government Code Section 34090 and California Penal Code Section 832.5 and Resolution No. 2003-26 of the City of Banning .....	39
8.	Resolution No. 2023-46, Approving the Measure “A” Five Year Capital Improvement Plan .....	46
9.	Resolution No. 2013-47, Approving a Successor Memorandum of Understanding between the Banning Police Officers Association and the City of Banning. ....	60

- Open for Public Comments
- Make Motion

## **V. ORDINANCES - INTRODUCTION**

1.	Ordinance No. 1464 of the City Council of the City of Banning Repealing Ordinance No. 1411 and Chapter 2.36 of the Banning Municipal Code Regarding the Banning Economic Development Committee.	
	Staff Report .....	92
	Recommendation: That the City Council adopt Ordinance No. 1464, Repealing Ordinance No. 1411 and Chapter 2.36 of the Banning Municipal Code regarding the Banning Economic Development Committee.	

**Mayor asks the City Clerk to read the title of Ordinance No. 1464:**

*"An Ordinance of the City Council of the City of Banning, California, Repealing Ordinance No. 1411 and Chapter 2.36 of the Banning Municipal Code Regarding the Banning Economic Development Committee."*

**Motion: I move to waive further reading of Ordinance No. 1464.**

(Requires a majority vote of Council)

**Motion: I move that Ordinance No. 1464 pass its first reading.**

**VI. REPORTS OF OFFICERS**

1. Resolution No. 2013-48, Amending Article VII-Public Comment and Presentations of the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning.  
Staff Report ..... 104  
Recommendation: **That the City Council adopt Resolution No. 2013-48, Amending Article VII-Public Comment and Presentations of the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning.**
2. Update on San Juan Generating Station  
Staff Report ..... 151  
Recommendation: **That the City Council accept this report which reviews the impacts of the various State and Federal regulatory mandates on the San Juan Generating Station, and summarizes the activities that Banning is taking to mitigate these impacts.**

**VII. PUBLIC HEARING**

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

1. Resolution No. 2013-45, Approval of Proposed Electric Rate Schedules  
Staff Report ..... 154  
Recommendations:  
Option One:
  1. Adopt Resolution No. 2013-45, approving the Electric Rate Schedules, and authorize the City Manager, or his designee, to implement said Rate Schedules effective May 1, 2013.
  2. Authorize the Administrative Services Director, or her designee, to make the necessary transfers between the applicable Electric Funds to resolve the deficit in FY 2012-13.

Option Two:

1. Adopt Resolution No. 2013-45, approving the Electric Rate Schedules, and authorize the City Manager, or his designee, to implement said Rate Schedules effective May 1, 2013.
2. Authorize the Administrative Services Director, or her designee, to make the necessary transfers between the applicable Electric Funds to resolve the deficit in FY 2012-13.
3. Authorize staff to analyze and report on the concept of an annual inflation index electric rate adjustment mechanism.

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

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

**IX. ITEMS FOR FUTURE AGENDAS**

New Items – None

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Consideration of an “in-house” attorney vs. contract
3. Let’s Move – Healthy Initiative

**X. 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. 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. 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].

**CITY COUNCIL AGENDA  
REPORT OF OFFICERS**

**DATE:** **April 23, 2013**

**TO:** **City Council**

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

**SUBJECT:** **Planning Commission Appointment**

**RECOMMENDATION:** That the City Council select one candidate to fill the vacant position on the Planning Commission and extend the expiration of the candidate's term to May 10, 2015.

**BACKGROUND:** Planning Commissioner Dennis Arterberry's term expired on February 24, 2013 which has created one vacant position on the Planning Commission. The application for residents who are interested in serving on the Planning Commission was advertised in Record Gazette, the City's website, and Channel 10. The application submittal deadline closed on December 3, 2012. The City received three (3) applications. The City Council interviewed the three applicants on March 5, 2013 which consisted of the following candidates: Dennis Arterberry, David Ellis and Ron Klimeczak.

The Planning Commission consists of five members appointed by the City Council. The Commissioners serve a four year term, which is staggered every two years concurrent with the City's elections. The term of the newly appointed commissioner will expire on February 24, 2015. In addition to this current recruitment process, staff will be required to take part in this selection process again in May of 2013 to fulfill another vacancy that is due to expire May 10, 2013. In an effort to ease processes in the future and provide consistency, staff respectfully requests to extend the expiration of this current appointment from February 24, 2015 to May 10, 2015.

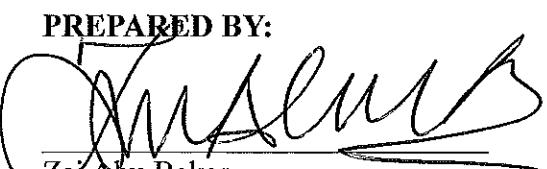
The Commission's rules and responsibilities are governed by Chapter 2.28 of the Municipal Code (see Attachment). The Commission's two (2) main functions are to review land development applications for compliance with the Zoning Code and to recommend policies changes to the General Plan or Zoning Code.

**RECOMMENDED BY:**



Andrew J. Takata  
City Manager

**PREPARED BY:**



Zai Abu Bakar  
Community Development Director

Attachment: Chapter 2.28 of the Banning Municipal Code

**Chapter 2.28****PLANNING COMMISSION****Sections:**

**2.28.010** **Planning commission—Membership requirements.**

**2.28.020** **Term and vacancies.**

**2.28.030** **Compensation.**

**2.28.040** **Rules of procedure.**

**2.28.050** **Duties and responsibilities.**

**2.28.060** **Conflict of interest requirements.**

**2.28.070** **Staff liaison.**

**2.28.080** **Meeting times and places.**

**2.28.090** **Adoption.**

**2.28.010 Planning commission—Membership requirements.**

A. Members of the planning commission shall be residents of the City of Banning who hold no other municipal office in the city. Members may not be employees of the city.

B. Proof of residency shall be submitted at time of application to the commission through voter registration, utility bill at a physical address within the city boundaries. Residency shall be confirmed prior to appointment and maintained throughout the term served. (Code 1965, § 2-5.)

**2.28.020 Term and vacancies.**

A. The planning commission shall consist of five members.

B. Planning commissioners shall serve four-year terms, which shall be staggered every two years concurrent with the city elections. Appointments shall be made by the city council. Applications shall be made available and the closing date announced at least two months prior to the expiration of the commissioner's term to be filled.

C. Members shall serve at the pleasure of the council and may be removed at any time by a majority vote of the entire council.

D. Any member who is unexcused for two consecutive regular meetings of the commission or six

meetings within a twelve-month period, whether the six meetings are excused or not, will be deemed to have resigned their office and the city council may appoint a new member to serve in the resigned commissioner's place for the remainder of their term.

E. To be excused from any such meeting, a member shall notify the planning department, at least forty-eight hours prior to any such meeting. If a member is unable to attend due to illness, injury or family matters, a statement by the member at the next regular meeting of the commission shall constitute an excused absence. (Code 1965, § 2-6.)

**2.28.030 Compensation.**

A. Members of the planning commission shall not receive compensation; reasonable traveling expenses to and from conferences and/or special field trips and training sessions shall be reimbursed.

B. Upon authorization by the city manager, the planning commission and members of its staff, may attend city planning conferences or meetings, or hearings on city planning legislation, or matters affecting the planning of the city. The reasonable expenses of such attendance shall be charged upon the funds allocated to the commission.

C. All fundings shall be established through the City of Banning budget, which shall be approved by the city council. (Code 1965, § 2-7.)

**2.28.040 Rules of procedure.**

A. A quorum of the planning commission shall consist of a majority of the members (including any vacancies). A quorum must be present in order for the planning commission to hold a meeting.

B. In the event that only three commissioners are present, any actions recommending amendment to the Municipal Code or general plan must be unanimous; all other actions would require a majority vote of the commission in attendance. A tie vote shall constitute a denial of the matter or request brought before the planning commission.

C. The commission shall adopt rules for the transaction of business and shall keep a record of its transactions, findings, and determinations. The Brown Act and "Robert's Rules in Plain English" by

Doris P. Zimmerman (Harper Perennial) shall be incorporated into such rules.

D. The commission shall follow all applicable city fiscal and administrative policies and procedures. (Code 1965, § 2-8.)

#### 2.28.050 Duties and responsibilities.

A. The planning commission shall exercise those functions of the planning agency of the city delegated to it in the Banning Municipal Code.

B. At the regular February meeting, the planning commission shall choose a chairperson and a vice-chairperson from among the planning commission members. The chairman and vice-chairman shall serve for one term. Both positions shall rotate every year. All members must be present to conduct this business.

1. The chairperson shall preside at all regular and special meetings and rule on all points of order and procedure during the meetings.

2. The vice-chairperson shall assume all duties of the chairperson in his or her absence.

3. In the event the chairperson and vice-chairperson are both absent, an acting chairperson shall be appointed from the commission for the meeting from those present.

C. The planning commission's scope of responsibility is to:

1. Prepare, review, adopt, and recommend to the city council for its adoption, a long range, comprehensive general plan to guide the future physical development and conservation of the city and its adjoining environs based on geographic, social, economic and political characteristics of the community;

2. Prepare, review, adopt and recommend to the city council for its adoption of special area specific plans for identifiable areas, wherein more detailed guidelines are needed to supplement the objectives of the general plan;

3. Review development applications submitted to the city for consistency with adopted plans and ordinances. Approve or deny applications when final authority is granted to the planning commis-

sion by the Municipal Code. Make a recommendation on those actions for which the city council is the final reviewing approval body;

4. Act as the appeal body on decisions made by the community development director;

5. Perform such other functions and duties as the city council may from time to time direct and/or provide within the Banning Municipal Code.

D. The commission may form ad-hoc subcommittees in accordance with the Brown Act, and make appointments to that subcommittee, as it deems necessary. A quorum of commission members may not be appointed to serve in a single subcommittee. Before forming a subcommittee, the commission shall establish a specific mission and term for the subcommittee.

E. The planning commission is an important function within the City of Banning, and as such, certain expectations are held by the city council in making the appointment of individuals to the commission. These expectations include the following:

1. Commissioners will attend all regular meetings and special meetings as they arise;

2. Commissioners will communicate expected and unexpected absences to the planning department, prior to the meeting;

3. Commissioners will communicate any potential conflicts of interest on agenda items to the planning department in advance of the hearing to allow confirmation of a quorum;

4. Commissioners will arrive on time to each meeting, fully participate, and remain in attendance until the end of each meeting;

5. Commissioners will prepare themselves for each meeting by reading the agenda, reports and other materials, and visiting the site, as necessary, and communicate any questions to the secretary in advance of the hearing.

Pursuant to Resolution 2000-41, if a commissioner visits the site prior to a hearing on the

matter, the commissioner shall disclose at the hearing such evidence and observation gathered during the site visit;

6. Commissioners are encouraged to attend the annual planner's institute (Monterey and Southern California) or an equivalent planning training program given by a University of California campus (or approved equivalent) and may attend other planning conferences and or training classes as the need and opportunities arise. The city will also provide regular in-service training and make-up training where attendance is required;

7. New commissioners are expected to become familiar with the city's general plan, the "Planning Commission Handbook" (prepared by the State of California), and relevant Municipal Code sections particularly those relevant to zoning to become familiar with these documents. The "Guide for New Members" distributed by the Planning Commissioners Journal and [www.plannersweb.com](http://www.plannersweb.com) are other valuable resources for new commissioners;

8. Applicants to the planning commission will be expected to attend a brief orientation session explaining the role of commissioners, the planning process, and the expectations of commissioners that are appointed; and

9. New commission members will attend an expanded orientation session with the liaison to the commission and other staff, as deemed necessary, to provide new appointees with a solid understanding immediately upon appointment. The orientation will include an overview of the planning process, a review of the commission's structure, policies and bylaws, a summary of available documents and resources, and a review of the commission's relationship with citizens, staff, developers, and the governing body.

F. The planning commission may serve on regional boards or commissions as directed by the city council.

G. The planning commission shall participate in annual meetings with the city council to discuss development activity, development doctrine, policies, etc. (Code 1965, § 2-8.1.)

#### **2.28.060 Conflict of interest requirements.**

A. The State of California Political Reform Act requires planning commission members to disclose interests in investments, real property, and income derived within the City of Banning or from sources doing business within the City of Banning. Filings are required within ten days of assuming office and on an annual basis.

B. Members shall not work for the "pass" cities, which include Beaumont, Calimesa, and Riverside County in roles, such as economic development, planning, or redevelopment.

C. If an apparent conflict of interest arises, the member shall inquire of the city attorney or staff prior to the meeting. (Code 1965, § 2-8.2.)

#### **2.28.070 Staff liaison.**

A. The staff liaison to the planning commission shall be the community development director.

B. The planning commission liaison, supported by the secretary to the planning commission (a staff position), shall be responsible for:

1. Confirming that a quorum will be present prior to each meeting;

2. Receiving and recording all exhibits, petitions, documents, or other material presented to the planning commission in support of, or in opposition to, any issue before the planning commission;

3. Signing all meeting minutes and resolutions upon approval;

4. Preparing and distributing agendas and agenda packets;

5. Facilitating the tape recording of meetings and preparation of minutes; and

6. Responding to all questions from planning commission members regarding agenda items in advance of meetings. (Code 1965, § 2-8.3.)

#### **2.28.080 Meeting times and places.**

A. The planning commission shall meet on the first Wednesday of each month at 6:30 p.m. at

the city council chambers located at 99 E. Ramsey Street, or at such time and place as the commission may designate by resolution.

B. Commissioners will attend special meetings as they arise. (Code 1965, § 2-8.4.)  
(Ord. No. 1427, § 1, 9-14-10)

**2.28.090 Adoption.**

A. This document, as adopted and amended by council resolution, shall serve as the bylaws for the commission. (Code 1965, § 2-9.)

## **COMMITTEE ASSIGNMENTS - 2013**

### **CITY COUNCIL CITY OF BANNING**

NAME OF COMMITTEE	DAY & TIME OF MEETING	ASSIGNMENT	ALTERNATE	STAFF MEMBER
Western Riverside Council of Governments (WRCOG) <i>(receive stipend)</i>	1 <sup>st</sup> Monday of each month.	Franklin	Peterson	City Manager
Riverside Transit Agency (RTA) <i>(receive stipend)</i>	4 <sup>th</sup> Thurs. of each month – 2:00 p.m. (Nov. & Dec. 3 <sup>rd</sup> . Thursday)	Welch	Botts	Heidi Meraz Community Services Dir.
Riverside County Transportation Commission (RCTC) <i>(receive stipend)</i>	2 <sup>nd</sup> Wednesday of each month - 10:00 a.m.	Botts	Franklin	Duane Burk, Public Works Director and Heidi Meraz, Community Services Dir.
Pass Area Transportation NOW Committee	1 <sup>st</sup> Friday of each month at Noon	Welch	Miller	Duane Burk, Public Works Director.

(01/8/13)

6

## Assignments - 2013 (Continued)

Regional Conservation Authority	ECONOMIC DEVELOPMENT COMMITTEE LIAISONS <i>(as needed)</i>	GOVERNMENT ACCESS CHANNEL COMMITTEE <i>(as needed)</i>	PUBLIC UTILITY ADVISORY COMMITTEE FOR CITY OF BANNING <i>(as needed)</i>	
Franklin Welch, Alt. <i>(receive stipend)</i>	<i>(no appointment)</i>	Peterson Welch	Miller Botts	

TUMF ZONE COMMITTEE	LEAGUE OF CALIF. CITIES – Contact and Executive Board Representative	LEAGUE OF CALIFORNIA CITIES <i>(External Group)</i>	SAN GORGONIO PASS WATER AGENCY <i>(External Group)</i>	COMMUNITY ACTION AGENCY <i>(External Group)</i>
Franklin Peterson, Alt.	Franklin (Mayor)	City Council	Franklin Miller, Alt.	Peterson Welch, Alt.

## 2 x 2 COUNCIL WORKING GROUPS

BANNING UNIFIED SCHOOL DIST.	MORONGO BAND OF MISSION INDIANS	MT. SAN JACINTO COLLEGE	AIRPORT	INTER-GOVERNMENTAL - LOBBYING
Miller Botts	Franklin Welch	Peterson Miller	Botts Peterson	Franklin Botts

(01/8/13)

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

04/09/13  
SPECIAL MEETING

A special meeting workshop of the Banning City Council was called to order by Mayor Franklin on April 09, 2013 at 3:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilman Botts  
Councilman Miller  
Councilman Peterson  
Councilman Welch  
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

PLANNING COMMISSION MEMBERS PRESENT: Commissioner Briant  
Chairman Barsh

OTHERS PRESENT: Andrew J. Takata, City Manager  
June Overholt, Administrative Services Dir./Deputy City Manager  
David J. Aleshire, City Attorney  
Duane Burk, Public Works Director  
Bill Manis, Economic Development Director  
Zai Abu Bakar, Community Development Director  
Brian Guillot, Associate Planner  
Jessica Hicks, Office Specialist  
Marie A. Calderon, City Clerk

### Workshop Item

## 1. Housing Element Update (Staff Report – Zai Abu Bakar, Community Development Director)

Director Abu Bakar addressed the Council stating that the purpose of the workshop is to bring the Council and Commission up to date on the status of our housing element and discuss the next steps that need to be taken in order to get the current housing element approved by the State Housing and Community Development. On May 2, 2012 a Planning Commission meeting was conducted to discuss the rezoning of the sites to comply with state requirements. Because there were a lot of comments and concerns from the residents of Serrano Del Vista the Planning

Commission conducted a community meeting with those residents in November 2012. Director Abu Bakar said the current housing element is overdue and the next element for 2014-2021 must be approved by October 15<sup>th</sup>, 2013. John Douglas, Housing Development Consultant, provided an overview of the housing element. He explained the goal is to adopt a housing element that is consistent with the City's goals as well as obtaining certification from the state. He said state housing law says every jurisdiction in the state must have adequate provision for the full range of economic segments in the community and that the state is mostly concerned with low to moderate income housing segments in the community. The State assessed the housing needs and allocated fair shares to each region in the state. Mr. Douglas explained the allocation for the City of Banning; the City is required to demonstrate that it can accommodate around 1500 units for low to moderate housing. Mr. Douglas said it is important to keep in mind that these numbers are not a mandate for development, they are a planning target. As long as the City has zoning regulations that could accommodate this growth we can be certified by the state; the City is not penalized if the property is not developed. Since the City didn't have zoning in place during the prior planning period, State law says that the City has to add those units from the previous cycle to the current RHNA (Regional Housing Needs Assessment) cycle so all together the City must demonstrate it can accommodate 2200 units through its zoning, at 20 units per acre. Mr. Douglas presented a slide show (Exhibit A) showing a three part strategy that is proposed to accommodate the City's zoning needs; 1) adopting an overlay zone in the downtown area that would allow increased density, 2) Adopting a provision in the High Density Residential district where at least 50% of the units are zoned at lower income rental prices as well as revising the density from 11-18 units/acre to 20 units/acre, 3) Creating a new "Very High Density" district allowing 18-22 units/acre.

Director Abu Bakar answered the City Council's questions regarding clarification on the rezoning proposal as well as the impact from the rezoning.

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

Mayor Franklin opened the meeting for public comment.

Inge Shuler, resident addressed her concerns in regards to the density.

Barbara Hanna, resident addressed her concerns with the report and regarding water.

MaKaily Kashe, 981 E. Charles, spoke in favor of the rezoning proposal.

Don Smith, resident addressed his concerns about the rezoning proposal and that it should be spread in different areas of the city.

Nancy Waycott, resident agreed with some of the previous concerns mentioned.

Dorothy Familetti-McLean, resident asked about having some high density located in west Banning and residents or businesses being negatively impacted downtown.

Another gentleman addressed his concerns with the high density.

Director Abu Bakar responded to the public comments and answered the questions as best as possible.

Councilmember Peterson expressed that he also represents the area near Charles that is proposed for rezoning and he is available to be contacted personally.

Councilmember Botts reiterated that this is state mandated and in order to stop this process, state law would need to be changed.

City Attorney explained the protest process to the public and also described the consequences if a certified housing element is not adopted.

Councilmember Peterson asked that the notification process for notifying the residents of these public meetings be more proactive.

Councilmember Miller advised the public to come with suggestions as to where to place the rezoning.

Councilmember Welch asked about the process of how the zoning was chosen and Director Abu Bakar responded that they looked at all the possibilities.

Mayor Franklin asked Director Abu Bakar to explain what the next steps are. Director Abu Bakar said the next step is to prepare an environmental study and make the environmental document available for public review. Then a public hearing will be brought before the Planning Commission and then a public hearing is brought to the City Council.

City Attorney pointed out that if the Council was fundamentally not comfortable with what is being proposed, now is the time to talk that through and make changes because we are going to spend a lot of money on the environmental process and if we go all the way through the process and then make major changes you would have to sort of restart the environmental process analyzing different situations and patterns.

Councilmember Peterson said he liked what Don Smith had to say and would like to explore that a little more in depth.

Mayor Franklin asked about the time frames. Director Abu Bakar said that we don't have that much time. The current Housing Element for 2008-2014 is actually past due and we are trying to get that done and then work on the new Housing Element which must be certified by the State by October 15, 2013.

#### ADJOURNMENT

By common consent the meeting adjourned at 4:16 p.m.

Prepared by:

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Jessica Hicks, Deputy City Clerk

Approved by:

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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.**



## City of Banning 2008-2014 Housing Element Update

Study Session  
April 9, 2013

### Housing Element Overview

#### Why is a Housing Element update required?

- 2008-2014 update required by state law
- Review by HCD – “Certification”
- Importance of Certification
  - ✓ Eligibility for grant funds
  - ✓ Local control of land use decisions
  - ✓ Avoid carryover of housing need



### Housing Element Overview

#### *“Adequate provision for the housing needs of all economic segments of the community”*

- ✓ Low & moderate income households
  - Apartments & condos
  - Residential/commercial mixed use



### RHNA Income Categories

#### *“Low & Moderate income”*

Median Income = \$65,000	Income Limits	Affordable Rent	Affordable Price (est.)
Extremely Low (<30%)	\$20,100	\$503	--
Very Low (31-50%)	\$33,500	\$838	\$140,000
Low (51-80%)	\$53,600	\$1,340	\$225,000
Moderate (81-120%)	\$78,000	\$1,950	\$325,000
Above Mod (>120%)	\$78,000+	\$1,950+	\$325,000+

*Assumptions:  
Based on a family of 4  
30% of gross income for rent or PITI  
5% down payment, 4% interest, 1.25% taxes & insurance*

**Regional Housing Needs**  
City of Banning  
2006-2014



Final Draft  
Housing Program  
Needs Assessment

Extremely Low	Very Low	Low	Moderate	Above Moderate	Total
436	437	618	705	1,645	3,841

Source: SCAG 2007

**Significance of RHNA**

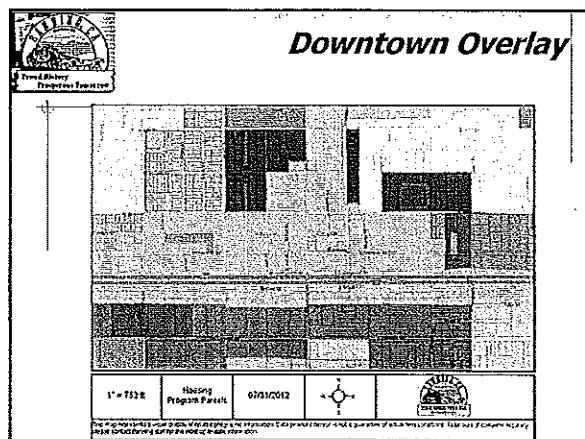


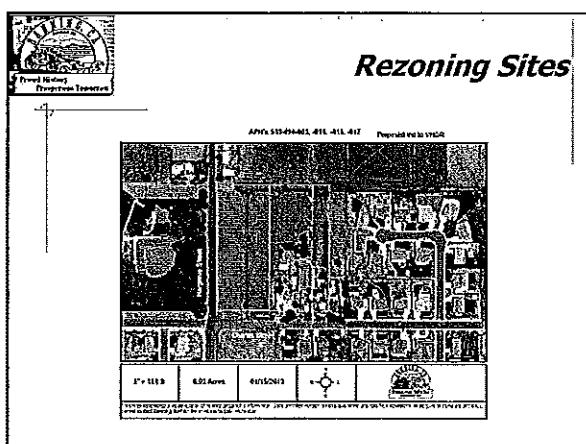
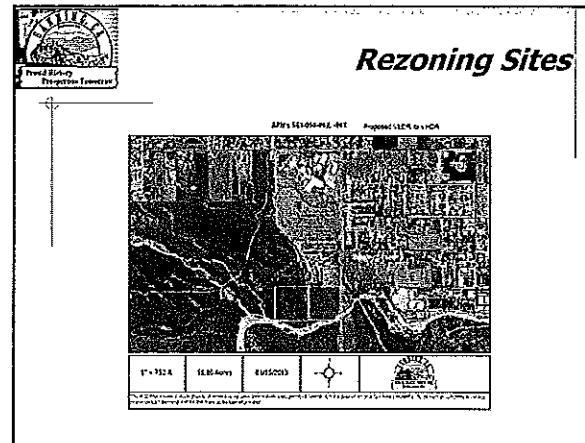
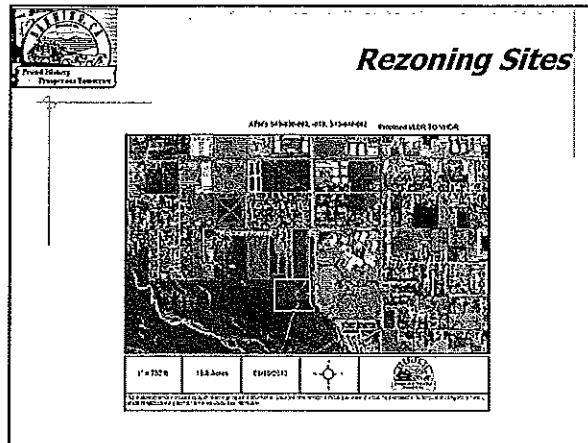
Final Draft  
Housing Program  
Needs Assessment

- RHNA is not a construction quota
- City must identify adequate sites with appropriate zoning to accommodate RHNA (2,257 units @ 20 units/acre)

**Rezoning Program**

- **Downtown Overlay** (16-30 units/acre)
- **HDR zone**: Allow 20 units/acre when 50% affordable units are provided
- **New VHDR zone**: 18-22 units/acre and 20 units/acre when 50% affordable units provided





**Next Steps**

- Public hearings
  - 2008-2014 Housing Element adoption
  - General Plan & zoning amendments
- Prepare 2013 Housing Element (due October)

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

04/09/13  
SPECIAL MEETING

A special meeting of the Banning City Council and the City Council Sitting in Its Capacity of a Successor Agency was called to order by Mayor Franklin on April 9, 2013 at 4:15 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT:      Councilmember Botts  
    Councilmember Miller  
    Councilmember Peterson  
    Councilmember Welch  
    Mayor Franklin

COUNCIL MEMBERS ABSENT:      None

OTHERS PRESENT:      Andrew J. Takata, City Manager  
                                    June Overholt, Administrative Services Director  
                                    David J. Aleshire, City Attorney  
                                    Christy Lopez, Attorney  
                                    Duane Burk, Public Works Director  
                                    Bill Manis, Economic Development Director  
                                    Marie A. Calderon, City Clerk

CLOSED SESSION

City Attorney said the items for closed session are existing litigation matters pursuant to the provisions of paragraph (d) (1) of Government Code Section 54956.9 – Stephen J. Mascaro, et al. v. City of Banning, et al; and Fields versus the City of Banning. Real property negotiations on 2301 W. Ramsey Street pursuant to the provisions of Government Code Section 54956.8 will not be discussed. There is one case of potential litigation pursuant to the provisions of Government Code Section 54956.9. The Successor Agency will meet pursuant to the provisions of Government Code Section 54956.8 in regards to real property negotiations concerning 42 W. Ramsey Street.

Mayor Franklin opened the item for public comments. There were none. Meeting went into closed session at 4:21 p.m. and reconvened at 5:00 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 5:00 p.m.

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Marie A. Calderon, City Clerk

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

04/09/2013  
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Franklin on April 9, 2013 at 5:15 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Botts  
Councilmember Miller  
Councilmember Peterson  
Councilmember Welch  
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andy Takata, City Manager  
David J. Aleshire, City Attorney  
Duane Burk, Public Works Director  
Bill Manis, Economic Development Director  
Zai Abu Bakar, Community Development Director  
Heidi Meraz, Community Services Director  
Jessica Hicks, Office Specialist  
Marie A. Calderon, City Clerk

The invocation was given by Pastor Javier Hernandez, New Creation Church. Councilman Welch led the audience in the Pledge of Allegiance to the Flag.

## REPORT ON CLOSED SESSION

City Attorney said the Council met in closed session concerning the litigation item Lloyd Fields vs. City of Banning, a status report was given, and no action was taken. The Mascaro matter was not discussed. A status report was given for the real property negotiations concerning property 2301 W. Ramsey St. and no action was taken. A status report was given on one case of potential litigation and no action was taken. A status report was given on 42 W. Ramsey St. and no action was taken.

## PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/ANNOUNCEMENTS

#### **PUBLIC COMMENTS – *On Items Not on the Agenda***

Eugene Kadow, Member of the Board of Trustees at Mt. San Jacinto College and a resident of the city of Banning, spoke in regards to Mt. San Jacinto College. He mentioned the college's history, sports achievements and interesting facts.

John Garcia, Banning resident, expressed his concerns with the raise in water rates and wants to know where the money from the water bills is going.

Barbara Hanna, Chairperson of the Banning Centennial Committee, gave an update on the recently passed centennial events, as well as informing the public of upcoming events. The new events include the 1<sup>st</sup> Annual Earth Day at Gilman Ranch, a lecture by Betty Meltzer at the Dorothy Ramon Learning Center, and the Spring Festival formally known as the Art Hop.

Don Smith, Cultural Alliance Representative, announced the revealing of the Phineas bust at the Haven on April 19<sup>th</sup>, 2013. On May 27<sup>th</sup>, 2013 the Memorial Day celebration will take place at the Women's Club.

Diego Rose, Banning Business Owner, expressed his concerns with how government funds are spent; specifically the funds going to the remodel of the Utility Yard. He is concerned the residents fail to reap the benefits of the money they put forward in this City. Mr. Rose spoke in support of Mr. Garcia's public comment.

CORRESPONDENCE – There was none.

PRESENTATIONS

1. Proclamation – National Donate Life Month

Mayor Franklin presented the proclamation to Barbara Do Couto. Barbara Do Couto and Al Bistany shared their stories of how organ donations impacted their lives.

APPOINTMENTS

1. Appointments to Parks and Recreation Commission

Community Services Director Meraz addressed the Council asking them to appoint three members to the Parks and Recreations Commission.

**Motion Welch/Botts to appoint William Dickson, Richard Sanchez and Annell Elmore to the Parks and Recreation Commission, with terms expiring January 18, 2017.** Mayor Franklin opened the item for public comments. There were none. **Motion carried, all in favor.**

CONSENT ITEMS

1. Approval of Minutes – Special Meeting (workshop) – 03/26/13

Recommendation: That the minutes of the special meeting (workshop) of March 26, 2013 be approved.

2. Approval of Minutes – Special Meeting – 03/26/13 (Closed Session)

Recommendation: That the minutes of special meeting of March 26, 2013 be approved.

3. Approval of Minutes – Regular Meeting – 03/26/13

Recommendation: That the minutes of the regular meeting of March 26, 2013 be approved.

**Motion Welch/Miller to approve Consent Items 1 through 3.** Mayor Franklin opened the item for public comments. There were none. **Motion carried, all in favor.**

4. Resolution No. 2013-41, Supporting the Governor and State Legislatures Efforts to Modernize the California Environmental Quality Act (CEQA).

Director Abu Bakar gave the staff report as contained in the agenda packet stating that CEQA reform is a priority to the Governor this year. RTCT (Riverside County Transportation Commission) has taken the lead on supporting the Governor and has requested cities to follow suit. It is requested that City Council adopt the resolution supporting the efforts of the Governor and State Legislatures. The last CEQA act was adopted in 1970. CEQA has done an excellent job at protecting the environment and allowing the public to participate in the decision making process. On the other hand, CEQA has been used to stop development in communities, so it is encouraged that the Council adopt the reformed CEQA to help get business into our City.

Councilmember Miller stated that there are problems with CEQA. He expressed his concern about the group of members that propose CEQA change, stating that it is made up of business that favor development and are not concerned with the environment. He is in support of the CEQA reform but would like professional environmental input added to the reform. He urged the council not to vote for this act.

Councilmember Botts stated that the group of members mentioned by Councilmember Miller is just one working group in the CEQA reform and that has nothing to do with the legislation in Sacramento. He said there will be discussion with environmental groups, unions and businesses. The reason for the reform is to stop extremist from halting development. He encouraged the Council to support the reform.

**Motion Botts/Peterson to approve Consent Item No. 4, adopting Resolution No. 2013-41, Supporting the Governor and State Legislatures Efforts to Modernize the California Environmental Quality Act (CEQA); Receive and file information on CEQA modernization efforts in Sacramento; Ratify membership in the CEQA Working Group and endorse the policy principles for CEQA modernization and Direct staff to send the adopted resolution and attached Local Government Officials in Support of CEQA Modernization letter to the Governor, Members of the State Senate and Assembly, Riverside County Transportation Commission, and CEQA Working Group.** Mayor Franklin opened the item for public comments. There were none. **Motion carried, 4 with ayes. Councilmember Miller voting no.**

5. Resolution No. 2013-42, Approving an Amendment to the Baseline Agreement with the California Transportation Commission (CTC) and the City of Banning for the Sunset Avenue Grade Separation

Director Burk gave the staff report as contained in the agenda packet stating that what is being approved tonight is an Amendment to the baseline agreement with the California Transportation Commission (CTC), approving the modified project schedule.

Mayor Franklin wanted the public to be aware of the change in the schedule, since many residents were expecting the project to break ground during the summer. She asked Director Burk to confirm that the project wouldn't start until around September or October.

Director Burk said that is correct as long as there are no other changes. If the CTC has any changes or issues with the agreement the process could be delayed further.

Councilmember Botts asked if the CTC funds are available in May can a ground breaking be moved to June. Director Burk said that would not be possible.

**Motion Botts/Welch to approve Consent Item No. 5, Approving an Amendment to the Baseline Agreement with the California Transportation Commission (CTC) and the City of Banning for the Sunset Avenue Grade Separation and Authorizing the City Manager to execute the Amendment to the Baseline Agreement with the California Transportation Commission (CTC) and the City of Banning for the Sunset Avenue Grade Separation.** Mayor Franklin opened the item for public comments. There were none. **Motion carried, all in favor.**

#### REPORTS OF OFFICERS

1. Resolution No. 2013-40, Approving a Professional Services Agreement with Innovative Federal Strategies, LLC to Provide Services in Federal Legislative Advocacy and Governmental Affairs.

City Manager gave the staff report as contained in the agenda packet explaining that last year. City Council directed staff to look for a federal lobbyist. The City had a federal lobbyist in the past that helped bring in money. During the tough times in the economy the City didn't feel they were getting their money's worth and therefore ended our contract with the lobbyist. In the past, we benefited from the lobbyist efforts by receiving grants for various projects in the City. 22 Request for Proposals (RFP) were sent out and received a good amount back. The committee narrowed down the candidates to the top 3 and interviews were conducted. The committee is recommending entering into an agreement with Innovative Federal Strategies, LLC.

Councilmember Miller was concerned that the chosen lobbyist didn't address any of the items presented by the City in their proposal. He recommends that the work order reflect the items presented in the RFP.

City Manager said this change can be made prior to signing the contract as long as the City Council authorizes him to do so.

Councilmember Botts said he has no problem changing the agreement to reflect the exact verbiage, but wanted to express as one of the interviewers, that he has faith in this company and has represented lots of cities over the years. It is also important to note that the lobbyist will come out and sit with the Council and department heads to find out what the needs and plans are for the City of Banning and come up with a strategy for what they're going to do for us.

Councilmember Peterson asked the City Manager if he knew the lobbyist and had a history with this company. City Manager confirmed that he has worked with this company in the past.

Mayor Franklin stated that the company also met with her and they were very knowledgeable with the subjects she wanted to address.

Councilmember Botts added that in the past earmarks were used to get local funding from the government but earmarks are no longer available so it is important that the lobbyist go out and find funding for our City.

Councilmember Welch complimented the City Manager on his efforts and expressed that it is important to have an ally in the nation's capital, so our City doesn't miss out on opportunities. He is very supportive of the recommendation.

There was a consensus of the Council to allow the City Manager to revise the contract to reflect the needs of the City and enter into the agreement with Innovative Federal Strategies, LLC.

**Motion Welch/Botts to approve Consent Item No. 5, Adopt Resolution No. 2013-40, Approving a Professional Services Agreement with Innovative Federal Strategies, LLC to provide services in Federal Legislative Advocacy and Governmental Affairs; and Authorizing the City Manager to negotiate and sign the Professional Services Agreement with Innovative Federal Strategies, LLC.** Mayor Franklin opened the item for public comments. There were none. **Motion carried, all in favor.**

Diego Rose, Banning Business Owner, approached the podium to ask if the City has researched what it would cost to hire a full time grant writer and said it may be less expensive.

Mayor Franklin said we have used grant writers in the past and it did not work out.

#### JOINT MEETING

Mayor Franklin recessed the regular City Council meeting and called to order a joint meeting of the Banning City Council and the Banning Utility Authority and the City Council Sitting in its Capacity of a Successor Agency.

#### CONSENT ITEMS

1. Resolution No. 2013-08 UA, Approving an Agreement with Merlin Johnson Construction, Inc. for the Replacement of Two Pumps at the City of Banning's Wastewater Treatment Plant and Approving the Purchase of the Pumps and Materials.

Recommendation: Adopt Resolution No. 2013-08 UA, Approving the Agreement with Merlin Johnson Construction, Inc. of Mentone, California in the amount not-to-exceed \$40,160.00 for the replacement of two pumps at the City of Banning's Wastewater Treatment Plant; Approving the purchase of two pumps and necessary parts from Flo-Systems, Inc. in the amount of \$32,869.00; and Authorizing the Administrative Services Director to make necessary adjustments and appropriations in an amount of \$73,029.80 from the Wastewater Capital Fund to Account No. 680-8000-454.95-12 (WWTP Improvements).

2. Resolution No. 2013-10 UA, Approving the Contract Services Agreement with Layne Christensen Company for the Repairs to Water Well No. M-3.

Recommendation: Adopt Resolution No. 2013-10 UA: Approving the Contract Services Agreement with Layne Christensen Company of Fontana, California, for the Repairs to Water Well No. M-3 in the amount of "Not to Exceed" \$96,084.52; and Authorizing the Administrative Services Director to make the necessary budget adjustments and appropriations in an amount of \$96,084.52 from the Water Operations Fund to Account No. 660-6300-471.95-08 (Wells/Pumping Equipment)

**Motion Botts/Welch to approved Consent Items 1 and 2. Motion carried, all in favor.**

#### REPORTS OF OFFICERS

1. Resolution No. 2013-09 UA, Approving Additional Funding for the Professional Services Agreement for the Whitewater Flume Restoration Project with Roy McDonald, Environmental and Regulatory Consultant.

Director Burk gave the staff report as contained in the agenda packet. Director Burk gave a brief history of the Flume and explained that he is asking for additional funds for the Whitewater Flume Restoration Project. He is asking for additional funding because the Forest Service denied our application for a special use permit. Director Burk is asking for an additional \$23,000.00 in order to fund the services needed by Roy McDonald, Environmental and Regulatory Consultant to implement a Federal Energy Regulatory Commission (FERC) power license. The reason this was not done originally was because the shareholders could not agree on the conditions' of the contract so it was stated that this could be done at a later time if necessary.

Councilmember Botts asked Duane to explain the reason we are doing this in order to bring the new council up to date.

Director Burk gave a brief history of the Flume and past agreements related to the Flume.

Councilmember Welch said he was under the impression that when Edison handed over their rights to the Flume that they were supposed to repair it and asked if that was correct.

Director Burk said that is correct and a legal agreement is in process.

Mayor Franklin asked if the issue for tonight is to pay somebody to continue this process.

Director Burk confirmed that the proposal tonight is for an additional \$23,600.00 for the amendment of the FERC.

Diego Rose, Banning Business Owner, asked where the money for this project is coming from.

Don Smith, Banning Resident, stated that the water canyon is responsible for the vast majority of the water we use. Don said it is imperative that the water keeps flowing to that canyon and he encourages council to keep this water in our water basin.

John Garcia, Banning Resident, says if we are short on water why are we providing water to the Sunlakes lake. He suggests we use the water for the people of Banning.

Director Burk addressed the public comments. In regards to the first question he said there is money set aside in the capital improvement fund, identified in the strategic plan. It is important to note that the City is bound by a contract that was signed in 1922 and that is why rates have to be where they are, to satisfy these obligations. He also stated that Sunlakes residents pay for the water that goes to the lake through a meter.

**Motion Miller/Welch that the City Council adopt Resolution No. 2013-09 UA, Approving additional funding for the Professional Services Agreement with Roy McDonald, Environmental and Regulatory Consultant in an amount of \$23,600.00 for additional professional services related to the Whitewater Flume Restoration Project for a total contract amount “not to excess” \$79,600.00; and Authorizing the Administrative Services Director to make necessary adjustments and appropriations in an amount of \$23,600.00 from the Water Capital Facility Fund to Account No. 661-6300-471.33-11 (Professional Services). Motion carried, all in favor.**

2. Resolution No. 2013-03 SA, Authorizing an increase of additional \$50,000.00 in the budget limit of the professional services agreement with Urban Futures, Inc.

Recommendation: That the Successor Agency: adopt Resolution No. 2013-03 SA, authorizing a contract amendment of \$50,000.00 for a new total of \$280,000 with Urban Futures, Inc. for expert financial management related services with respect to the ongoing wind down of the Successor Agency; and Authorize the Administrative Services Director/Deputy City Manager to make necessary budget adjustments and to increase the current Purchase Order for the Professional Services Agreement with Urban Futures, Inc.

Director Manis gave the staff report as contained in the agenda packet stating that the Successor Agency uses the services of Urban Futures, Inc. to assist in former redevelopment related activities, projects and the wind down process of former Redevelopment Agency. He requests the approval of the 5<sup>th</sup> amendment to the current agreement we have with them, for their ongoing expert financial consulting services with respect to the Successor Agency's wind down process, which is mandated by the State of California. It is important to note that the

services they provided to us as the Redevelopment Agency in 2009 differ from the services they provide to us now as the Successor Agency. Previously they aided in development and now they strictly aid in the wind down process for the former Redevelopment Agency. These services have been included in the City's recognized obligations payment schedule (ROPS) which was approved by the State Department of Finance. He asked the City Council to approve Resolution No. 2013-03 SA.

Mayor Franklin asked if this was required

Director Manis confirmed it is required by the State that maintain our ROPS and that we do not have the staff to do this in house and some of the details of this require an expert financial consultant who works with the state on a regular basis.

Mayor Franklin asked the Director to explain what DDR stands for.

Director Manis explained DDR stands for Due Diligence Review. There are 2 DDR's that had to be done; a housing DDR and a DDR for everything outside housing. The DDR is a onetime requirement but the ROPS must be updated every 6 months.

**Motion Miller/Peterson that the City Council adopt Resolution No. 2013-03 SA; authorizing a contract amendment of \$50,000 for a new total of \$280,000 with Urban Futures, Inc., for expert financial management related services with respect to the ongoing wind down of the Successor Agency; and Authorize the Administrative Services Director/Deputy City Manager to make necessary budget adjustments and to increase the current Purchase Order for the Professional Services Agreement with Urban Futures Inc. Motion carried, all in favor.**

Mayor Franklin recessed the joint meetings and reconvened the regular City Council Meeting

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

**City Council**

Councilmember Miller commented on comments made about Sunlakes by saying Sunlakes is a part of Banning and it doesn't help to try to separate Sunlakes from the rest of Banning. Sunlakes pays the same as all other residents. He finished by saying it is not the job of the council to favor Sunlakes, it is to benefit Banning as a whole.

Mayor Franklin announced that she learned from the Clean Energy Summit last week that a bill was adopted, through the California Energy Commission. The bill will require the building energy code to have 25% more stringent measures on single family residents, 14% more stringent measures on multifamily housing and 30% on nonresidential buildings. Mayor Franklin said this will have a direct impact on development in our city as developers find out how difficult the requirements are in order to develop.

Mayor Franklin also went to the Southern California Association of Governments where they talked about the dollars that would come from the cap and trade auction. They are anticipating 500 million dollars next year and they are talking about where that money is going to go. We are trying to get a list of the cities they are looking at funding so we know whether or not we qualify for some of the funds.

Mayor Franklin reminded the public of the disaster preparedness expo on April 20<sup>th</sup> at the Community Center from 10AM-2PM. The transit will be running along Wilson St. and come around by Kmart. There will be a lot of demonstrations and information. She hopes the community will come out and participate.

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

Report by City Manager

City Manager Takata asked the Council if they were happy with the way the Housing Element is now or should another workshop be scheduled.

**Mayor Franklin asked council to take vote as to whether or not to have another workshop.  
Motion carried, 4 with ayes. Councilmember Botts said no**

#### ITEMS FOR FUTURE AGENDAS

New Items –

1. Committee assignments
2. “Let’s Move” Healthy Initiative Program

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Consideration of an “in-house” attorney vs. contract
3. Policy regarding “Presentations” to City Council
4. Extend the public comment period from 3 minutes to 5 minutes.

#### ADJOURNMENT

By common consent the meeting adjourned at 6:40 p.m.

Prepared By:

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Jessica Hicks, Deputy City Clerk

Approved By:

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.

## CITY COUNCIL AGENDA

**Date:** April 23, 2013

**TO:** City Council

**FROM:** June Overholt, Administrative Services Director

**SUBJECT:** Approval of Accounts Payable and Payroll Warrants for Month of February 2013

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

**FISCAL DATA:** The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of February 2013.

The reports are:

Expenditure approval lists	
February 7, 2013	1,092,632.90
February 14, 2013	547,529.09
February 21, 2013	335,322.68
February 28, 2013	231,215.94
April 11, 2013	2,163,378.69 (February Month End)
Payroll check registers	
February 8, 2013	3,952.02
February 22, 2013	3,771.63
Payroll direct deposits*	
February 8, 2013	278,606.30
February 22, 2013	268,902.11

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

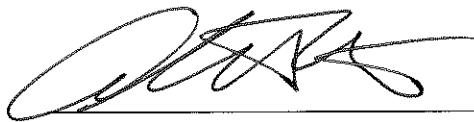
Report Prepared by: Jenna Harrell, Accounts Payable

**RECOMMENDED BY:**



June Overholt  
Administrative Services Director

**APPROVED BY:**



Andy Takata  
City Manager

# CITY of BANNING

## Fund/Department Legend

*Fund/Department Legend*

### 0001 General Fund Departments

0001 – General  
1000 – City Council  
1200 – City Manager  
1300 – Human Resources  
1400 – City Clerk  
1500 – Elections  
1800 – City Attorney  
1900 – Fiscal Services  
1910 – Purchasing & A/P  
2060 – TV Government Access  
2200 – Police  
2210 – Dispatch  
2279 – TASIN – SB621 (Police)  
2300 – Animal Control  
2400 – Fire  
2479 – TASIN – SB621 (Fire)  
2700 – Building Safety  
2740 – Code Enforcement  
2800 – Planning  
3000 – Engineering  
3200 – Building Maintenance  
3600 – Parks  
4000 – Recreation  
4010 – Aquatics  
4050 – Senior Center  
4060 – Sr. Center Advisory Board  
4500 – Central Services  
4800 – Debt Service  
5400 – Community Enhancement

204 – D.A.R.E. Donation Fund  
300 – City Administration COP Debt Service  
360 – Sun Lakes CFD #86-1  
365 – Wilson Street #91-1 Assessment Debt  
370 – Area Police Computer Fund  
375 – Fair Oaks #2004-01 Assessment Debt  
376 – Cameo Homes  
400 – Police Facilities Development  
410 – Fire Facilities Development  
420 – Traffic Control Facility Fund  
421 – Ramsey/HIGHLAND Home Road Signal  
430 – General Facilities Fund  
441 – Sunset Grade Separation Fund  
444 – Wilson Median Fund  
451 – Park Development Fund  
470 – Capital Improvement Fund  
475 – Fair Oaks #2004-01 Assessment District  
600 – Airport Fund  
610 – Transit Fund  
660 – Water Fund  
661 – Water Capital Facilities  
662 – Irrigation Water Fund  
663 – BUA Water Capital Project Fund  
669 – BUA Water Debt Service Fund  
670 – Electric Fund  
672 – Rate Stability Fund  
673 – Electric Improvement Fund  
674 – '07 Electric Revenue Bond Project Fund  
675 – Public Benefit Fund  
678 – '07 Electric Revenue Bond Debt Service Fund  
680 – Wastewater Fund  
681 – Wastewater Capital Facility Fund  
682 – Wastewater Tertiary  
683 – BUA Wastewater Capital Project Fund  
685 – State Revolving Loan Fund  
689 – BUA Wastewater Debt Service Fund  
690 – Refuse Fund  
700 – Risk Management Fund  
702 – Fleet Maintenance  
703 – Information Systems Services  
761 – Utility Billing Administration  
805 – Redevelopment Obligation Retirement Fund  
810 – Successor Housing Agency  
830 – Debt Service Fund  
850 – Successor Agency  
855 – 2007 TABS Bond Proceeds  
856 – 2003 TABS Bond Proceeds  
857 – 2003 TABS Bond Proceeds Low/Mod  
860 – Project Fund

### All Other Funds

002 – Developer Deposit Fund  
003 – Riverside County MOU  
100 – Gas Tax Street Fund  
101 – Measure A Street Fund  
103 – SB 300 Street Fund  
104 – Article 3 Sidewalk Fund  
110 – CDBG Fund  
111 – Landscape Maintenance  
132 – Air Quality Improvement Fund  
140 – Asset Forfeiture/Police Fund  
148 – Supplemental Law Enforcement  
149 – Public Safety Sales Tax Fund  
150 – State Park Bond Fund  
190 – Housing Authority Fund  
200 – Special Donation Fund  
201 – Sr. Center Activities Fund  
202 – Animal Control Reserve Fund  
203 – Police Volunteer Fund

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** April 23, 2013

**TO:** Mayor and City Council

**FROM:** David J. Aleshire, City Attorney  
Lutfi Z. Kharuf, Deputy City Attorney

**SUBJECT:** Settlement and Release Agreement with the County of Riverside  
Regarding Property Tax Administration Fees

**RECOMMENDED ACTION:** That the City Council approve:

- The counter-offer from the County of Riverside for repayment of Property Tax Administration Fees (“PTAF”) in two equal payments over the next two years, instead of three equal payments over the next three years.
- The Administrative Services Director to make the necessary revenue budget adjustments for this unexpected revenue.

**DISCUSSION:** On December 20, 2012, Banning submitted a claim to the Board of Supervisors for the County of Riverside demanding repayment of improperly withheld Property Tax Administration Fees (“PTAF”). This was in response to a recent Supreme Court ruling (*City of Alhambra et al. v. County of Los Angeles et al.*, S85457), which held that the method of calculating PTAF resulted in too much property tax being withheld. As a result, many counties, including Riverside, will have to repay substantial amounts.

The County has taken the position that all claims filed by cities for reimbursement of PTAF are untimely, and has offered a settlement to each city for repayment of the past three (3) years of PTAF in three equal annual installments, beginning within 1-2 months after acceptance of the settlement.

Banning submitted a counter-offer to the County requesting repayment of the full amount in one lump sum, or alternatively, repayment in two equal sums with interest. The County rejected this offer, and instead offered to repay the City in two equal sums with no interest.

The County is offering to pay Banning \$80,810.00. The recommendation is to accept the counter-offer submitted by the County. The first payment of \$40,405 will likely be received before the end of June 2013. The second payment of \$40,405 will be received next fiscal year. This is a one-time revenue source. The City is benefiting from the outcome of the court ruling in the County of Los Angeles.

**FISCAL IMPACT:**

If accepted, the County will repay the City of Banning a total amount of \$80,810.00, in two equal annual payments of \$40,405.00.

**PREPARED BY:**

Aleshire & Wynder, LLP

**REVIEWED BY:**



June Overholt

Administrative Services Director/Deputy City Manager

**APPROVED BY:**



Andrew J. Takata

City Manager

Attachment: Settlement and Release Agreement

## **SETTLEMENT AND RELEASE AGREEMENT**

**THIS SETTLEMENT AND RELEASE AGREEMENT** (“Agreement”) is entered into as of April 23, 2013 (the “Effective Date”), by and among the County of Riverside, a political subdivision of the State of California (referred to herein as “County”), and City of Banning (referred to herein as “City”). County and City are sometimes referred to individually as “Party” and collectively as “Parties.”

### **RECITALS**

**A.** On December 26, 2012, City presented a governmental claim (“Claim”), requesting compensation for Property Tax Administrative Fees (PTAF) withheld by County, a copy of which is attached hereto as “Exhibit “A.”

**B.** In December 2012, the Riverside County Auditor-Controller made allocations consistent with the California Supreme Court’s decision in the *City of Alhambra v. County of Los Angeles* case.

**C.** County disputes the amount that City claims that it is owed by the County with respect to the PTAF allocations.

**D.** County and City now desire to fully and finally settle and resolve any and all rights, claims, counterclaims, disputes, causes or action, demands for just compensation, and alleged claims which currently exist, or may exist in the future, with respect to the PTAF allocations.

**E.** In consideration of the settlement of this matter and a mutual release of all claims, County and City have agreed upon terms and conditions for settlement as more fully set forth herein.

**NOW, THEREFORE**, in consideration of the above Recitals, which are incorporated into this Agreement, and of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, County and City Contractors hereby agree as follows:

**1. Payment.** The County shall cause the sum of \$80,810.00 for PTAF allocations from Fiscal Year 2009-10, Fiscal Year 2010-11, and Fiscal Year 2011-12, to be paid to City. This sum will be paid to City in a two equal installments. The first installment of \$40,405.00, shall be paid on or about May 20, 2013. The second installment of \$40,405.00 shall be paid on or about May 20, 2014.

Date of Payment	Principal Payment	Interest Payment	Total Due
May 20, 2013	\$40,405.00	\$0	\$40,405.00
May 20, 2013	\$40,405.00	\$0	\$40,405.00

**2. No Admission of Liability.** The parties understand, acknowledge and agree that this Agreement represents a compromise of disputed claims, facts and allegations and shall not be treated by any party thereto, as an admission of liability or fault of any other party hereto for any purpose whatsoever or as an admission as to claims for any purpose whatsoever or as an admission as to claims of interest in any manner whatsoever.

**3. Each Party to Bear Own Attorneys' Fees and Costs.** The parties expressly understand, acknowledge and agree to bear their own costs and expenses to date, including attorneys' fees, incurred in prosecuting and/or defending this matter, in resolving their disputes herein and in preparing and negotiating this Agreement.

4. **Parties Jointly Drafted the Agreement.** The parties understand, acknowledge and agree that each of the parties hereto has contributed to the drafting of this Agreement, and no provision hereof shall be construed against any party causing this Agreement to be drafted.

5. **Mutual Release.** The Parties hereby release, and fully and finally and forever discharge each other, and each of their respective predecessors, successors, heirs, executors, administrators, assigns, agents, directors, officers, partners, employees, contractors, representatives, lawyers, and all persons acting by, through, under, or in concert with them or any of them of and from any and all manner of actions or causes of action, suits, debts, liens, liabilities, claims, demands, and damages of any nature whatsoever, known or unknown, fixed or contingent, existing or as the law may change, including, without limitation, to claims which any Party now has against the other Party as alleged in or arising out of, or which could have been raised in, based upon, or related to the Demand for Arbitration, whether provided by law at the time of the execution of this Agreement or which may in the future be provided by law and retroactively applied to this matter.

6. **Waiver of Civil Code Section 1542.** The Parties hereby acknowledge that they have been advised by their attorneys concerning, and are familiar with, the provisions of California Civil Code section 1542, which provides as follows:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”**

It is the intention of the Parties that the releases entered into as part of this Agreement shall be effective as a bar to all actions, causes of action, obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands of any character, nature and kind, known or unknown, suspected or unsuspected, to be so barred; in furtherance of which intention the Parties expressly waive any and all right and benefit conferred upon them by the provisions of Section 1542 of the California Civil Code, except this waiver shall not act to waive any representations, warranties, indemnities, actions, causes of action, obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands of any character as a result of a breach of this Agreement. The Parties hereby acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was bargained for separately. The Parties expressly agree that the release provisions herein contained shall be given full force and effect in accordance with each and all of their express terms and provisions, including but not limited to those terms and provisions relating to unknown or unsuspected claims, demands, and causes of action herein above specified. The Parties assume the risk of the foregoing and of the subsequent discovery or understanding of any matter, fact, or law which if now known or understood would in any respect have affected this Agreement.

Each Party acknowledges that it may have sustained damage, loss, costs or expenses which are presently unknown and unsuspected, and such damages, loss, costs or expenses which may have been sustained may give rise to additional damages, loss, costs or expenses in the future. Each Party also acknowledges that changes in law may occur in the future which may apply retroactively and may allow

such Party to be entitled to further claims for damages, loss, costs or expenses which are presently unknown and unsuspected. Nevertheless, each Party hereby acknowledge that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waive any and all rights which it may have under California Civil Code Section 1542, or under any statute or common law or equitable principle of similar effect.

7. **Attorneys' Fees.** In any action to enforce the terms of this Agreement, the Prevailing Party shall be entitled to recover from the non-prevailing Party all reasonable attorneys' fees, expert fees, and court costs.

8. **Entire Agreement.** This Agreement and the documents referenced herein contain the entire agreement between the Parties. This Agreement shall not be modified in any manner except by an instrument in writing executed by the Parties.

9. **Severability.** If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

10. **Waivers.** A waiver of a breach or covenant or other provision in this Agreement shall not be deemed a waiver of any other breach or covenant or provision in this Agreement and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act.

11. **Construction.** The Section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the Parties. The

Section headings, captions, and arrangement of this instrument do not in any way affect, limit, amplify, or modify the terms and provisions of this Agreement. The singular form shall include plural, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if all Parties have prepared it. Unless otherwise indicated, all references to Sections are to this Agreement. All exhibits referred to in this Agreement are attached to it and incorporated in it by this reference.

**12. Merger.** All of the terms, provisions, representations, warranties, covenants, and indemnity obligations of the Parties under this Agreement shall survive each Close of Escrow and shall not be merged in any Deed or other documents.

**13. Counterparts.** This Agreement may be executed in one or more counterparts. Each counterpart shall be deemed an original and all, taken together, shall constitute one and the same instrument.

**14. No Obligations to Third Parties.** This Agreement is not intended to create any third-party beneficiaries, and the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties, to any person or entity other than the Parties. Additionally, no third party may enforce the terms of this Agreement.

**15. Governing Law and Venue.** This Agreement and any dispute arising hereunder shall be governed by California law. Each Party consents to the exclusive jurisdiction of the state and federal courts sitting in the County of Riverside, State of California, in any action on a claim arising out of, under, or in connection with this Agreement or the transactions contemplated by this Agreement. EACH PARTY

HEREBY ACKNOWLEDGES THAT THE FOREGOING VENUE PROVISIONS HAVE BEEN CHOSEN AS THE APPROPRIATE AND CONVENIENT FORUM FOR ANY SUCH ACTION AND WAIVES ANY RIGHT TO OBJECT TO JURISDICTION ON THE BASIS OF LACK OF PERSONAL JURISDICTION OR *FORUM NON CONVENIENS*.

IN WITNESS WHEREOF, the County and City have executed this Agreement to be effective on and as of the Effective Date set forth in the preamble of this Agreement.

COUNTY OF RIVERSIDE

Date: \_\_\_\_\_ By: \_\_\_\_\_  
County of Riverside

CITY OF BANNING

Date: \_\_\_\_\_ By: \_\_\_\_\_  
City

**APPROVED AS TO FORM:**

OFFICE OF COUNTY COUNSEL

Date: \_\_\_\_\_ By: \_\_\_\_\_  
L. ALEXANDRA FONG  
Deputy County Counsel  
Attorneys for County of Riverside

**APPROVED AS TO FORM:**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Attorneys for City

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** April 23, 2013

**TO:** City Council

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

**SUBJECT:** Approve Amendment to contract with Norman A. Traub Associates for Investigation Services for the City of Banning Police Department.

**RECOMMENDATION:** "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 \$45,000."

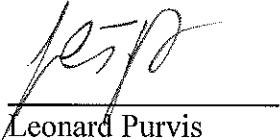
**JUSTIFICATION:** Amendment of this contract allows the Police Department to continue utilizing the investigative services of Norman A. Traub Associates for sensitive personnel matters.

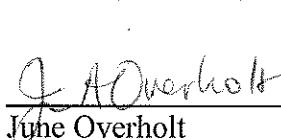
**BACKGROUND & ANALYSIS:** During the course of the current fiscal year the Banning Police Department has required the professional and independent services of Norman A. Traub Associates for personnel investigations involving employees of the City of Banning. Because of the number of investigations required during the last year, the limit (\$25,000) on the compensation for services with Norman A. Traub Associates will be reached shortly.

The requested increase in the spending limit for services with Norman A. Traub Associates is necessary to complete several personnel investigations that require an independent and professional review for the protection of the City and the Banning Police Department.

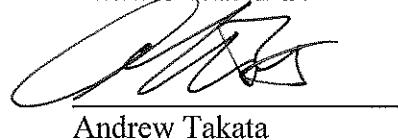
**FISCAL DATA:** Sufficient funds are available to cover this request in the Police Department's Professional Services Account (001-2200-421-3311).

**RECOMMENDED BY:** **REVIEWED BY:**

  
Leonard Purvis  
Chief of Police

  
Juhe Overholt  
Administrative Services Director

**APPROVED BY:**

  
Andrew Takata  
City Manager

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** April 23, 2013

**TO:** City Council

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

**SUBJECT:** Resolution No. 2013-27, authorizing the destruction of city records as provided by Section 34090 of the California Government Code, Section 832.5 of the California Penal Code, and Resolution No. 2003-26 of the City of Banning.

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

**JUSTIFICATION:** The City Clerk and the City Attorney have certified the records listed in Attachment A to Resolution 2013-27 are no longer required to be kept by the City.

**BACKGROUND:** In March of 2003, the City Council adopted Resolution No. 2003-26, setting forth the schedule for destruction of City Records. The records listed in Attachment A of Resolution No. 2012-26 have all reached the end of their retention period.

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

**FISCAL DATA:** This request requires no funds.

**RECOMMENDED BY:**



Leonard Purvis  
Chief of Police

**APPROVED BY:**



Andrew Takata  
City Manager

**RESOLUTION NO. 2013-27**

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

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

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

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

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

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

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

**PASSED, APPROVED, AND ADOPTED** this 23<sup>rd</sup> day of April, 2013.

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Deborah Franklin, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT

ATTEST

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

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Marie A. Calderon, City Clerk  
City of Banning

40

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-27 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 23<sup>rd</sup> day of April, 2013, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

# Attachment A

## BPD INTERNAL AFFAIRS INVESTIGATIONS INVENTORY WORKSHEET

DEPARTMENT Police	Banning Police Department					
INVENTORY TAKEN BY: Leonard Purvis, Chief of Police	CHIEF OF POLICE: <i>L.P.</i> 4-9-13 (Signature/Date)					
<b>RECORDS INVENTORY</b>						
IA CASE NUMBER	DATE COMPLETED	FILE LOCATION	MEDIA TYPE	YEARS COVERED	DOCUMENT ORIG COPY	Disposition
#2006-18	9/7/2006	BPD	Paper, Cassette, Video, CD	2006 & Prior	X	Preventable
#2006-22	3/2/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Preventable
#2006-29	3/2/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Non Preventable
#2007-01	3/2/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Non Preventable
#2007-02	4/19/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Not Sustained
#2007-03	5/21/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Unfounded / Exonerated
#2007-04	7/3/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Unfounded
#2007-05	7/12/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Non Preventable
#2007-06	9/19/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Preventable
#2007-07	8/27/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Sustained
#2007-08	9/18/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Non Preventable
#2007-09	9/24/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Within Policy
#2007-10	11/9/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Preventable
#2007-11	11/21/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Preventable
#2007-12	11/7/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Preventable
#2007-13	2/21/2008	BPD	Paper, Cassette, Video, CD	2008 & Prior	X	Sustained
#2007-14	11/28/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Preventable
#2007-15	12/26/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Unfounded / Not Sustained
#2007-16	2/4/2008	BPD	Paper, Cassette, Video, CD	2008 & Prior	X	Unfounded
#2007-17	12/26/2007	BPD	Paper, Cassette, Video, CD	2007 & Prior	X	Not Sustained
#2007-19	1/30/2008	BPD	Paper, Cassette, Video, CD	2008 & Prior	X	Preventable
#2007-20	1/18/2008	BPD	Paper, Cassette, Video, CD	2008 & Prior	X	Sustained
#2007-21	1/25/2008	BPD	Paper, Cassette, Video, CD	2008 & Prior	X	Non Preventable

## BPD ADMINISTRATIVE INQUIRY INVENTORY WORKSHEET

## REQUEST FOR DESTRUCTION OF RECORDS

Date: 04-23-13  
Department: Banning Police Department

We are requesting destruction of the attached records due to:

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

### Approvals:

Department Head \_\_\_\_\_ Date \_\_\_\_\_

City Clerk \_\_\_\_\_ Date \_\_\_\_\_

City Attorney \_\_\_\_\_ Date \_\_\_\_\_

Destruction Date:	Destroyed By:	Remarks:

Return signed original to City Clerk when completed.

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## CITY COUNCIL AGENDA

**DATE:** April 23, 2013

**TO:** City Council

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

**SUBJECT:** Resolution No. 2013-46, "Approving the Measure 'A' Five Year Capital Improvement Plan"

**RECOMMENDATION:** Adopt Resolution No. 2013-46 approving the Measure "A" Five Year Capital Improvement Plan as presented.

**JUSTIFICATION:** The City is required to submit a Five Year Capital Improvement Plan ("CIP") annually to the Riverside County Transportation Commission ("RCTC") in order to receive Measure "A" funds.

**BACKGROUND:** Voters in Riverside County approved Measure "A" in 1988, which authorized the Riverside County Transportation Commission to impose an additional one-half percent (0.5%) sales tax for the next 20 years to be used for improvements of state highways, public transit systems, and local streets. In 2002, voters in Riverside County approved a 30-year extension of the one-half percent sales tax for transportation improvements.

RCTC has estimated that the City of Banning will receive Measure "A" Funds totaling \$2,496,000.00 as follows for the next five years:

<u>Year</u>	<u>Estimated Amount</u>
2013/2014	\$470,000.00
2014/2015	\$484,000.00
2015/2016	\$499,000.00
2016/2017	\$514,000.00
2017/2018	\$529,000.00

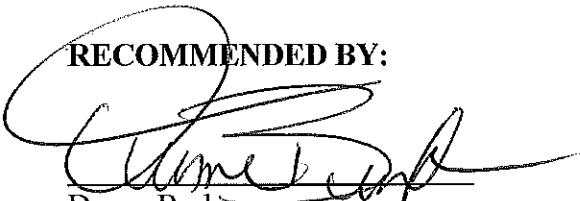
Each City in Riverside County is required by the RCTC to submit a Five Year CIP, as approved by its governing board, to indicate how Measure "A" funding is to be utilized over the next five years. The list of street locations under the Five Year CIP is attached as Exhibit "A".

In addition, the City is required to submit a Project Status Report for FY 2012/2013, which has been prepared by staff and attached as Exhibit "B". The Maintenance of Effort Certification, attached as Exhibit "C", must be signed by the City Manager and submitted to the RCTC along with the Five-Year CIP.

The program is intended to support public transit systems, street pavement rehabilitation, and public street improvements. The priority list of street locations can be changed by the City Council during the design stage or at the time of award of the construction contract.

**FISCAL DATA:** The estimated revenue for the City of Banning's Measure "A" Program was provided by the RCTC. The actual amounts will be determined during each Fiscal Year.

**RECOMMENDED BY:**



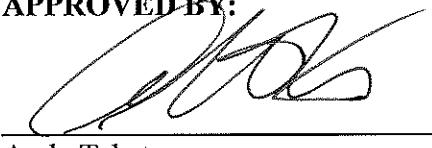
Duane Burk  
Director of Public Works

**REVIEWED BY:**



June Overholt  
Deputy City Manager/  
Administrative Services Director

**APPROVED BY:**



Andy Takata  
City Manager

**RESOLUTION NO. 2013-46**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA, APPROVING THE MEASURE "A" FIVE YEAR CAPITAL IMPROVEMENT  
PLAN**

**WHEREAS**, in 1988, Riverside County voters approved a 0.5% sales tax (Measure "A") over a 20-year span to be used toward improvements of state highways, local transit systems, and public streets; and

**WHEREAS**, in 2002, Riverside County voters approved a 30-year extension of the Measure "A" 0.5% sales tax; and

**WHEREAS**, each City in Riverside County is required by the Riverside County Transportation Commission ("RCTC") to submit a Five Year Capital Improvement Plan (attached as Exhibit "A"), as approved by its governing board, to indicate how Measure "A" funding is to be utilized over the next five years; and

**WHEREAS**, the RCTC has estimated that the City of Banning will receive a total of \$2,496,000.00 in Measure "A" funds over the next five years; and

**WHEREAS**, the program is intended to support local transit systems, street pavement rehabilitation and public street improvements at various locations; and

**WHEREAS**, the priority list of street locations can be changed by the City Council during the design stage or at the time of award of the construction contract.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning, that Resolution No. 2013-46, "Approving the Measure 'A' Five Year Capital Improvement Plan," is hereby adopted.

**PASSED, APPROVED and ADOPTED** this 23<sup>th</sup> day of April, 2013.

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Deborah Franklin, Mayor

ATTEST:

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Marie A. Calderon, City Clerk

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-46 was duly adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 23<sup>rd</sup> of April, 2013.

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

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

---

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

**EXHIBIT "A"**

**MEASURE "A" FIVE YEAR CAPITAL IMPROVEMENT PLAN**

**FISCAL YEARS 2013/2014-2017/2018**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
MEASURE "A" LOCAL FUNDS PROGRAM  
FISCAL YEAR 2013/2014 – 2017/2018**

Agency: City of Banning  
Page: 1 of 5  
Prepared By: Arturo Vela  
Phone No. (951) 922-3130  
Date: April 23, 2013

Estimated Prior Year Measure A Balance: \$0.00  
Estimated FY 2013/2014 Measure A Allocation: \$470,000.00  
Estimated Measure A Available for FY 2013/2014 Projects: \$470,000.00

ITEM NO.	FY 2013/2014 PROJECT NAME/LIMITS	PROJECT TYPE	TOTAL COST (\$1,000)	MEASURE "A" FUND (\$1,000)
1.	Hoffer Street: Alessandro Road to Hargrave Street	A.C. Overlay	160	160
2.	Alessandro Road: Williams Street to Ramsey Street	A.C. Overlay	60	60
3.	Ramsey Street: Hargrave Street to San Gorgonio Avenue	A.C. Overlay	250	250
			<b>TOTALS</b>	<b>470</b>

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
MEASURE "A" LOCAL FUNDS PROGRAM  
FISCAL YEAR 2013/2014 – 2017/2018**

Agency: City of Banning

Page: 2 of 5

Prepared By: Arturo Vela

Phone No. (951) 922-3130

Date: April 23, 2013

Estimated Prior Year Measure A Balance: \$0.00

Estimated FY 2014/2015 Measure A Allocation: \$484,000.00

Estimated Measure A Available for FY 2014/2015 Projects: \$484,000.00

ITEM NO.	FY 2014/2015 <b>PROJECT NAME/LIMITS</b>	PROJECT TYPE	<b>TOTAL COST</b>	<b>MEASURE "A" FUND (\$1,000)</b>
			(\$1,000)	(\$1,000)
1.	Cherry Street: Hoffer Street to George Street	A.C. Overlay	110	110
2.	Lincoln Street: San Gorgonio Avenue to Hargrave Street	A.C. Overlay	280	280
3.	City Wide Slurry Seal	Slurry Seal	94	94
		<b>TOTALS</b>	<b>484</b>	<b>484</b>

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
MEASURE "A" LOCAL FUNDS PROGRAM  
FISCAL YEAR 2013/2014 – 2017/2018**

Agency: City of Banning

Page: 3 of 5

Prepared By: Arturo Vela

Phone No. (951) 922-3130

Date: April 23, 2013

Estimated Prior Year Measure A Balance: \$0.00

Estimated FY 2015/2016 Measure A Allocation: \$499,000.00

Estimated Measure A Available for FY 2015/2016 Projects: \$499,000.00

ITEM NO.	FY 2015/2016 PROJECT NAME/LIMITS	PROJECT TYPE	TOTAL COST (\$1,000)	MEASURE "A" FUND (\$1,000)
1.	Allen Street: Hoffer Street to George Street	A.C. Overlay	90	90
2.	Nicolet Street: Sims Street to Sunset Avenue	A.C. Overlay	320	320
3.	City Wide Slurry Seal	Slurry Seal	89	89
		<b>TOTALS</b>	<b>499</b>	<b>499</b>

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
MEASURE "A" LOCAL FUNDS PROGRAM  
FISCAL YEAR 2013/2014 – 2017/2018**

Agency: City of Banning  
 Page: 4 of 5  
 Prepared By: Arturo Vela  
 Phone No. (951) 922-3130  
 Date: April 23, 2013

Estimated Prior Year Measure A Balance: \$0.00  
 Estimated FY 2016/2017 Measure A Allocation: \$514,000.00  
 Estimated Measure A Available for FY 2016/2017 Projects: \$514,000.00

ITEM NO.	FY 2016/2017 PROJECT NAME/LIMITS	PROJECT TYPE	TOTAL COST (\$1,000)	MEASURE "A" FUND (\$1,000)
1.	Ramsey Street: San Gorgonio Avenue to 8 <sup>th</sup> Street	A.C. Overlay	220	220
2.	8 <sup>th</sup> Street: Lincoln Street to Westward Avenue	A.C. Overlay	130	130
3.	Charles Street: Hargrave Street to 1037 E. Charles Street	A.C. Overlay	82	82
4.	Wesley Street: Hargrave Street to 1401 E. Wesley Street	A.C. Overlay	82	82
		<b>TOTALS</b>	<b>514</b>	<b>514</b>

**MEASURE "A" LOCAL FUNDS PROGRAM**

**FISCAL YEAR 2013/2014 – 2017/2018**

Agency: City of Banning  
Page: 5 of 5  
Prepared By: Arturo Vela  
Phone No. (951) 922-3130  
Date: April 23, 2013

Estimated Prior Year Measure A Balance: \$0.00

Estimated FY 2017/2018 Measure A Allocation: \$529,000.00

Estimated Measure A Available for FY 2017/2018 Projects: \$529,000.00

ITEM NO.	FY 2017/2018  PROJECT NAME/LIMITS	PROJECT TYPE	TOTAL COST (\$1,000)	MEASURE "A" FUND (\$1,000)
			100	100
1.	Cottonwood Road: 8 <sup>th</sup> Street to 12 <sup>th</sup> Street	Overlay	100	100
2.	George Street: 8 <sup>th</sup> Street to 12 <sup>th</sup> Street	Overlay	100	100
3.	10 <sup>th</sup> Street: Williams Street to George Street	Overlay	105	105
4.	12 <sup>th</sup> Street: Williams Street to George Street	Overlay	114	114
5.	14 <sup>th</sup> Street: Williams Street to George Street	Overlay	110	110
		<b>TOTALS</b>	<b>529</b>	<b>529</b>

**EXHIBIT “B”**

**PROJECT STATUS REPORT**

**FY 2012/2013**

RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
MEASURE A LOCAL FUNDS PROGRAM  
PROJECT STATUS REPORT FY 2012-2013

Agency: City of Banning  
Page 1 of 1  
Prepared by: Arturo Vela  
Phone #: (951) 922-3130  
Date: April 23, 2013

Item No. 1	Project Name/Limits	Project Type	Total Cost (\$1,000's)	Measure A Funds (\$1,000's)	Estimated Completion	Status
1	Project No. 2013-01, "Street Improvements on Westward Avenue". The limits are from Highland Home Road to Sunset Avenue.	Street Construction	1,000	454*	November, 2013	Design 75% Complete

\*Measure A funding for this project included rollover amounts from previous years. The balance will be funded using Proposition 1B funding.

**EXHIBIT "C"**

**MAINTENANCE OF EFFORT CERTIFICATION**

**2013-2014 MEASURE A PROGRAM  
MAINTENANCE OF EFFORT  
CERTIFICATION STATEMENT**

The undersigned agrees and certifies for the CITY OF BANNING (the "Agency") that sales tax transportation funds received pursuant to Ordinance No. 02-001 of the Riverside County Transportation Commission (Measure "A") shall be used in compliance with the Commission's Maintenance of Effort Guidelines and a base year amount of \$164,325.00, approved by the Commission at its July 11, 2012 meeting, and that the Agency shall not use such funds to replace discretionary Local Funds previously expended by the Agency for local transportation purposes. The Agency hereby acknowledges that the failure of the Agency to continue such local expenditure shall result in a reduction or loss of Measure "A" funds. Additionally, the Agency commits to expending Measure A Local Streets and Roads funds for projects listed in the Five Year Capital Improvement Plan as approved by Riverside County Transportation Commission.

Dated: \_\_\_\_\_, 2013

---

Andy Takata, City Manager

Attest:

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Secretary

**CITY COUNCIL AGENDA  
CONSENT CALENDAR**

**DATE:** **April 23, 2013**

**TO:** **City Council**

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

**SUBJECT: Banning Police Officers Association - Memorandum of Understanding 2013**

**RECOMMENDATION:** Adopt Resolution No. 2013-47 approving the successor Memorandum of Understanding Between the City of Banning and the Banning Police Officers Association for the period January 8, 2013 through June 30, 2013 ("BPOA MOU 2013").

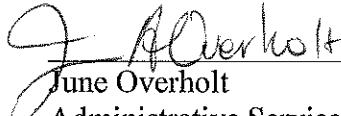
**JUSTIFICATION:** Section 3505.1 of the Meyers-Milias-Brown Act ("MMBA") (Gov't Code Sections 3500-3511) provides that: "If agreement is reached by the representatives of the public agency and a recognized employee organization or recognized employee organizations, they shall jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to the governing body or its statutory representative for determination." Once approved by the governing body of the local agency, a memorandum of understanding becomes a binding agreement between the employee organization and the local government. ***Therefore, City Council approval of the proposed BPOA MOU 2013 is required by the MMBA in order to be binding on the parties.***

**BACKGROUND:** The previous Memorandum of Understanding ("MOU") between the City and the Banning Police Officers Association ("BPOA") expired by its own terms on June 30, 2011 ("BPOA MOU 2010-2011"). The City's labor relations negotiation team and the BPOA labor representatives have met and conferred in labor negotiations since 2011 regarding a successor MOU. The parties implemented pension reform and cost saving measures through a Side Letter Agreement that was adopted by City Council on December 20, 2012 which required employees to pay their full employee contribution to the California Public Employees Retirement System (CalPERS), which currently is nine percent (9%) for Public Safety (sworn personnel) and eight percent (8%) for Miscellaneous (civilian personnel employees), in exchange for a concurrent a six-percent (6%) salary increase and three salary range adjustment. These agreed upon changes to the pre-existing terms and conditions of employment were then to be formalized in a full and complete MOU setting forth all the terms and conditions of employment negotiated between the parties. The BPOA MOU 2013 represents the full and complete MOU. Given its expiration date of June 30, 2013, the parties will shortly be negotiating for a successor MOU.

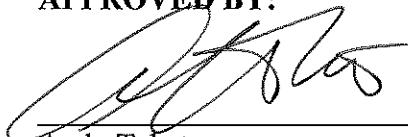
60

**FISCAL DATA** The BPOA made several concessions during negotiations that have been incorporated into the attached BPOA MOU 2013. The MOU results in a nominal fiscal impact to the General Fund. However, the long term benefit for the City is that the employees undertake paying the full employee rate of the CalPERS retirement plan along with two tiered retirement for new legacy members and other salary changes to make their compensation more transparent.

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

Attachments: Resolution No. 2013-47

**RESOLUTION NO. 2013-47**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
APPROVING A SUCCESSOR MEMORANDUM OF UNDERSTANDING BETWEEN  
THE BANNING POLICE OFFICERS ASSOCIATION AND THE CITY OF BANNING**

WHEREAS, the City of Banning ("City") has formally recognized the Banning Police Officers Association ("BPOA") as the exclusive employee organization for the police bargaining unit; and

WHEREAS, the prior Memorandum of Understanding between the City and the BPOA expired on June 30, 2011; and

WHEREAS, the City and BPOA have successfully met and conferred to negotiate a successor BPOA Memorandum of Understanding for the period January 8, 2013 through June 30, 2013 pursuant to the Meyers-Milias-Brown Act ("MMBA") (Gov't Code Sections 3500-3511) and the City's Employer-Employee Relations Resolution No. 2010-45; and

WHEREAS, MMBA Section 3505.1 provides that: "If agreement is reached by the representatives of the public agency and a recognized employee organization or recognized employee organizations, they shall jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to the governing body or its statutory representative for determination"; and

WHEREAS, once approved by the governing body of a local agency, a memorandum of understanding becomes a binding agreement between the employee organization and the local agency.

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

**SECTION 1:**

1. That the City Council approves the Memorandum of Understanding Between the City and the Banning Police Officers Association for the period January 8, 2013 through June 30, 2013, a copy of which is attached hereto and by this reference made a part hereof.

PASSED, APPROVED AND ADOPTED this 23rd day of April, 2013 at Banning, California.

---

Deborah Franklin, Mayor  
City of Banning, California

ATTEST:

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Marie A. Calderon  
City Clerk of the City of Banning

APPROVED AS TO FORM AND  
LEGAL CONTENT

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2013-47 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 23rd day of April, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

MEMORANDUM OF UNDERSTANDING BETWEEN  
THE CITY OF BANNING,  
AND  
THE CITY OF BANNING POLICE OFFICERS' ASSOCIATION  
JANUARY 8, 2013 – JUNE 30, 2013

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## ARTICLE 1 - PREAMBLE

1.1 - Agreement - This Memorandum of Understanding ("MOU" or "Agreement") is entered into between The City of Banning, a Municipal Corporation, hereinafter known as "the City" or "City" and the authorized representatives of the Banning Police Officers' Association, the recognized employee organization of the Police Unit, hereinafter known as "BPOA" or "Unit", relative to wages, hours, and other terms and conditions of employment as provided by Sections 3500 - 3511 of the California Government Code, otherwise known as the Meyers-Millas-Brown Act.

1.2 - Recognition - The City hereby formally recognizes the Banning Police Officers' Association as the only Recognized Employee Organization representing employees in the unit of representation presently or hereafter employed by the City and eligible for inclusion in the Police Unit. It is understood that this Agreement shall constitute a bar to any petition or request for recognition of any unit which includes classifications of employees covered by this Agreement or such petitions to represent such employees at any time during the term hereof. This provision shall not preclude employees from otherwise exercising their rights as may be provided by the Meyers-Millas-Brown Act or the Employer-Employee Relations Resolution of the City.

1.3 - Term - Except as otherwise provided herein, the deal points of this MOU between the City and the Union relative to wages, hours, and other terms and conditions of employment became effective as of adoption of the Side Letter Agreement dated December 20, 2012 incorporated herein by this reference. Thus, while the deal points became effective as of December 20, 2012 per the terms of the Side Letter Agreement, this formal MOU shall be effective upon its adoption by the Banning City Council and continue through June 30, 2013.

1.4 - Represented Classifications - This Agreement covers employees in the following classifications: Police Sergeant, Police Staff Sergeant, Police Master Sergeant, Police Officer, Community Service Officer and Evidence Technician.

## ARTICLE 2 - CONTINUATION OF RULES & POLICIES

2.1 - Other Written Policies - Subject to the terms of this Agreement, all City ordinances, resolutions, rules and regulations, including the City's Personnel Rules and Regulations, the Employer-Employee Relations Resolution (Resolution No. 2010-45) and the Administrative Policies of the City of Banning and the Banning Police Department shall apply during the term of this Agreement.

2.2 - Meet and Confer - The Union and the City agree to meet and confer during the term of this MOU over the adoption, amendment or revision, including repeal, of City ordinances, resolutions, rules and regulations, including the City's Personnel Rules and Regulations, the Employer-Employee Relations Resolution (Resolution No. 2010-45) and the Administrative Policies of the City of Banning and the Banning Police Department, to the extent that such documents contain mandatory subjects of bargaining pursuant to the Meyers-Millas-Brown Act. Should an impasse be reached following such meet and confer

sessions, the provisions of the Employer- Employee Relations Resolution (Resolution No. 2010-45) or any amendment thereto or successor Employer- Employee Relations Resolution will apply.

2.3 - Past Practice - For purposes of this Agreement, a "past practice" shall be defined as an unwritten policy, procedure or work rule, whether or not it affects a mandatory subject of bargaining, and upon which the City, the Union and the bargaining unit employees may have relied through a course of conduct. As of the effective date of this Agreement, all past practices are void, and of no further force or effect.

### **ARTICLE 3 - EMPLOYEE RIGHTS**

3.1 - Non-Discrimination - The provisions of this Agreement shall apply to bargaining unit employees without illegal discrimination based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex (including pregnancy, childbirth and related medical condition), sexual orientation, age, citizenship status, or any other basis protected by applicable law, nor will there be any discrimination with respect to hiring, retention or any condition of employment because of membership or non-membership in the Union, or because of any activities or refraining from activities on behalf of the Union.

3.2 - Union Membership - The Union will accept into membership all eligible persons of the bargaining unit without regard to, race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex (including pregnancy, childbirth and related medical condition), sexual orientation, age, or any other basis protected by applicable law.

3.3 - Rights Granted by State and Federal Law - Except as otherwise provided in this Agreement, the employees covered by this Agreement shall have all rights which may be exercised in accordance with State and Federal Law, and applicable ordinances, resolutions, rules and regulations. However, employees covered by this Agreement shall not have the right to a grievance for violation of any such law, ordinance, resolution or rule, except as specifically set forth herein.

3.4 Gov't Code Section 3502 - Employees shall have the rights provided to them under Government Code section 3502 of the Meyers-Millas-Brown Act.

### **ARTICLE 4 - MANAGEMENT RIGHTS**

4.1 - The Union recognizes and agrees that the City and its representatives have the responsibility and the authority to manage and direct all operations and activities of the City including, but not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards and the processes and the materials to be employed; the right to subcontract any work or operation; to expand or diminish services; to determine the procedures and standards of selection for employment and promotion; determine classifications; direct its employees; take disciplinary action; relieve its employees of duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by

which government operations are to be conducted and to assign work to employees and to establish and change work schedules and assignments and to determine the days and hours when the employees shall work; take all necessary actions to carry out its mission in emergencies; and, exercise complete control and discretion over its organization and work performance technology.

#### **ARTICLE 5 - DUES DEDUCTION**

5.1 - Dues Deduction - The City shall deduct one (1) month's current and periodic Union dues from the wages and/or Leave benefits of each employee who voluntarily executes and delivers to the City a payroll deduction authorization form.

5.2 - Sufficient Earnings - The employee's earnings must be regularly sufficient after other legal and required deductions are made to cover the amount of the dues deduction authorized. When an employee is in a non-pay status for an entire pay period, no withholding will be made to cover that pay period from future earnings.

5.3 - Non-Pay Status - In the case of an employee who is in a non-pay status during only part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all other legal and required deductions have priority over Union dues.

5.4 - Cancellation - An employee's authorization for deduction of dues may be canceled at any time by written notice from the employee to the City with a copy to the Union. An Employee's deduction authorization shall automatically be canceled if the employee leaves the employ of the City or is transferred out of the representation unit.

5.5 - Funds Transmission - The aggregate amount of such deductions by the City shall be transmitted monthly to the President of the Union or his or her designee. The City shall provide the President of the Union or his or her designee with a list each month indicating the dues deducted from the pay of any represented unit employee and those employees for whom no deduction was made pursuant to the provisions of Sections 5.2 and 5.3. The Union shall notify the City of the names of its President and other officers and designees each year following election of the board and appointment of members to committees to which the Union is entitled to appoint members under this Agreement.

5.6 - Indemnification - The Union shall indemnify, defend, and hold the City harmless against any claims made, and against any suit instituted against the City on account of deduction of employee organization dues. In addition, the Union shall refund to the City any amounts paid to it in error upon presentation of supporting evidence.

#### **ARTICLE 6 - UNION REPRESENTATIVES**

6.1 - Two (2) employees selected by the Union may attend scheduled meetings with City management during regular hours without loss of pay, provided that such employees shall not leave their work station or assignment without first providing twenty-four (24) hour notice to the Department Head. Additional employees who are not on duty may participate at no additional cost to the City. Such meetings shall be scheduled in a

manner consistent with the City's operating requirements and work schedules. Nothing herein shall be deemed to preclude the scheduling of such meetings at hours other than such employee's regular working hours, in which event attendance shall be without pay.

#### ARTICLE 7 - BULLETIN BOARDS

7.1 - Authorized Postings - The City will furnish adequate bulletin board space where currently available. The Department Head shall designate the bulletin boards to be used for posting notices. Bulletin boards may be used for the following notices:

- (a) Scheduled Union Meetings, Agenda and Minutes.
- (b) Information on Union Elections and the Results.
- (c) Posting of Union special, recreational, and related bulletins.
- (d) Reports of Official Business of Union Including Reports of Committees or the Board of Directors
- (e) MOU, Pay Scales, Job Announcements, Promotion Lists, Etc.
- (f) Such other items as may be approved by the Department Head upon request of the Union.

7.2 - Posted Notices - Posted notices shall not be defamatory or violate any of the City's policies, nor shall they advocate election or defeat of candidates for public office. All notices to be posted may be dated and signed by an authorized representative of the Union. The Union may give notices to the represented employees through the use of the City mail system and/or the City computer e-mail system.

#### ARTICLE 8 - MEMORANDUM OF UNDERSTANDING COPIES

The City shall provide the Union with one (1) original and one (1) electronic (PDF) copy of this Memorandum after it has been fully executed by the parties. The City shall also provide a copy of the executed MOU to any represented employee hired or promoted into the representation unit after the effective date of the Agreement. The City may charge for any additional hard copies. The Union shall be responsible for providing hard copies of this MOU to represented employees at Union expense. Electronic copies shall be no charge.

#### ARTICLE 9 - MEETINGS

9.1 - Items of Mutual Concern - Upon mutual agreement of both the City and the Union, the parties may meet to discuss items of mutual concern. A meeting conducted under this section shall not constitute a meet and confer or hearing under any grievance procedure.

9.2 - Use of City Facilities - The Union may be granted permission to use City facilities for the purpose of meeting with employees to conduct Union business provided space for

such meetings can be made available without interfering with City needs. The Union shall be held fully responsible for any damages to and security of any facility that is used by the Union.

9.3 - Budget Oversight Committee - The City agrees to the creation of a Budget Oversight Committee, with the Union entitled to appoint one (1) member. Said Committee shall have an equal number of members appointed by the City's recognized Employee Associations and the City. Said Committee shall be advisory only to the City Manager.

#### ARTICLE 10 - HOURS OF WORK

10.1 - Schedules - Unless modified by the Department Head as set forth in section 10.2 and 10.4 below, the Police Unit employees described below shall work the following work periods:

- (a) Employees assigned to uniformed patrol shall have a work schedule of seven (7) twelve (12) hour shifts each fourteen (14)-day work period.
- (b) Employees assigned to the detective bureau shall have a work schedule as assigned by the Department Head.

10.2 - Department Head Discretion - Employees may be assigned to a work schedule consisting of the days and hours as determined by the Department Head.

10.3 - Briefing - Preshift briefing shall be at the discretion of the Department Head and if required, shall count as hours worked.

10.4 - Schedule Changes - The Department Head in the exercise of his or her discretion may change the work schedule and/or work period of Police Unit employees. Accordingly, work schedule and work period changes are not subject to meet and confer requirements. The Department Head shall notify the Union regarding any change in work schedule and/or work period no later than thirty (30) days before the date the change is implemented.

10.5 - Shift Assignments - Each year, the Department Head shall post a shift assignment notice on which officers shall indicate their shift assignment preference. The Notice will solicit three shift preferences and any additional information regarding their reasons for requesting a particular shift. The Department Head shall consider each request, giving those with seniority a higher priority, and make an effort to accommodate individual preferences. However, it is recognized that the Department Head shall have the ultimate authority to make shift assignments based on the needs of the Department. These shift assignments shall be for the full year except for individual changes as determined by the Department Head.

10.6 - Outside Employment - Prior to any bargaining unit employee accepting outside employment, he or she shall request and receive authorization from the Department Head. Authorization for outside employment shall be made according to the policies and procedures in place at the time of request.

## **ARTICLE 11 - SHIFT EXCHANGE**

Employees may be permitted to trade shifts provided that:

- (a) No additional compensation or other cost to the City results from such assignment;
- (b) Exchanging employees are fully qualified to perform the required tasks of both assignments; and
- (c) Written requests for shift representation must be submitted on the prescribed Department form and approved by the Department Head or his or her designee prior to the start of the requested shift.

## **ARTICLE 12 - SALARIES, PERFORMANCE EVALUATIONS, INCENTIVE PAY**

12.1 - Salary Adjustment — All represented Unit members shall receive a six percent (6%) salary increase and three salary range adjustment effective with, and contingent upon, the concurrent elimination of City paid employee member contributions, commonly known as the Employer Paid Member Contribution ("EPMC"), to the California Public Employees Retirement System ("CalPERS"), which for those hired on or before January 1, 2011 is currently nine percent (9%) of the sworn employees' regular and special compensation and eight percent (8%) for non-sworn miscellaneous members.

12.2 - Assignment to Ranges — All employees have been placed on ranges with defined steps as shown on the attached salary schedule. The salary table is calibrated in approximate 2.5% increments. Subsequent annual increase for satisfactory performance will be two (2) steps or approximately 5%.

- (a) No employee shall be granted a step increase unless and until such employee has obtained an acceptable evaluation consistent with the applicable administrative policies of City.
- (b) A first denial of a step increase shall not be an allowable subject of the exercise of employee rights under any grievance procedure afforded by the City or collective bargaining agreement.
- (c) An employee denied a step increase for unacceptable performance shall be entitled to be re-evaluated in six (6) months from the date of the performance evaluation which led to the denial of the step increase. If the employee's overall performance is rated acceptable, the employee shall be granted the appropriate step increase effective the first pay period following the six month re-evaluation period. Such step increase shall not be retroactive.
- (d) If the employee's performance continues to be unacceptable after the six (6) month re-evaluation period, the employee shall be given a final denial of a

step increase for the remainder of the regular evaluation period. Denial of a step increase under this subsection may, at the employee's option, be subject to the collectively bargained grievance procedure for unit members.

(e) An employee at the top of his or her range shall have his or her performance evaluated at least annually within thirty (30) days of his or her anniversary date.

**12.3 - Premium Pay** - City shall additionally pay a five percent (5%) premium for the following special assignments, provided that no such premium shall attach when the officer is otherwise working an eighty-four (84) hour shift:

- Professional Standards Supervisor (Sgt. rank only)
- Detective Sergeant
- Detective (ARCNET)
- K-9 Officer
- Motor Officer
- School Resource Officer
- Youth Resource Officer
- CET
- Any other assignment determined to be appropriate and approved by the Chief of Police in consultation with the Human Resources Department.

**12.3 - Field Training Officer (FTO)** - Any Police Unit member who serves as an FTO shall receive additional pay of five percent (5%) during actual training. Any Police Unit member who has been assigned as a FTO and serves in any other special assignment is entitled to additional premium pay to a maximum of ten percent (10%) of their salary during such assignment. The amounts in this article shall not be pyramided except as set forth above.

**12.4 - Bilingual Pay** - Employees certified to use sign language or to speak Spanish, or any of the Hmong languages (Chinese, White Lao, Blue Lao), or any other foreign language designated for Bilingual Pay by the City Manager, shall be paid a bonus equivalent to five percent (5%) of their base salary for such use on the job. Initial certification and any requirement with respect to demonstration of the continuing ability to use sign language or to speak the foreign language shall be determined by the City using methods selected by the Human Resource Department.

## **ARTICLE 13 - OVERTIME**

**13.1 - 7(k) Exemption** - The City has adopted a fourteen (14) day work period pursuant to the "7k exemption" of 29 U.S.C. section 207(k) under the Fair Labor Standards Act (FLSA). Except as provided below in connection with uniformed patrol officers, an employee shall be paid at the rate of one and one-half (1-1/2) times the employee's regular hourly base rate of pay for all hours worked in excess of eighty (80) hours in the fourteen (14) day work period. Uniformed patrol officers assigned to work twelve (12) hour shifts as outlined in Article 10.1 above, shall be paid at the rate of one and one-half (1-1/2) times the employee's regular hourly base rate of pay for all hours worked in excess

of eighty-four (84) hours in the fourteen (14) day work period. This section 13.1 does not preclude the Chief of Police from establishing the practice of scheduling an employee to work a pay period of any duration which is not less than eighty (80) hours and not more than eighty-four (84) hours, subject to the shift change provisions of the MOU. At all times, the full eighty-four (84) hours shall be accounted for on the time card. Unassigned hours of the eighty-four (84) shall be so indicated.

(a) The City shall pay the PERS contribution, as required by the MOU, for the first eighty-four (84) hours of PERS eligible time worked during a pay period. Hours earned as overtime and paid at time and one-half (1/2) shall not be counted as PERS eligible hours. All overtime worked shall be authorized by a supervisor in advance, if possible. Otherwise, the claim for overtime shall be subject to review by the Department Head. Overtime may be paid as accrued compensatory time subject to the following: Compensatory time may not be accumulated in excess of two hundred forty (240) hours. Employees may cash out accumulated comp time twice per year (July and December) up to a maximum of eighty (80) hours per year unless otherwise restricted herein. Any cash out will be at the employee's current rate of pay inclusive of all premium pay.

(i) The "regular hourly base rate of pay" includes only salary as described in Article 13.1. Acting pay as set forth in Section 14.1 and educational incentive pay as provided in Article 18.4.

(b) In calculating overtime, the practice of the Finance Department shall be as follows:

(i) All hours appearing on the time card as "Reg Hours" shall first be totaled.

(ii) All hours otherwise defined as "hours worked" under the MOU shall then be totaled.

(iii) Finally, all hours recorded as overtime on the time card shall be totaled.

(iv) All hours totaled above, which are in excess of eighty-four (84) hours for patrol personnel and eighty (80) hours for special assignments during the pay period, shall be treated as overtime.

(v) In the case of correction of the time card by the Finance Department, the affected employee shall be given timely notice of such correction prior to the preparation of the pay check.

(c) Any assigned hours which are not worked, and are not otherwise accounted for through a reduction in accrued leave, shall be treated as Leave-Without-Pay ("LWOP") and the employee may be subject to a personnel action as prescribed in the personnel policies of the City.

(d) Accruals, and reductions in accruals, are based on an eighty (80) hour pay period.

13.2 - Hours Worked. - "Hours worked" means time spent in required court appearances as set forth in Article 15, and time paid for vacation, holidays, sick leave, CTO and administrative leave for officer involved shooting or other non-disciplinary leave.

13.3 - Call Out Minimum. - Bargaining Unit employees shall be paid a minimum of two (2) hours' pay for any time worked during the first hour when called-out for emergencies, and time and one-half (1/2) for each hour worked there-after. For example, should an employee be called-out to work two (2) hours of emergency duty he or she would be compensated with three and one-half (3 ½) hours' pay at the regular hourly base rate of pay; two (2) hours' pay for the first hour worked and one and one-half (1 ½) hours pay for the second hour worked.

13.4 - Pyramiding of Overtime. - There shall be no pyramiding or duplication of overtime payments and other premiums for the same hour worked.

13.5 - Compensatory Time. - Accrued compensatory time may be taken by the employee on an "hour accrued/hour off" basis. However, in the event an employee terminates his employment and/or the City is otherwise obligated or desires to "cash out" accrued compensatory time, the employee shall be paid for any accrued time at his or her then regular hourly base rate of pay.

13.6 - Maximum Comp Time Accrual. - Comp time may be accrued to a maximum of two hundred forty (240) hours.

#### **ARTICLE 14 - ACTING PAY AND PROMOTION PAY**

14.1 - Represented employees temporarily assigned to work in a higher classification by management shall be compensated for working their thirty-first (31<sup>st</sup>) consecutive day worked of such assignment within the fiscal year, and consecutive days worked thereafter, at a rate five percent (5%) above their normal rate of compensation while working in the higher classification. The conditions of this subsection are prerequisites to the receipt of any higher acting pay. At such time as an employee is no longer performing work out of his or her pertinent classification, he or she shall be compensated at his or her regular rate of pay for his or her pertinent classification.

14.2 - Represented employees promoted to work in a higher classification shall be placed in the lowest step of the higher classification that pays more than the employee received in the lower classification.

#### **ARTICLE 15 - PAY FOR JURY DUTY; COURT APPEARANCES, "ON CALL" DUTY**

15.1 - Any employee who shall be summoned for attendance to any court for jury duty during his or her normal working hours shall be deemed to be on duty and there shall be no loss of salary, but any jury fees received by him or her shall be paid into the City

treasury. Any employee who shall be called as a witness arising out of and in the course of his or her City employment shall be deemed to be on duty and there shall be no loss of salary, but any witness fees received by him or her shall be paid into the City treasury. An employee absent as a witness in a private matter shall not be entitled to be paid during such absence, except that he or she may, however, use Vacation Leave, Holiday Leave and Compensatory Leave for such absence.

15.2 - Represented employees shall be compensated for off-duty court appearances. The City will pay a minimum of three (3) hours for travel to and appearances in court at a rate of one and one-half (1 ½) times the base rate of pay. All travel shall be calculated based on the time required to travel from any Banning Police Station to the destination. All hours required in excess of three (3) hours shall be compensated at one and one-half (1 ½) times the base rate of pay.

15.3 - Employees required to be on call for court appearances before noon shall be compensated for one (1) hour. Those required to be on call for court purposes after noon shall be compensated for one (1) hour. Requirement for multiple court appearances in the same time frame shall constitute one (1) period of on call. For purposes of this section, an employee shall not be deemed to be on call while appearing in court. Employee shall not be paid for being on call under this Section for a day on which the employee is compensated for being in court under Section 15.2.

15.4 - Any detective scheduled for "on call" duty shall receive four (4) hours of either compensatory time off or pay for each scheduled day off on which the detective is assigned to "on call" duty, other than for court appearances as outlined above.

15.5 - An employee shall be on call for purposes of the receipt of the four (4) hours where:

- (a) the employee is scheduled to provide a mandatory response; and
- (b) that response is to be to the station, or other designated location within two (2) hours; and
- (c) the employee is required to provide the Department with sufficient information to obtain immediate contact with the employee.

15.6 - All Police Unit members who are required to respond to a traffic accident call out would receive a minimum of two (2) hours double time pay commencing thirty (30) minutes before their arrival time. The Evidence Technician will be entitled to receive a minimum of two (2) hours double time pay commencing thirty (30) minutes before his/her arrival for any call outs.

15.7 - Scheduled Training. Any employee who is scheduled by the Department to attend day long training during his or her normal shift or working hours shall be deemed to be on duty and there shall be no loss of salary. The Department will abide by the "day for a day" theory for any day long training not lasting more than four (4) days. This policy provides that the employee will not owe the Department time should the day long training course be shorter than the officer's regularly scheduled work day. This theory applies only to

scheduled full-day training courses. For overtime calculation purposes, only actual hours in training will count as actual hours worked.

#### **ARTICLE 16 - EQUIPMENT, UNIFORM ALLOWANCE, SAFETY AND TRAINING**

16.1 - The City will provide covered employees safety equipment in accordance with California State Law. Said safety devices and safeguards shall remain the property of the City of Banning and their use may be required and regulated by the Department Head or his or her designee.

16.2 - The Department Head or his or her designee shall have sole authority to assign the use of or regulate the use of City property by represented employees including but not limited to City vehicles.

16.3 - The City agrees to pay a uniform allowance of \$110 per month to Police Unit members. Payment of the uniform allowance will be paid equally between the first two pay periods each month. Such money shall be used for the purpose of purchasing and maintaining uniforms in order that individual officers and civilian employees who wear regulation uniforms may maintain a professional appearance.

16.4 - The City shall reimburse Police Unit employees the reasonable replacement value of personal property, not including uniforms for which the above uniform allowance is paid, which is destroyed in the course and scope of their employment. The employee shall make application for reimbursement by presenting to the Department Head the damaged or destroyed article. Personal property subject to this provision consists of personal property necessary to fulfill the employee's job duties and that is approved in advance for use on the job. Replacement for prescription eyewear is limited to \$200 per pair. Replacement for watches is limited to \$50. Sums paid hereunder shall be secondary to any applicable insurance. If an individual pays a sum of money to the City pursuant to a court order as restitution for damaging the uniform of a bargaining unit employee, then the City will reimburse that amount to the Police Unit employee.

16.5 - The Department Head or his designee may at his or her discretion authorize an employee to carry optional weapons. Nothing in this Agreement shall require the Chief of Police to approve the use of any specific weapon or ammunition.

#### **ARTICLE 17 - MILEAGE, MEALS AND OTHER TRAVEL REIMBURSEMENT**

17.1 - The City will reimburse expenses for meals, lodging and tuition when a Police Unit employee attends a City directed educational program. Reimbursement shall be equal to but not exceed the amount permitted under applicable P.O.S.T. standards. If the employee's meals and lodging expenses exceed reimbursement provided by P.O.S.T., then the employee may be required to demonstrate that such expenses are reasonable by providing receipts for all expenses and written justification. Only reasonable expenses will be reimbursed.

17.2 - Accommodation arrangements for attendance at a City directed educational program shall be made by the Police Unit employee. The City agrees to provide any

accompanying information concerning available lodging arrangements for the program to the employee as soon as it becomes available to the City.

17.3 - Upon request, an employee attending a City directed educational program shall receive an advance up to the P.O.S.T. established limits established for the particular educational program.

17.4 - At the conclusion of the educational program, the employee shall show by certificate awarded or some other manner that the program was attended and completed.

17.5 - Except as otherwise set forth in this MOU, the scheduling of training/educational programs shall be done in accordance with Departmental procedures.

**ARTICLE 18 - TUITION AND BOOKS REIMBURSEMENT; EDUCATION INCENTIVE**

18.1 - Qualifications - All Police Unit employees enrolled in an approved Bachelor of Arts/Science Degree or Master of Arts/Science Degree programs shall be eligible to receive reimbursement for tuition and cost of books actually paid for their approved professional and technical courses subject to the provisions below.

(a) The employee has furnished evidence that the course has been completed with at least a "C" grade or "pass."

(b) Police Unit employees will receive a maximum of \$3,000 for tuition and actual expenses paid for books for expenses incurred per fiscal year for any academic training in a university or college recognized by an accrediting institution as determined by the Human Resources Director.

**18.2 - Reimbursement Requirements**

(a) Requests for reimbursement must be completed and returned to the Human Resources Department within three (3) weeks after receipt of course completion documentation. (No reimbursement will be made without bona fide receipts or documentation).

(b) Reimbursements will be made only after proof of completion of course with a minimum of "C" average or "pass" and satisfactory receipts of payment for books and tuition are approved by the Human Resources Department.

18.3 - Attendance - Employees may utilize shift changes and one (1) hour or more increments of Vacation or Holiday Leave to attend courses that have been approved under this Article. Employees may also convert Sick Leave to Vacation Leave for this purpose.

18.4 - Education Incentive Pay - Educational incentive pay shall be earned as follows:

- (a) Possession of an Intermediate POST Certificate entitles the unit member to \$200 a month; and possession of a Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, entitles the employee to \$300 a month.
- (b) Possession of an Associate of Arts/Science Degree in any academic field entitles the employee to \$75 per month.
- (c) Possession of a Bachelors of Arts/Science Degree in any academic field entitles the employee to \$150 per month.
- (d) Possession of a Masters of Arts/Science Degree in any academic field entitles the employee to \$225 per month.
- (e) Possession of a Ph.D. in any academic field entitles the employee to \$300 per month.
- (f) Possession of an Intermediate POST Certificate and an Associate of Arts/Science Degree in any academic field entitles the employee to \$275 per month; Possession of an Intermediate POST Certificate and a Bachelors of Arts/Science Degree in any academic field entitles the employee to \$350 per month; Possession of an Intermediate POST Certificate and a Masters of Arts/Science Degree in any academic field entitles the employee to \$425 per month; Possession of an Intermediate POST Certificate, and a Ph.D. in any academic field entitles the employee to \$500 per month.
- (g) Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate and an Associate of Arts/Science Degree in any academic field entitles the employee to \$375 per month; Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, and a Bachelors of Arts/Science Degree in any academic field entitles the employee to \$450 per month; Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, and a Masters of Arts/Science Degree in any academic field entitles the employee to \$525 per month; Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, and a Ph.D. in any academic field entitles the employee to \$600 per month.

(h) For all Police Unit members who are employed with the City at the time of the execution of this MOU, **possession** of 60 semester units from an accredited college with a minimum of 39 units being in an occupationally related field (i.e. Police Science, Social Science, Political Science, Public Administration, etc.) shall entitle the employee to receive pay of \$100 per month. Determination as to whether courses are occupationally related will be made by the Department Head with right of appeal to the City Manager.

(i) The amounts in this article shall not be pyramided except as set forth above.

#### **ARTICLE 19 - SICK AND BEREAVEMENT LEAVE**

19.1 - Sick Leave Accrual - Represented employees shall accrue three and sixty-nine hundredth (3.69) hours of Sick Leave per pay period. Sick Leave shall accrue without limit.

19.2 - Use of Sick Leave - Sick Leave, shall be granted only where consistent with the City's sick leave and Pregnancy Leave policy (currently AP-1 and AP-02).

19.3 - [Intentionally left blank]

19.4 - Conversion to Vacation - Any employee who has taken forty (40) hours of Sick Leave or less during the fiscal year ending June 30 of each year shall be entitled to convert up to forty (40) hours of unused sick leave to vacation. The month of August will be the month for annual conversion. Only those employees who have completed twelve (12) months of service with the City as of June 30th of any year will be eligible for such annual conversion and there shall be no interim pro-rata conversion.

19.5 - Cash Out Upon Separation - After ten (10) years continuous City service, and upon voluntary separation under satisfactory conditions or involuntary disability retirement, sworn personnel shall be eligible to receive a cash payment equivalent to forty percent (40%) of all unused sick leave less the total number of hours converted to vacation, as set forth above. Civilian personnel shall be eligible to receive a cash payment equivalent to thirty percent (30%) of all unused sick leave less the total number of hours converted to vacation, as set forth above. Such reimbursement will be computed based upon the employee's final compensation rate.

19.6 - Conversion to Deferred Compensation - Beginning with the 11th year of City service, unit members may convert the value of the total amount of their sick leave bank, minus forty (40) hours, to either Deferred Compensation, or the Retiree Health Savings. Thereafter, the employee may contribute one hundred percent (100%) of the value of unused sick leave, minus forty (40) hours for such purposes.

19.7 - Use of Other Leave - An employee who has exhausted all accumulated Sick Leave while on Sick Leave may utilize accrued Vacation or Holiday Leave or accrued compensated time off for the purposes described in 19.2 above or 19.8 below.

19.8 - Bereavement Leave - Employees covered by this Agreement will be allowed three (3) shifts off duty with pay for Bereavement Leave upon the death of a member of their family. For the purpose of this subsection, "family" includes the following persons: spouse, domestic partner, mother, father, brother, sister, child, stepchild, grandchild, or grandparent of the employee or any one of the same relatives of the employee's spouse or domestic partner.

## **ARTICLE 20 - VACATION AND HOLIDAY LEAVE**

20.1 - Vacation Leave Accrual - For employees of the City as of date of this Agreement, Vacation Leave shall accrue in accordance with the following schedules:

- (a) one (1) through four (4) years service: ten (10) days per year = three and eight-hundredth (3.08) hours per pay period
- (b) Beginning the fifth (5<sup>th</sup>) year through the ninth (9<sup>th</sup>) year: fifteen (15) days per year = four and sixty-two hundredth (4.62) hours per pay period
- (c) Beginning the tenth (10th) year & thereafter: twenty (20) days per year = six and fifteen hundredth (6.15) hours per pay period

20.2 - Maximum Accrual - Vacation Leave may be accrued to a maximum of three-hundred twenty (320) hours for non-supervisory personnel and three-hundred thirty-six (336) hours for supervisory personnel. Holiday leave may be accrued to a maximum of one-hundred sixty (160) hours per employee.

20.3 - Approval Required - Vacation Leave shall be taken with approval of the Department Head at any time following the completion of the one (1) year probationary period, but the Vacation Leave taken shall not be in excess of that actually accrued at the time such Vacation Leave is taken. Vacation Leave must be approved a minimum of fourteen (14) days in advance of the first day of such Vacation by the Department Head or his or her designee. Exceptions may be made to the fourteen (14)-day notice requirement for emergencies or at the discretion of the City by the Department Head or Division Supervisor.

20.4 - Payment Upon Termination - Any employee, who has been in continuous full-time service of the City for a period of 1 year or more, who is about to terminate his or her employment and has earned Vacation Leave to his or her credit, shall be paid for such Vacation Leave on the effective date of such termination. It shall not be necessary to carry such employee on the payroll for the Vacation Leave period, and the vacancy created may be filled at any time after the employee ceases to perform the duties of his or her office or employment. When separation is caused by death, payment of all outstanding compensation, including Salary and all remaining Sick Leave, Vacation, Comp Time or Holiday Time accruals shall be paid into the employee's direct deposit account the same as regular payroll.

20.5 - Payment of Excess Hours - Unused vacation accrual in excess of the employee's annual entitlement, if any, may be paid off at the option of the employee up to a maximum

of forty (40) hours every twelve (12) months. The employee may otherwise be scheduled for mandatory vacation time off by the Department Head for a period of time equal to the excess accrual.

20.6 - Holidays - City Holidays are as follows:

New Year's Day  
Martin Luther King Day  
President's Day  
Memorial Day  
Fourth of July  
Labor Day  
Veteran's Day  
Thanksgiving  
Day after Thanksgiving  
Christmas  
one (1) floating holiday

20.7 - Holiday Accrual - Employees shall accrue Holiday leave at the rate of three and thirty-eight hundredths (3.38) hours per pay period.

20.8 - Approval Required - Holiday Leave must be approved a minimum of fourteen (14) days in advance by the Department Head or his or her designee of the first day of such Holiday leave. Exceptions may be made to the fourteen (14) day notice requirement for emergencies or at the discretion of the City by the Department Head or immediate supervisor.

20.9 - Cash Out - Employees may cash out accrued holiday leave twice per year (July and December) up to a maximum of 88 hours per calendar year.

20.10 Payment Upon Termination - Any employee who is about to terminate his or her employment, and has earned Holiday Leave to his or her credit, shall be paid for such Holiday Leave on the effective date of such termination.

## ARTICLE 21 - MEDICAL AND DENTAL INSURANCE

21.1 City Contributions to Cafeteria Plan - The City agrees to the following contribution to each employee's cafeteria account: The City will contribute to each employee's cafeteria account an amount equal to the payment of that employee's medical insurance premium related to a City sponsored medical plan (excludes dental) up to a maximum of \$11,000 annually. In addition, the City will contribute \$50 per month into each employee's cafeteria account. An employee opting out of a City sponsored medical plan, i.e. demonstrating proof of medical coverage from another plan, will receive a cafeteria contribution equal to \$5,725 plus an additional \$50 per month. These dollars may be used toward any City benefit offered under the cafeteria plan. All dollars will be allocated equally on a month. Employees will be responsible for all taxes associated with this payment.

(a) The contribution shall first be used to provide for health insurance for the employee. The employee shall be covered by health insurance with a City approved health insurance plan unless the employee provides proof to the City that the employee is covered by another acceptable health plan as determined by the City's Human Resource Department. Additionally, all members of the Police Unit shall participate in a long-term disability plan approved for participation by the members of the Police Unit, provided that such plan does not require the City to incur costs for its administration.

(b) The balance may be used for any of the following or any combination thereof:

- (i) Health insurance for the employee's spouse and/or dependents.
- (ii) Dental Plan for the employee, and the employee's spouse and/or dependents.
- (iii) Eye care plan for the employee, and the employee's spouse and/or dependents.
- (iv) Deferred compensation program.

21.2 IRS 125 Plan – Police Unit employees may participate in the City's Internal Revenue Section 125 program which will allow employees to allocate specified amounts of monthly pretax salary or wages for the reimbursement of medical care expenses, dependent care expenses, or both. Premiums for LTD are excluded from the pretax provisions of the Section 125 program.

21.3 Insurance Advisory Committee – The City shall maintain the Insurance Advisory Committee to which the Association may appoint two (2) representatives.

21.3.1 Purpose. The purpose of the Advisory Insurance Committee shall be to advise the City relative to health, life, and related insurance plans which may be provided to employees of the City of Banning including the type of plans, scope of coverage, and the selection of insurance carriers.

21.3.2 Voting. The Insurance Committee shall determine issues by a majority vote of the members, each member having one (1) vote, except that any such determination shall constitute an advisory recommendation only to the City Manager.

21.3.3 Selection of Members. Insurance Committee Members shall be selected as follows:

- (a) Representatives of bargaining units shall be selected in a manner to be determined by each respective unit.

(b) The City's Representative shall be the City Manager or his designated representative.

21.3.4 Meetings. The Insurance Advisory Committee shall meet as may be necessary to conduct the business of the committee.

21.3.5 Status. The Insurance Advisory Committee will be advisory only, with no power or prerogative to decide on behalf of the City on issues pertaining to employee insurance coverage.

## **ARTICLE 22 - RETIREMENT AND MEDICARE.**

### **22.1 Contributions to CalPERS -**

- a) As Employer Paid Member Contribution ("EPMC"), the City will continue to pay each Unit member's employee contribution, currently nine percent (9%) of the sworn employees' regular and special compensation and eight percent (8%) for non-sworn miscellaneous members hired on or before January 1, 2011, to the California Public Employees Retirement System ("CalPERS") until implementation of Resolution 2013-04.
- b) Effective upon City Council adoption of Resolution 2013-04 effectuating such a change and contingent upon the concurrent salary adjustment set forth in Article 12, the City will cease paying EPMC and/or any of the employee's 9% or 8% share of the employee's required contribution to CalPERS. Thus, each Unit employee shall pay their own 9% or 8% employee contribution to CalPERS.
- c) All Unit employees hired on or after January 1, 2011 shall continue to pay their full member contribution for their CalPERS retirement plan. In addition, per AB340, new employees will be subject to paying at least 50% of the normal costs.

### **22.2 CalPERS Formulas -**

- (a) The City agrees to continue to pay the employer's portion of the "Three Percent at Fifty" (3% @ 50) Public Safety formula and the "Two Point Five Percent at Fifty-Five" (2.5% @ 55) miscellaneous formula CalPERS retirement for current employees.
- (b) City Council has adopted Resolution 2012-99 side letter agreement that authorized implementation of a two tiered retirement plan known as the "Two Percent at Fifty" (2% @ 50) formula for safety employees and the "Two Percent at Sixty" (2% @ 60) formula for miscellaneous employees. This benefit shall apply to all new employees hired after December 20, 2012 that are currently vested in CalPERS (sometimes referred to as legacy employees). All Unit employees hired on or before such resolution adoption shall remain at the current existing "Three Percent at Fifty" (3% @ 50)

retirement formula for safety employees and the "Two Point Five Percent at Fifty-Five" (2.5% @ 55) formula for miscellaneous employees.

- (c) Unit employees hired on or after January 1, 2013 shall be enrolled in either the "Two Percent at Fifty" (2% @ 50) formula for safety employees and the "Two Percent at Sixty" (2% @ 60) formula for miscellaneous employees or the "Two Point Seven Percent at Fifty-Seven" (2.7% @ 57) formula for safety employees and the "Two Percent at Sixty-Two" (2% @ 62) formula for the Miscellaneous employees depending upon eligibility rules as established by CalPERS under AB340 and related statutes.
- (d) Per AB340, employees hired on or after January 1, 2013 shall also be required to have their final compensation defined as the highest average annual final compensation during a consecutive 36 month period, subject to the cap. Current employees as of December 20, 2012 will maintain the "single highest year" benefit.

22.3 F.I.C.A. – Police Unit employees will pay employee portion of FICA and the City shall be responsible for payment of the employer's portion.

### **ARTICLE 23 – MISCELLANEOUS BENEFITS**

23.1 Life Insurance - The City shall provide a life insurance policy to each employee in the Police Unit in the amount of \$50,000.00.

23.2 Direct Deposit - All Police Unit employees shall be paid by direct deposit of their payroll check into an account of their choice, except those employees who either do not hold an account with a financial institution that offers direct deposit or who do not hold an account of any type and such employees will be required to pay a \$10 administration fee per payroll. It shall be the responsibility of the employee to establish and maintain such account.

23.3 Computer Loan - Every Police Unit employee shall be entitled to participate in an interest free loan program for the purchase of a computer. The maximum amount of any individual loan shall be equal to one (1) month of an employee's salary. The cumulative amount of loans outstanding hereunder shall not exceed \$20,000. The loan shall be upon the terms and conditions established by the City. These conditions shall include the prohibition against developing, maintaining or storing any department files or department related files or information or any criminal justice files, including but not limited to Megan's Law files and information, on such equipment. Wrongful possession of such information on the equipment shall constitute grounds for discipline up to and including dismissal. For purposes of this section "department files or department related files" are information concerning any individual or group of individuals, developed or obtained in the course and scope of the duties of the owner of the equipment purchased hereunder, or the course and scope of the duties of the provider of the information to such owner, as a law enforcement officer or employee of a law enforcement agency. The definition includes, but is not limited to, information regarding an individual or group of individuals which is

not available to the general public and which is available to the owner of the equipment because, and not necessarily solely because, of their status as a public safety officer.

23.4 - Utility Allowance - Any Police Unit employee who resides within the City shall receive \$150 per month as a discount against the cost of electric and water service during the period of such residency.

23.5 - Deferred Compensation Plan - The City has established a deferred compensation plan under Section 457 of the IRS code. Police Unit employees may participate in this plan at their own expense and at their option. Employees may opt to deposit into their established deferred compensation account, any funds paid to them under any leave pay out provisions in this MOU. Deposits into deferred compensation accounts shall be subject to IRS rules and regulations.

23.6 - Gun Loan - The City has established a loan program for those police officers approved by the Chief of Police who wish to purchase a weapon. Repayment of the loan shall be through payroll deduction. The complete policy is established in Resolution 2005-66.

#### ARTICLE 24 - LAYOFFS AND RE-EMPLOYMENT

24.1 - Purpose. The purpose of this Article is to provide a fair and equitable basis for the reduction in force of full-time classified personnel due to insufficient work or lack of funds.

24.2 - Reasons for Lay Off. The City of Banning retains the right to determine when a lack of work or lack of funds condition exists. Lack of work means that a category of work effort within the City can be fulfilled with fewer employees at a level of service acceptable to the City. Lack of funds means that the City in its sole discretion has determined that it cannot sustain operations at the current level of employment within the funding available. For the purpose of this subsection, the determination of the City shall be binding.

24.3 Notice of Lay Off. Any lay off initiated under the provisions of this Agreement can take place at any time during the year. The City shall notify the affected employees in writing at least ten (10) working days prior to the employee's last day of work. The City reserves the right to pay the employee for such ten (10) day period or any remaining portion thereof, and to require the employee to immediately vacate City property. A copy of any notice will be forwarded to the appropriate Police Unit representative. Any notice of lay off shall specify the reason for the lay off and the effective date. The form and timing of any such notice shall be subject to the established grievance procedure, provided however, the City's decision to lay off is not subject to the grievance procedure. The date of the layoff shall not be delayed by the pendency of a grievance.

24.4 Order of Lay Off. Any lay off shall be effective within the job classification or job classifications selected by the City. Once the City has determined which classification or classifications will be affected by the layoff, the order of lay off shall be based on seniority among employees in the classification with "satisfactory job performance." "Satisfactory job performance" as used in this section shall be established when an employee has not more than two (2) overall less than satisfactory evaluations within the past five (5) years.

For purposes of this Article, seniority is defined as the length of uninterrupted service within the classification of employees to be laid off as measured from the date of the layoff notice.

24.5 Reduction of Class. Any employee who has been designated to be laid off may choose to be reduced in class and compensation if the employee has greater seniority in a class than those employees in a lower class or position.

24.6 Equal Seniority. If two (2) or more employees subject to lay off have equal class seniority, then the determination as to who has greater seniority shall be based upon total length of uninterrupted service with the City.

24.7 Reemployment Rights. Laid off employees will be eligible for reemployment under the provisions of the Personnel Rules.

24.8 Reduction in Workweek. The Personnel Rules authorize the City Council to change or alter the work week by resolution.

## ARTICLE 25 - GRIEVANCE AND DISCIPLINE APPEALS PROCEDURE

25.1 - Procedure - Subject to the provisions of this MOU, any permanent Police Unit employee who has a grievance, as defined below, or has been disciplined, as defined below, shall be entitled to have the matter reviewed through the procedures outlined in this Article. This Article shall also include and satisfy all rights which a permanent bargaining unit employee may have under California Government Code Section 3304(b).

### 25.2 - Definitions:

(a) For the purposes of, and subject to the terms, provisions and conditions of, this MOU, "grievance" is defined as a dispute between the employee and the City, or the Union and the City, over the interpretation or application of this MOU, or the second denial of a step increase to an employee. The term "grievance" does not include "discipline" as defined herein.

(b) For the purposes of, and subject to the terms, provisions and conditions of, this MOU, "discipline" is limited to any action taken by the City against a permanent Police Unit employee which (1) is punishment or discipline of the employee, (2) will result in a reduction or loss in the employee's salary, (3) is either (i) an involuntary termination from City employment (ii) involuntary suspension from employment without pay, (iii) involuntary move from one (1) job classification to another job classification where the second job classification has a lower rate of pay at the top step than the top step of the job classification from which the employee was moved, or (iv) involuntary reduction in step within a job classification, and (4) is not the result of a lay off or (v) a written reprimand.

25.3 - Informal Step. An attempt shall be made to ascertain all facts and adjust such grievance or discipline on an informal basis between the employee and, if he or she desires, the employee's representative, on the one hand, and the immediate supervisor,

on the other hand. Presentation of such grievance or discipline shall be made within fourteen (14) calendar days of the incident causing the grievance or discipline, or the date on which the employee first became aware of it.

25.4 - Step One. If the grievance or discipline is not adjusted to the satisfaction of the employee within seven (7) calendar days after presentation to the grievance or discipline to the immediate supervisor, and if the employee or the Union wishes to resolve the matter, the grievance or discipline shall be submitted in writing by the employee or his or her representative to the Police Chief in consultation with the Human Resources Director within the next fourteen (14) calendar days. The Police Chief shall meet with the employee, his or her representative or both within seven (7) calendar days of receipt of such written grievance; and deliver his or her decision in writing to the employee, along with reasons for such decision, within seven (7) calendar days after meeting.

25.5 Step Two. If the grievance or discipline dispute is not adjusted to the satisfaction of the employee and the union under the procedures set forth immediately above, the employee or his/her representative may submit written notice to the City Manager of his/her intent to submit the matter to mediation. Such written notice must be delivered to the City Manager within fourteen (14) calendar days after the date of the Chief of Police's written decision. The Union agrees that submission of any matter to mediation must be by mutual agreement of the Union and the City, with each party to bear their own costs. If the parties mutually agree to mediation, the following procedures apply:

- (a) Within seven (7) calendar days of receipt of the written notice, the Union and the City shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service.
- (b) Within fourteen (14) calendar days of receipt of the list of arbitrators the City and the Union shall attempt to agree on an arbitrator to preside at the advisory arbitration hearing. If the parties do not agree on an arbitrator, the Union and the City shall take turns striking the names of arbitrators from the FMCS list until one (1) name remains. The Union shall strike the first name.
- (c) The parties shall contact the arbitrator to arrange for a mutually convenient time and date for the advisory arbitration hearing.
- (d) The City shall pay for the costs of the advisory arbitrator.

25.6 Grievances Related to MOU Interpretation - On grievances pertaining to the interpretation or administration of this MOU, the Union agrees that the decision of the arbitrator's decision shall be final and binding upon the City. On disputes related to discipline, the decision of the arbitrator shall be advisory to the City Manager, whose decision shall be the final decision of the City.

25.7 Grievances Related to Discipline - On grievances related to discipline, the written notice in Step Three below shall set forth in detail the employee's and/or Union's view of the basis for the disciplinary dispute and shall separately set forth the issue or issues to be

submitted to the advisory arbitrator. The procedures set forth below shall be followed thereafter.

- (a) Within seven (7) calendar days of receipt of the written notice, the Union and the City shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service.
- (b) Within fourteen (14) calendar days of receipt of the list of arbitrators the City and the Union shall attempt to agree on an arbitrator to preside at the advisory arbitration hearing. If the parties do not agree on an arbitrator, the Union and the City shall take turns striking the names of arbitrators from the FMCS list until one (1) name remains. The Union shall strike the first name.
- (c) The parties shall contact the arbitrator to arrange for a mutually convenient time and date for the advisory arbitration hearing.
- (d) The City shall pay for the costs of the advisory arbitrator.

25.8 Step 3 - Within seven (7) calendar days after the Union and City receive the advisory arbitrator's recommendation on the dispute related to discipline, either the Union or the Department Head may submit written argument to the City Manager as to whether the arbitrator's opinion should be accepted, rejected or modified. Within fourteen (14) calendar days after the seven (7) day-period above has expired, the City Manager shall advise the Union and the Department Head whether the City Manager is accepting, rejecting, or modifying the advisory arbitrator's recommended decision. The decision of the City Manager shall be final and binding.

25.9 - Modification of Time Limits - The above time limits may be modified by mutual agreement.

## ARTICLE 26- SEVERABILITY CLAUSE

26.1 - Severability - If any of the provisions contained in this Memorandum of Understanding are determined to be unlawful, then only such provision(s) shall be deleted from this Memorandum of Understanding with the remainder of this Memorandum of Understanding remaining in force and effect. Upon the issuance of a decision by a Court of Competent Jurisdiction declaring any section of this Memorandum to be unlawful, unenforceable, unconstitutional, or not applicable, the parties agree to meet and confer as soon as possible concerning only those sections.

## ARTICLE 27- COMPLETE AGREEMENT

27.1 Entire Agreement - This Agreement is the entire Agreement between the parties, terminating all prior agreements, whether written or oral, arrangements and practices, and, except as otherwise provided herein, shall conclude all meetings and conferences during the term of this Agreement.

27.2 Items Not Covered - All terms and conditions of employment not covered by this Agreement shall continue to be subject to the City's direction and control.

27.3 Vacant Positions - The level of service and number of employees remain a management prerogative and the parties agree that the City may elect not to fill four (4) current or soon to be vacant police officer positions as a cost saving mechanism.

## ARTICLE 28- INVESTIGATION DOCUMENTS AND MATERIALS

The City shall continue to maintain investigation documents and material in accordance with its Records Management Program. No. A-28 in the Administrative Policy which was adopted by Resolution No. 2003-26.

## ARTICLE 29 - RE-OPENERS

29.1 - During the term of this MOU, unless otherwise provided, the parties shall not meet and confer with respect to any subject or matter whether or not referred to in this MOU, unless mutually agreed to otherwise.

29.2 The parties agree, however, to the following re-openers:

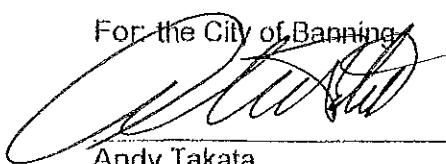
- a) In the event that the City General Fund reserves are reduced to less than \$1 million, the parties agree to re-open their contract to negotiate additional cost saving measures.
- b) The parties have agreed that in the event that Unit overtime exceeds by more than five percent (5%) in a month in the regular overtime account, the baseline experience defined as the average of the last four months of 2012, then the parties will reopen the contract to meet and confer regarding a means and method to address this increase in expense.

## ARTICLE 30 – RATIFICATION AND EXECUTION

This MOU has been developed as a result of meet and confer sessions between representatives of the City and the Union regarding issues related to wages, hours and other terms and conditions of employment. The City's representatives and the Union have reached an understanding as to certain recommendations to be made to the City Council for the City of Banning and have agreed that the parties hereto will jointly urge said Council to adopt a new wage and benefit resolution which will provide for the changes contained in said joint recommendation. The parties hereto acknowledge that this MOU shall not be in full force and effect until adoption by the Banning City Council.

In witness whereof, the parties have caused their signatures to be affixed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

For the City of Banning



Andy Takata,  
City Manager



Colin Tanner,  
Lead Negotiator



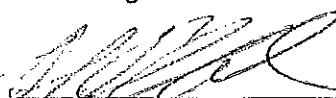
June Overholt,  
Administrative Services Director/  
Deputy City Manager



Rita Chapparosa,  
Deputy Human Resources Director

For the Banning POA

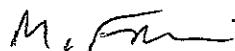
Michael McGill, Esq.  
Lead Negotiator



Brian Callahan  
BPOA Representative



Brandon Smith  
BPOA Representative



Matt Friesen  
BPOA Representative

**CITY OF BANNING  
ORDINANCE INTRODUCTION**

**DATE:** **April 23, 2013**

**TO:** **Mayor and Members of the City Council**

**FROM:** **Bill R. Manis, Economic Development Director/  
Public Information Officer**

**SUBJECT:** **Ordinance No. 1464 of the City Council of the City of Banning Repealing  
Ordinance No. 1411 and Chapter 2.36 of the Municipal Code Regarding the  
Banning Economic Development Committee**

**RECOMMENDATION:**

That the City Council:

- (1) Adopt Ordinance No. 1464 of the City Council of the City of Banning repealing Ordinance No. 1411, and Chapter 2.36 of the Banning Municipal Code, regarding Banning Economic Development Committee.

**BACKGROUND/ANALYSIS:**

The Economic Development Committee (“EDC”) was formally established in April of 1998 with the adoption of Ordinance 1224 (“Original EDC Ordinance”). The Original EDC Ordinance outlined the duties and responsibilities of the EDC, membership requirements, officers, meeting schedule, and other organizational matters. The intent of the Original EDC Ordinance was to establish a coordinating entity between the City, its staff, and other commissions/committees, and the private sector for the purpose of recruiting and retaining business development and tourism.

The Original EDC Ordinance outlined a nine (9) member committee, with two (2) City Council Members and seven (7) members from the community at large representing a diverse cross section of the Pass Area. Over the years a variety of amendments to the Original EDC Ordinance took place changing the ordinance number on five (5) separate occasions. The vast majority of these ordinance amendments related to membership structure/representation and staffing of the EDC. The most recent amendment took place in September of 2009 with the repeal of Ordinance 1371 and the adoption of Ordinance 1411, Attachment 1.

Ordinance 1411 outlines four (4) primary areas of responsibility for EDC members with eight (8) specific goals for the EDC to focus on. The eight (8) goals touch upon typical business retention and attraction efforts for all industry sectors, supporting specific local non-profits, developing a tourism plan, and having the EDC serve as a Red Team for business interaction. The EDC was initially viewed as a Committee that would be hands on and actively involved with City staff in all areas of economic development. The EDC was to also serve as an advisory panel to the City Council on economic trends

and/or programs might impact the City fiscally. The intent of the EDC was to compliment the City's economic development efforts due to the fact the City was understaffed in this area.

During the active period of the EDC, 1998–2009, the City had a Redevelopment Agency and funding to assist in the efforts of the EDC. Many of the economic development efforts during this time period were consistent with the goals and objectives of former Redevelopment Agency. Effective February 1, 2012, Redevelopment Agencies were dissolved throughout the State of California. As a result, prior funding received from tax increment was also eliminated.

In looking back at the minutes from past EDC meetings and talking with past EDC members, it appears the EDC struggled for a variety of reasons. While their intentions were certainly commendable, the EDC had a difficult time finding common goals and objectives and then moving forward to achieve those goals and objectives. The EDC did identify the regions strengths and weaknesses as it relates to the economy, but they were not able to come together to implement programs and projects they identified. Eventually the EDC members slowly stopped attended meetings and in 2010 the EDC became an inactive Committee. It is staffs opinion that a variety of reasons caused the EDC to lose its focus and momentum that included lack of consensus on agenda items among Committee members and the inability of staff to properly manage the Committee due to limited internal resources.

The economic development needs of the City have been addressed in several ways. First, since November of 2011, the economic development function has had a formal role within the City's internal organization and structure. The City now has a full-time Economic Development Director dedicated to implementing many of the original goals and objectives that were outlined in Ordinance 1411 and that are still applicable today.

Due to ongoing limited financial and staffing resources, staff is recommending that the City Council adopt Ordinance No. 1464 (Attachment 2) formally eliminating the EDC from the Municipal Code. Secondly, the Pass Area has several active groups who are focused on economic development initiatives for the region. These groups have a wide range of member representation and many of the previous members of our EDC are now active members with these other Pass Area groups. The City of Banning is represented in all of these groups.

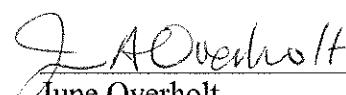
#### **FISCAL DATA:**

There is no added fiscal impact associated with this request.

#### **RECOMMENDED BY:**

  
Bill R. Manis  
Economic Development Director/  
Public Information Officer

#### **REVIEWED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**



---

Andy Takata  
City Manager

**Attachment:**

1. Ordinance No. 1411
2. Ordinance No. 1464

**ATTACHMENT 1**  
**ORDINANCE NO. 1411**

ORDINANCE NO. 1411

AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF BANNING, CALIFORNIA, AMENDING  
CHAPTER 2.36 OF THE BANNING MUNICIPAL  
CODE REGARDING ESTABLISHMENT OF THE  
BANNING ECONOMIC DEVELOPMENT  
COMMITTEE

WHEREAS, The Economic Development Committee was originally established in 1965 to advise the City Council and Board of the Redevelopment Agency concerning economic development activities in the City.

WHEREAS, over the last two years the Committee has been inactive and a number of the committee offices are currently vacant.

WHEREAS, the City Council intends to reconstitute the Committee and expand its representation to better advise the Council with respect to economic development.

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

SECTION 1. Title 2, Chapter 2.36 ("Economic Development Committee") of the Banning Municipal Code is hereby amended by amending Chapter 2.36 to read, in its entirety, as follows:

**"Sec. 2.36.10. Committee Established.**

An economic development committee is established in the city. The purpose of this committee is to establish a coordinating entity between the City, its staff and other commissions and committees, and the private sector for the purpose of recruiting and retention of business development and tourism. The committee is charged with the following responsibilities and duties:

A. Participate in the implementation of the city's economic strategic/implementation plan as approved by the city council.

B. Review and advise the city council on proposed economic development projects within the city.

C. Advise the city council on economic development trends and/or programs that may impact the city fiscally or economically.

D. Assist the city council and staff in economic development matters including:

1. recruitment of new retail, commercial and industrial businesses to the city;
2. development of programs and activities to assist in the expansion of existing retail, commercial and industrial companies;
3. development of programs and activities directed toward the retention of existing retail, commercial and industrial businesses;
4. review and research of economic development issues to provide recommendations to the city council relating to such things as tax revenue generating activities including educational outreach to the community;
5. support of the Banning Cultural Alliance's Downtown Revitalization Committee and the related five year strategic plan;
6. provision of advice and counseling with regard to business recruitment and development;
7. coordination of tourism between the city and private sector organizations including assistance in developing a tourism plan to be recommended to the city council for adoption; and
8. serving, when called upon by the city council, as members of a business recruitment team as well as a "red team" for business retention.

**Sec. 2.36.020. Membership – voting members.**

A. The economic development committee shall be comprised of nine voting members, five appointed by the City Council and four representing designated organizations.

B. Five (5) members of the economic development committee shall be appointed by the city council from the community at-large and shall have a demonstrated interest and experience in business and economic development issues and shall live within the City of Banning.

C. There shall be four (4) members of the economic development committee known as the "organization members" including (i) one representative from the Banning Unified School District, (ii) one representative from the Mount San Jacinto College District, (iii) one representative from the Morongo Band of Mission Indians, and (iv) one representative from the Pass Area Economic Development Association. These members shall be recommended by their respective organizations and appointed by the city council.

**Sec. 2.36.030 Terms of office.**

A. Upon the effective date of this ordinance, the terms of office of any member of an existing economic development committee shall terminate and the terms of office set forth in this ordinance shall apply to those appointed to serve under the provisions set forth herein.

B. Except as provided in Section 2.36.060 and subsection (C) of this section, terms of office of voting members of the economic development committee after reestablishment of the economic development committee as provided in this ordinance, shall be four (4) years or until a successor is appointed as provided herein.

C. The initial appointment of the members of the economic development committee other than the four organization members under this ordinance shall include three (3) members who shall serve for an initial term of four (4) years and two (2) members who shall serve for an initial term of two years to assure continuity on the committee by the staggering of terms of office. The Council shall designate who serves for which terms.

D. Terms of office of the organization members shall be two years.

**Sec. 2.36.040. Officers.**

The members of the economic development committee shall elect a Chairperson and Vice Chairperson at the initial meeting of the committee under this ordinance and at the first meeting in February of all subsequent years. Both the Chairperson and Vice Chairperson must be residents of or own a business in Banning.

**Sec. 2.36.050. Quorum.**

A majority of the members shall constitute a quorum and a majority of a quorum or of the full committee if the full committee is present shall be required for action.

**Sec. 2.36.060. Absences and removal.**

A. All members of the economic development committee shall serve at the pleasure of the city council and may be removed from office by a four-fifths (4/5ths) vote of the city council at any time with or without cause.

B. Three (3) unexcused absences in any fiscal year shall constitute an automatic resignation of the absent member. Absences may be excused at the discretion of the Chair.

**Sec. 2.36.070. Staff Support for Committee.**

The Executive Director of the Redevelopment Agency shall serve as the official secretary of the economic development committee and shall provide staff support as needed to the committee.

**Sec. 2.36.080. Meetings and Bylaws.**

A. The economic development committee shall meet once monthly on the third Thursday at 6:00 p.m. in the City Council Chambers.

B. The economic development committee shall adopt such rules, regulations and bylaws for the conduct of its business as it deems appropriate consistent with the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et seq.) and other applicable law."

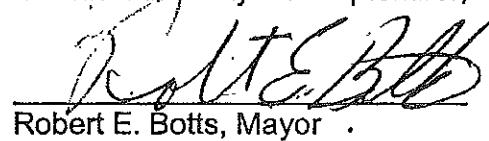
**SECTION 3.** Ordinance 1371 previously adopted by the City Council on June 12, 2007 concerning the Economic Development Committee is hereby repealed in its entirety, and is superseded by this Ordinance.

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

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

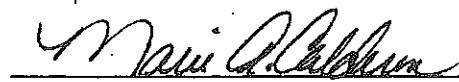
**SECTION 6. PUBLICATION.** The City Clerk is directed to cause this Ordinance to be published within 15 days of its passage in a newspaper of general circulation published and circulated within the City of Banning.

**PASSED, APPROVED, AND ADOPTED** this 22<sup>nd</sup> day of September, 2009.



Robert E. Botts, Mayor

ATTEST:

  
\_\_\_\_\_  
Marie Calderon, City Clerk

APPROVED AS TO FORM:

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

**ATTACHMENT 2**  
**ORDINANCE NO. 1464**

**ORDINANCE NO. 1464**

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING REPEALING  
ORDINANCE NO. 1411, AND CHAPTER 2.36 OF THE MUNICIPAL CODE  
REGARDING THE BANNING ECONOMIC DEVELOPMENT COMMITTEE**

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

Section 1.

That Ordinance No. 1411, and Chapter 2.36 of the Municipal Code, (Banning Economic Development Committee) is hereby repealed in its entirety.

Section 2.

The Mayor shall sign this Ordinance and the City Clerk shall attest thereto and shall within fifteen (15) days cause it or summary of it to be published in a newspaper of general circulation in the city of Banning and thereupon and thereafter this Ordinance shall become effective on the thirtieth (30<sup>th</sup>) day after the date of its adoption.

PASSED, APPROVED, AND ADOPTED on this \_\_ day of May, 2013.

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Deborah Franklin, Mayor  
City of Banning, California

ATTEST:

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

APPROVED AS TO FORM AND  
LEGAL CONTENT:

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

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing Ordinance No. 1464 was duly introduced at a regular meeting of the City Council of the City of Banning, California, held on the 23<sup>rd</sup> day of April 2013, and was duly adopted at a regular meeting of said City Council held on the 14<sup>th</sup> day of May 2013, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Marie A. Calderon, City Clerk  
City of Banning

Ord. No. 1464

**CITY COUNCIL AGENDA  
REPORT OF OFFICERS**

**DATE:** April 23, 2013

**TO:** Honorable Mayor and City Council

**FROM:** Andy Takata, City Manager

**SUBJECT:** Resolution No. 2013-48, Amending ARTICLE VII – PUBLIC COMMENT AND PRESENTATIONS of the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning.

**RECOMMENDATION:** Staff respectfully requests the City Council Adopt Resolution No. 2013-48:

- I. Approve and adopt the Banning City Council Meeting Presentation Policy to be included as an exhibit and incorporated in the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning.
- II. Approve amendments to **ARTICLE VII – PUBLIC COMMENT AND PRESENTATIONS** of the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning.

**JUSTIFICATION:**

The City of Banning currently has no Presentation Policy. The Council requested a policy that would encompass and provide guidance for groups making presentations to the City Council.

**BACKGROUND:**

There is a need for a policy for presentations in order to manage the agenda and length of the Council meetings. At a regular public meeting held on October 23, 2012, the City Council adopted Resolution No. 2012-83, Approving and Adopting a Manual of Policies and Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning.

**ARTICLE VII – PUBLIC COMMENT AND PRESENTATIONS:**

**7.0 NEW ADDITION TO ARTICLE VII – City Council Meeting Presentations:**

City Council presentations are for providing information to the Mayor and Council, City management, and the community about activities of interest and value to include activities, events and infrastructure projects relating to the City, honors and celebrations for organizations, corporations and residents which reflect their service to the Banning community, honors and recognitions for City staff for outstanding service or commitment to the City's mission and goals. Please Note: This is not the appropriate time to seek funds from the City and/or endorsements from City Council or discuss politics.

All presentations are to be no more than five minutes in length; this is to include all speakers for the group being recognized. Please see the attached "Exhibit A" for a complete copy of the Banning City Council Meeting Presentation Policy which is also contained and incorporated as an exhibit to the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning.

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**7.2 REVISION TO ARTICLE VII – Time Limitations:**

The time limit to speak for public comment is five minutes during a noticed public hearing, provided that these time limits do not apply to a project applicant speaking at a public hearing pursuant to Article VIII. All such time limits shall be noticed on the agenda for the meeting. Notwithstanding these time limits, the Presiding Officer has the full prerogative to maintain meeting order and decorum as provided in Section 9.1 and Article X generally, and the President Officer may extend time if he/she finds such extension is reasonably necessary to allow the speaker to complete his/her message without repetition or unnecessary tangents.

**RECOMMENDED BY:**



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Andy Takata  
City Manager

**REVIEWED BY:**



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June Overholt  
Administrative Services Director/  
Deputy City Manager

**Attachments:**  
**Exhibit A – Banning City Council Meeting Presentation Policy**  
**Exhibit B - Revised Procedural Manual**

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**RESOLUTION NO. 2013-48**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
AMENDING “ARTICLE VII – PUBLIC COMMENT AND PRESENTATIONS”  
OF THE MANUAL OF PROCEDURAL GUIDELINES  
FOR THE CONDUCT OF CITY COUNCIL AND CONSTITUENT  
BODY/COMMISSION MEETINGS FOR THE CITY OF BANNING**

**WHEREAS**, on October 23, 2012, this City Council adopted Resolution No. 2012-83 approving the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings (“Manual”); and

**WHEREAS**, the City of Banning currently has no Presentation Policy; and

**WHEREAS**, the City Council requested a policy that would encompass and provide guidance for groups making presentations to the City Council; and

**WHEREAS**, the time limit to speak during public comments has been amended to allow for up to five minutes during a noticed public hearing.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BANNING AS FOLLOWS:**

**SECTION 1:** Approve and adopt the Banning City Council Meeting Presentation Policy to be included as an exhibit and incorporated in the Manual of Procedural Guidelines for the Conduct of the City Council and Constituent Body/Commission Meetings for the City of Banning.

**SECTION 2:** Approve amendments to **ARTICLE VII – PUBLIC COMMENTS AND PRESENTATIONS** of the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning.

**PASSED, APPROVED AND ADOPTED** this 23<sup>rd</sup> day of April, 2013.

---

Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

---

Marie A. Calderon, City Clerk

Reso. No. 2013-48

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

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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. 2013-48 was duly adopted by the City Council of the City of Banning, California, at a regular meeting held thereof held on the 23<sup>rd</sup> day of April, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

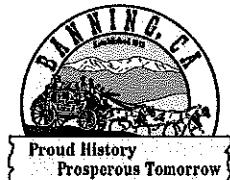
ABSTAIN:

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Marie A. Calderon, City Clerk  
City of Banning

## **EXHIBIT “A”**

# **BANNING CITY COUNCIL MEETING PRESENTATION POLICY**



## BANNING CITY COUNCIL MEETING PRESENTATION POLICY

### **Presentation Purpose**

City Council presentations are for providing information to the Mayor and Council, City management, and the community about activities of interest and value including:

- Activities, events and infrastructure projects relating to the City
- Honors and celebrations for organizations, corporations and residents related to Banning
- Honors and celebrations for organizations, corporations and resident which reflect their service to the Banning community.
- Honors and recognitions for City staff for outstanding service or commitment to the City's mission and goals.
- Please note this is not the appropriate time to seek funds from the City and/or endorsements from City Council or discuss politics.

### **Presentation Length**

All presentations are to be no more than five minutes in length; this is to include all speakers for the group being recognized.

### **Presentation Schedule**

City Council begins at 5:00 p.m. with an invocation and pledge to the American flag followed by presentations. All honorees or groups are to arrive no later than 4:45 p.m.

### **Presentation Location**

Presentations take place in the Council Chambers inside Banning City Hall located at 99 E. Ramsey Street. Parking is available in the Police Department parking lot located at 125 E. Ramsey Street (just off Hays Street) adjacent to the Council Chambers, or in the City Hall parking lot located at the corner of Hays and San Gorgonio.

### **Presentation Technical Support**

The City has the capability to display PowerPoint during the presentation. If a PowerPoint is to be used during the presentation:

- The PowerPoint is to be no more than 10 slides with limited text; and
- To be submitted to the City Clerk's Office no later than the Thursday prior to the scheduled Tuesday City Council meeting (2<sup>nd</sup> and 4<sup>th</sup> Tuesdays of the month).
  - PowerPoints are subject to editing for appropriateness
  - PowerPoints which do not meet these standards will not be used

## **EXHIBIT “B”**

### **AMENDED MANUAL OF PROCEDURAL GUIDELINES FOR THE CONDUCT OF CITY COUNCIL AND CONSTITUENT BODY/COMMISSION MEETINGS FOR THE CITY OF BANNING**

**ADOPTED: OCTOBER 23, 2012  
AMENDED: APRIL 23, 2012**

MANUAL OF PROCEDURAL GUIDELINES  
FOR THE CONDUCT OF  
CITY COUNCIL AND CONSTITUENT  
BODY/COMMISSION MEETINGS FOR

**THE CITY OF BANNING**

ADOPTED ON OCTOBER 23, 2012

**AMENDED ARTICLE VII  
– PUBLIC COMMENT AND PRESENTATIONS  
ON APRIL 23, 2013**



**Marie Calderon  
City Clerk**

**David J. Aleshire  
City Attorney**

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## **OUTLINE OF PROCEDURAL MANUAL PROVISIONS**

### **Manual Applies to Council; Agency; Housing Authority; All Commissions**

#### **A. Agendas (3.1-3.4; 5.1-5.10)**

1. City Manager generally has the authority to set the agenda. (5.1)
2. Any Councilmember may request a matter be put on an agenda. If significant staff work involved, CM can bring it to an agenda under pending items and Council can decide whether they want it agendized for discussion. (5.1)
3. Permits consent calendars and defines what isn't permitted on consent calendar: ordinances; matters involving split votes or public controversy.
4. List order of agenda.
5. Permits an agenda item for "Council Agenda – New Business" and where announcements permitted with no discussion.

#### **B. Ordinances and Resolutions and Contracts (5.3 - 5.6)**

1. Defines matter appropriate for ordinance *vs.* resolution.
2. Defines vote requirements--resolutions require 3 votes.
3. Urgency circumstances defined where resolution can be prepared at a meeting.
4. Contracts may be put in final form by legal counsel.

#### **C. Boards and Commissions (6.4)**

1. Defines legislative bodies and advisory bodies subject to the Brown Act. (1.2(a))
2. Permits creation of ad hoc council subcommittees not subject to the Brown Act.
3. Permits formation boards and commissions subject to the Brown Act.
4. Provides that appointments are by Mayor with the consent of Council.
5. Commissions not permitted to create subcommittees.

#### **D. Closed Sessions (4.1 - 4.4)**

1. Those persons not relevant to the closed session matter are excluded.
2. A minute book may be kept of the proceedings.
3. Revealing any matter from closed session can subject the person to censure.

#### **E. Public Comments (7.1 – 7.4)**

1. Time limits are 3 minutes and 5 minutes for public hearing but applicant not limited.
2. Public comment periods include initial comment period on non-agenda items; comment on agenda items.

## **F. Hearings (8.1 – 8.4)**

1. Before the hearing, Councilmembers limited to factual questions of staff and speakers. Not to engage in debate.
2. Presiding Officer to make it clear when hearing is opened or closed. No questions of speakers or public comment after hearing closed.
3. Hearing must be fair and impartial with decision based on findings required by law.
4. No expression of opinion until hearing is closed.
5. Avoid extra meeting contact with interested persons. Encourage participation in hearing.
6. Presiding Officer can control conduct of hearing--representative speakers, etc. Set any rules at beginning and keep fair to each side.
7. Be attentive during hearings.

## **G. Conduct of Members**

1. Don't represent position of City or promise City action. (9.2; 9.10)
2. Don't speak in derogatory fashion concerning colleagues, employees, citizens. (10.1(f))
3. Mayor speaks officially for City rather than councilmembers. (9.2)
4. Councilmembers in correspondence represent their own position rather than City unless authorized by Council. (9.2)
5. Commissioners don't speak for City. (9.2)
6. No Conflicts. Can consult with City Attorney but advice not binding and no attorney-client confidentiality. (9.6(b))
7. Use City email account. Emails subject to the Brown Act--no development of collective action. Public Records Act, too. (9.3)
8. Formal process for censure for wrongful conduct involving hearing before City Council. (10.3)
9. City Attorney can file amicus briefs. (9.6 (d))

## **H. Procedures**

1. Abstentions discouraged but permitted where appearance impropriety even if no financial conflict.
2. Motions to rescind clarified so that matter can be rescinded if later legislative session. (11.4)
3. Defines process to correct an earlier action in violation of Brown Act. (12.1 – 12.3)
4. Includes Table of Motions and Procedural Actions.

# **MANUAL OF PROCEDURAL GUIDELINES FOR THE CONDUCT OF CITY COUNCIL AND CONSTITUENT BODY/COMMISSION MEETINGS**

## **ARTICLE I – SCOPE**

### **1.1 Application of Rules**

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

This Manual rescinds and supersedes all prior City resolutions setting forth rules of procedure for the conduct of meetings by City Legislative Bodies (defined below). Wherever there is a conflict between this Manual and any prior City resolution, the terms and rules in this Manual shall govern. Resolutions more specifically superseded by this Manual include, without limitation, the following:

- City of Banning Resolution No. 2004-43;
- City of Banning Resolution No. 1999-31;
- City of Banning Resolution No. 2003-06;
- City of Banning Resolution No. 2000-41;
- Banning CRA Resolution No. 2010-13; and
- Banning CRA Resolution No. 1990-04.

### **1.2 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 Successor Agency to the former Redevelopment Agency, Banning Housing Authority Board, Banning Utility Authority, Banning Financing Authority, Planning Commission, Parks and Recreation 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 Successor Agency to the Redevelopment Agency and/or the Housing Authority, and the Chair of any 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 Successor Agency to the former

Redevelopment Agency and/or Housing Authority, and the Vice Chairperson of any 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 Successor Agency to the former Redevelopment Agency and/or the Housing Authority.
- e) "General Counsel" means the legal advisor to the Legislative Body, such as the City Attorney in the case of a City Council meeting, or Agency Counsel in the cases of the Successor Agency to the former Redevelopment Agency and/or Housing Authority.
- f) "City Manager" means the Chief Executive Officer of the City, the Successor Agency to the former Redevelopment Agency and Housing Authority. The City Manager may serve as the Secretary to the Successor Agency or Housing Authority, and the City Manager can designate appropriate staff to serve as the clerk/secretary to any Commission of the City.
- g) "Non-Governing Bodies" means wholly advisory committees and bodies that are not subject to the provisions of the Brown Act.
- h) "Sub-Legislative Bodies" means such advisory committees which are subject to the Brown Act but are not "governing" Legislative Bodies.

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. In the event that any state statute referenced herein is renumbered, the reference herein shall be deemed to refer to the successor statute dealing with the same subject matter.

## **ARTICLE II – MEETINGS**

### **2.1 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.

## **2.2     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.

## **2.3     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:

- (a)     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
- (b)     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.

## **2.4     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. Any member who fails to attend any of the meetings of the Legislative Body for 60 days, unless such absences are excused, shall surrender the office and be deemed to have surrendered the office.

## **2.5     Study Sessions**

The Legislative Body may meet informally in conference or "study" sessions regarding concerns of the Legislative Body to interchange information, provided that all discussions and conclusions shall be informal. Such meeting shall be called in the same manner as for special meetings or adjourned meetings, as applicable, and be subject to the Brown Act. Each notice shall indicate that an opportunity for public comment shall be provided before any matter shall be determined. 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**

### **3.1 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 V. 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:

CITY HALL COUNCIL CHAMBERS  
CITY HALL LARGE CONFERENCE ROOM  
OTHER CITY HALL CONFERENCE ROOMS  
LIBRARY

### **3.2 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 V.

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:

CITY HALL COUNCIL CHAMBERS  
CITY HALL LARGE CONFERENCE ROOM  
OTHER CITY HALL CONFERENCE ROOMS  
LIBRARY

### **3.3 Notice and Agenda for 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.

### **3.4 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. 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 except in accordance with the City's record retention policies.

## **ARTICLE IV– CLOSED SESSIONS**

### **4.1 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 shall exclude all 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.

#### **4.2 Persons Authorized**

Persons present in the closed session shall be only those persons necessary to the discussion of the matter 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 any reportable decisions made at the meeting, unless attendance is excused.

#### **4.3 Confidentiality**

The minute book for any closed session is not a public record and shall be kept confidential and 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. Violation of this rule shall subject the violator to censure by the Legislative Body as provided in Section 10.5 herein.

#### **4.4 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 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 publicly any reportable actions taken on a closed session matter and, if any vote was taken, shall announce that the matter was put to a vote, the results of the vote, and how each Legislative Body member voted.

### **ARTICLE V - AGENDA CONTENTS**

#### **5.1 Preparation of Agendas**

Barring insurmountable difficulties, the agenda shall ordinarily be delivered to the members of the Legislative Body on Friday (as an informal deadline) 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, or in any case as required by the Brown Act.

Any Legislative Body member may have placed on the agenda any business that should be deliberated upon in the future by the Legislative Body. 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 the member wishes the subject to be considered. The matter shall then be listed on the next agenda for discussion of whether it should be a future agenda item. The City Manager shall advise the Legislative Body member of constraints affecting staff's ability to produce an agenda report, and when the matter should be scheduled.

Notwithstanding the foregoing, the City Manager generally has responsibility for setting the agenda for the Legislative Body (except for any Commission where the responsibility may be assigned to the City Manager's designee), and may place matters on the agenda in accordance with the Manager's evaluation of administrative priorities and resource capacities of City.

## **5.2 Description of Matters**

All items of business to be transacted or discussed at a meeting of the Legislative Body, shall be briefly described on the agenda. The description may, but 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. The description of closed session matters shall meet the requirements of Government Code Sections §54954.2 and, where applicable, §54954.5. Matters may be designated as "pending" and listed for the sole purpose of determining if they will be on a future agenda.

## **5.3 Action Items**

(a) Matters may formally be adopted by an ordinance, a resolution, minute order, or other motion (thereafter recorded by minute entry). Technically, all three are equally as legally effective and binding but vary in the formality of respective memorialization. While most actions will be presented to the Legislative Body in a written form prior to, or at, the meeting, the Legislative Body may amend any proposed action as written by carried motion of the Legislative Body at the time of its presentation for adoption. If an action as written is so amended by the Legislative Body, it shall be revised to reflect the Body's amendments for later execution by the Presiding Officer.

(b) Besides ordinances and resolutions, action can be taken by motion and recorded as a minute order. A "minute order" denotes a Legislative Body action which is recorded simply by an item entered in the minutes of the meeting at which it was accomplished, and no separate document is made to memorialize it.

(c) As a general rule, a recorded majority of the quorum for a Legislative Body may take an action. However, for the City Council, resolutions, orders or the payment of money, and all ordinances require a recorded majority vote of the total membership of the City Council. Some actions, such as the passage of an urgency ordinance or adoption of a resolution of necessity to condemn property, require a super-majority vote. Under the Political Reform Act of 1974, a member with a financial conflict of interest regarding a matter before the member's board must leave the room while that matter is being discussed, heard, or acted on, so that member cannot be counted towards the quorum for that matter.

## **5.4 Resolutions**

(a) . A "resolution" is a formal action with findings taken by the Legislative Body, generally pre-prepared in writing, designated by sequential number, and 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 are used 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.

(b) A resolution may be adopted at the same meeting it is presented. Where a resolution has been prepared in advance, the procedure shall be: motion, second, discussion, vote pursuant to methods prescribed in Article XI, and result declared. It shall not be necessary to read a resolution in full or by title except to identify it.

(c) Where a resolution cannot reasonably be prepared in advance of a meeting, the Legislative Body may instruct the City Manager or the General Counsel to prepare a resolution for presentation at the next Legislative Body meeting. Where urgent, 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 XI, shall be followed.

### **5.5 Ordinances (City Council Only)**

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

(b) Ordinances, other than urgency ordinances, require at least two readings at different meetings held at least five days apart with the first reading considered to be introduction and the second adoption.

(c) 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. Government Code Section 36934.

(d) 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. Ordinances shall be numbered and kept by the clerk/secretary with the same formality as resolutions as described above in Section 5.4.

(e) 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.

### **5.6 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 for 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). The Legislative Body may choose to leave

the final form of the contract to the discretion of General Counsel if the Legislative Body has determined the general conditions of the contract.

### **5.7 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 5.9 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.

### **5.8 Public Comment Period**

Pursuant to Government Code § 54954.3, every agenda posted for any meeting 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. The public comment period should be conducted in accordance with Article VII.

### **5.9 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:

(a) Upon a majority determination that an "emergency situation" that is either (i) a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, or (ii) 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.

(b) 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.

## **5.10 Minutes and Recordings**

(a) 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 which when adopted by the Legislative Body shall be the official Minutes of the meeting. 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. Only the best and most complete available recording of the meeting shall constitute the official record of the Legislative Body, but the Minutes shall constitute the official record of the Legislative Body meeting where a verbatim record of the meeting is not available.

(b) Any recording 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.

## **ARTICLE VI – ORDER OF BUSINESS**

### **6.1 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:

- (a) Roll Call.
- (b) Announcement of Closed Session Items, if applicable.
- (c) Public Business from the floor on closed session items.
- (d) Recess.
- (e) Reconvene Regular Meeting.
- (f) Pledge of Allegiance.
- (g) Closed Session Report, if applicable.
- (h) Public Comments, Correspondence, Presentations, Appointments.
- (i) Consent Items. (See Section 6.3 below.)
- (j) Public Hearings.
- (k) Announcements and Reports.
- (l) Discussion Items.
- (m) Items for Future Agendas (Pending Matters).
- (n) Adjournment.

### **6.2 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.

### **6.3 Consent Items**

Matters 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 Calendar. The approval of the Consent Calendar shall signify the approval of each matter or recommendation included therein. All matters on the Consent Calendar shall be the subject to public comment procedures in Article VII. 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, a matter may be removed from the Consent Calendar for separate discussion and/or action. Any such item shall be considered as part of the Excluded Consent Calendar. Each matter 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. The following matters are not appropriate for the Consent Calendar:

(a) 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.

(b) Any matter where the City Manager believes (i) it unlikely that there would be unanimous approval by the Legislative Body, or (ii) there is likely to be public comment on the matter, or (iii) a public presentation of the matter would be beneficial to the community.

### **6.4 City Representatives and Advisory Bodies (*City Council Only*)**

(a) From time to time the Council may be required to assign a representative of the City to non-City boards, commissions or organizations (e.g., boards or commissions of another agency or joint powers authority). Except as otherwise required by law or by the policies of the non-City organization, the Mayor shall make all such appointments of City representatives on non-City organizations after consultation with the City Council.

(b) The City Council shall have the power to establish advisory committees, commissions, other Legislative Bodies and Non-Governing Bodies. Any committee which is (i) established by ordinance, resolution or other formal action, or (ii) has a fixed regular meeting schedule, or (iii) has continuing subject matter jurisdiction over a non-temporary issue, or (iv) which continues to conduct business in excess of 180 days, or (v) has a majority membership of officials from other Legislative Bodies, shall be subject to the provisions of the Brown Act.

Advisory bodies and committees may take the following form:

i) 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.

ii) 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 jurisdiction and duties as the Council may specify. Except as otherwise required by law, the Mayor shall make appointments of members to such committees, boards or commissions subject to the approval of the Council. The procedure of filling vacancies and provision of notice thereof shall be subject to the provisions of the Maddy Act (Government Code §§ 54970-54974). Absent any other provision to the contrary, members of committees, boards and commissions may be removed by the Council without cause by a majority vote of the whole Council body. Any member of the City Council may place the question of such removal on the agenda. Any committees, boards, or commissions so created may be abolished by a majority vote of the whole Council body by repeal of the enacting ordinance or resolution.

iii) Sub-Legislative Bodies, including Non-Governing Bodies, shall be responsible for reporting the Body's activities to the City Council. The members of a Sub-Legislative Body or Non-Governing Body shall operate within the jurisdiction established by the Council and shall not have authority to make subcommittees 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 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.

## **6.5      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 Successor 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.

## **6.6      Items from Members**

(a) There is a specific item on the agenda for receiving general comments, announcements, and/or suggestions from members of the Legislative Body. This can be used to inform the public concerning upcoming events, report on members' attendance at conferences and seminars, for requests by members that staff look into specific matters or similar matters. These matters may not be discussed, opined upon or deliberated, and if they do not concern a matter on the agenda, shall be handled by the Presiding Officer according to the same procedures set out for Public Comment in Section 7.3. No action may be taken on such matters without being placed on a subsequent agenda.

(b) There is an agenda item referred to as pending matters. Matters are listed under this item pursuant to Section 5.1 where a member has asked that the matter be scheduled for discussion of whether a future staff report should be prepared. The listing of the matter allows a discussion of whether a staff report should be prepared, or it may be held on the pending agenda to keep track of when it will be assigned to a future agenda.

(c) There is an agenda item referred to as Reports from City Manager. This may be used by the City Manager similarly to the item for members of the Legislative Body in Subsection (a) above to make announcements without separately listing the matter on the agenda, and subject to the same restriction that there may be no discussion or action on such matter.

## ARTICLE VII– PUBLIC COMMENT AND PRESENTATIONS

### **7.0 City Council Meeting Presentations**

City Council presentations are for providing information to the Mayor and Council, City management, and the community about activities of interest and value to include activities, events and infrastructure projects relating to the City, honors and celebrations for organizations, corporations and residents which reflect their service to the Banning community, honors and recognitions for City staff for outstanding service or commitment to the City's mission and goals. Please Note: This is not the appropriate time to seek funds from the City and/or endorsements from City Council or discuss politics.

All presentations are to be no more than five minutes in length; this is to include all speakers for the group being recognized. Please see the attached "Exhibit B" for a complete copy of the Banning City Council Meeting Presentation Policy contained and incorporated as an exhibit to the Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning.

### **7.1 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 7.3, 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 7.4 below.

### **7.2 Time Limitations**

The time limit to speak for public comments is **five minutes** during a noticed public hearing, provided that these limits do not apply to a project applicant speaking at a public hearing pursuant to Article VIII. All such time limits shall be noticed on the agenda for the meeting. Notwithstanding these time limits, the Presiding Officer has the full prerogative to maintain meeting order and decorum as provided in Section 9.1 and Article X generally, and the Presiding Officer may extend time if he/she finds such extension is reasonably necessary to allow the speaker to compete his/her message without repetition or unnecessary tangents.

### **7.3 Reserved**

#### **7.4 Additional Procedures for Public Comment on Agenda Items**

(a) 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, as determined by the Legislative Body and set forth in the agenda.

(b) The purpose of the public comment period is to receive input from the public, not to create a debate between the Members and the public. Members should generally refrain from debating members of the public during the period for public comment, but if Members desire to clarify comments by members of the public, they may ask factual questions, and if necessary, should do so during the public comment period.

(c) The Presiding Officer should clearly open and close the public comment period. After the close of the public comment period or after a motion has been made, no member of the public shall address the Legislative Body without first securing permission of the Presiding Officer.

### **ARTICLE VIII– NOTICED PUBLIC HEARINGS**

#### **8.1 Public Hearings; Notice; Fairness**

(a) 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.

(b) 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, to refer to City staff for further information, or to suggest that the concern be brought to the whole Council at the hearing or Council meeting, as appropriate.

(c) All public hearing notices shall be issued and published in compliance with any statutory notice requirements applicable to the particular hearing at issue and such notice shall inform interested persons of the Statute of Limitations to challenge the validity of any action taken by the Legislative Body on such matter.

(d) In all matters before a Legislative Body, whether public hearing or otherwise, the Body must judge the matter fairly and without personal bias. Although every Legislative Body member has a right to their own personal opinions, Legislative Body members should by their demeanor show an ability to listen to a variety of viewpoints and demonstrate a reasonable willingness to consider all sides of an issue before them. For quasi adjudicative matters involving public hearings, the members of the Legislative Body shall not prejudice the

matter prior to the public hearing, shall be fair and impartial, and shall decide the matter based upon the evidence and the statutorily required findings.

(e) For such matters, Legislative Body members should avoid expressing an opinion or divulging their thought process until after the public hearing has been completed.

## **8.2 Continuance of Hearings**

(a) 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.

(b) 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 unless the speaker will not be available at the continued hearing date.

(c) When the Legislative Body has continued 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.

(d) Continuances of a public hearing to a date certain need not be re-noticed unless (i) the hearing has not been continued to a date certain, or (ii) has been continued three or more times and the Presiding Officer believes confusion may be created as to the time of the hearing.

## **8.3 Conduct of Hearings**

(a) 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.

(b) 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 upon being recognized, may speak or present evidence relevant to the matter being heard. Generally the Presiding Officer should allow speakers in favor of projects, then those opposed, and then rebuttal. Any testimony shall be truthful.

(c) Members of the Legislative Body who wish to ask questions of the speakers, during the public hearing portion, may do so but should be mindful that the purpose of the public hearing is to obtain testimony and evidence from the speakers, and not to debate the merits of the matter with speakers. Members should avoid debate and expressions of personal opinion until after the close of the public hearing. Unlike public comment periods, generally there should be no response to speaker comments until after the close of the hearing. The Presiding Officer shall conduct the hearing in such a manner as to afford due process to all affected persons.

(d) 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.

(e) 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 may re-open the public hearing to obtain public comments upon such new evidence.

(f) The Presiding Officer has the prerogative to establish special rules, such as to require group spokesmen, to limit the number of speakers to limit the total time for testimony to allow speakers to give time to others, or otherwise control the hearing, provided that (i) speakers are treated fairly, and that (ii) any such special rules are announced in advance of their application. The Presiding Officer always retains the prerogative to cut off speakers who are unduly repetitious, and to permit the extension of time to speakers.

#### **8.4 Extra-Meeting Contacts on Matters Set for Public Hearing**

(a) Legislative Body members should minimize their contacts with developers, applicants, or other persons who will be the subject of a quasi-adjudicative public hearing matter to be heard before the Legislative Body. Legislative Body members should avoid extra-meeting contacts with persons who will be the subject of a public hearing before the Body or with advocacy groups or special interests.

(b) 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 and should encourage any such person to present their position in writing or orally at the public hearing.

(c) At the commencement of the public hearing, the Legislative Body member must disclose publicly any extra-meeting contacts or discussions had which may be relevant to the decision.

(d) 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.

## **ARTICLE IX - OFFICERS**

### **9.1 Presiding Officer**

(a) 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, including as provided in Article X.

(b) The Vice Chair shall generally take the place of the Presiding Officer in the absence of the Presiding Officer. In the absence of the Vice Chair, the Presiding Officer may call any other member to take his or her place as Presiding Officer; such substitution not to continue beyond adjournment.

(c) 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 governed by the Chart of Motions attached as Exhibit A.

### **9.2 Representation of Legislative Body**

(a) 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 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.

(b) Members of the City Council may use official City letterhead to correspond with other public officials and with consultants but any such correspondence shall state that the views expressed therein are personal and not the position of the City unless the City Council has officially adopted such position. No commission or Sub-Legislative Body may take a position officially representing the City unless authorized to do so by the City Council.

### **9.3    Email Policy**

(a) Members of the Legislative Body are provided with City email accounts which may be utilized for the conduct of City business, including communications with constituents. Members should be aware that all such communications may be subject to the Public Records Act (Gov't Code Section 6200). Use of private email accounts for City business may also make them subject to disclosure.

(b) Members of the Legislative Body are subject to the Brown Act in the use of email. Email communications may not be used to develop a collective consensus or decision on any matter. Email communications to the entire Body should be avoided but may be permitted to provide factual information, for example such as arranging an event, where no discussion or exchange of opinions on a matter within the jurisdiction of the Legislative Body is initiated or occurs.

### **9.4    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.

### **9.5    City Manager**

The City Manager, or designee, shall attend all meetings of the Legislative Body unless excused. The City Manager 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, shall provide the Legislative Body with a staff report providing sufficient information to be the basis for any action by the Legislative Body at its meeting. Any officer or employee of the City, when directed by the City Manager, shall attend any meeting of the Legislative Body and may present information relating to matters before the Legislative Body.

### **9.6    General Counsel**

(a) The General Counsel, or 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 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 and all contracts, deeds, easements or other legal instruments 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.

(b) 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 the City Manager or 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 shall not have an attorney-client relationship with individual councilmembers. 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.

(c) 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 but should provide advice to members when requested. However, 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. Any advice given to an individual member of a Legislative Body cannot be withheld from the rest of the City or Legislative Body. 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.

(d) *[City Council Only]*. It often happens that other jurisdictions or the League of California Cities or other regional or statewide association will ask the City to participate in the filing of a letter or brief before a court in a matter deemed to be of concern to all or a great many cities. These "friend of the court" or "amicus" 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. In considering whether to direct General Counsel to file an amicus brief, the City Council shall consider whether such brief would represent or propose a position that conflicts with, or causes strife amongst, other City-related interests such as, without limitation, the interests of employee organizations, law enforcement or public safety.

i) Upon receipt of the request, the General Counsel shall make the request available through the City Manager to the Council. 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 City Manager or 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.

ii) In lieu of the foregoing process, where there is urgency to the matter, General Counsel is authorized to undertake the filing of the letter or brief where (i) in the opinion of General Counsel the legal matter significantly affects the interests of the City, (ii) the General Counsel has consulted with and received the approval of the City Manager, (iii) the cost to the City will not exceed \$5000, and (iv) the General Counsel makes a written report of the action to the Legislative Body.

iii) Approval given to General Counsel to defend, or seek or refrain from seeking, appellate review or relief, or to enter as an *amicus curiae* in any form of litigation as the result of a closed session consultation shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

#### **9.7 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.

#### **9.8 Reserved**

#### **9.9 No Financial Interest in Contracts**

A member of a Legislative Body shall not have a financial interest in a contract within the meaning of (Government Code §1090 *et seq.*) made in their official capacity and such contract shall be null and void whether the member participates in the making of the contract or not.

## **9.10 Ethical Standards**

A member of a Legislative Body shall maintain the highest ethical standards and shall adhere to all laws and the ordinances and regulations of the City in carrying out their duties.

## **ARTICLE X- DECORUM AND ORDER**

### **10.1 Decorum and Order – Legislative Body Members**

(a) 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.

(b) 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.

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

(d) 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.

(e) Any Legislative Body member called to order while speaking shall cease speaking immediately until the question of order is determined. If ruled to be in order, the member shall be permitted to proceed. If ruled to be not in order, the member shall comply with ruling of the Presiding Officer.

(f) 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.

(g) 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 the member to so act.

(h) 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.

(i) The members of the Legislative Body shall always be attentive and show respect to those addressing the Legislative Body provided that nothing shall prevent the enforcement of the rules of decorum herein.

(j) 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 they are representing the Legislative Body unless they have been authorized to do so by the Legislative Body. When making a comment at such a meeting, the Legislative Body member should make it clear that they are 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 ultimately be decided upon by the Legislative Body.

(k) The Legislative Body may punish its own members for misconduct pursuant to Section 10.5.

## **10.2 Decorum and Order – Employees**

(a) 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 staff and 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.

(b) 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.

(c) 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.

### **10.3 Decorum and Order – Public**

(a) 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.

(b) 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 may 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.

(c) 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.

### **10.4 Enforcement of Decorum**

(a) The Banning Police Chief or 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 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.

(b) 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.

### **10.5 Censure of Legislative Body Members**

(a) 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.

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

(c) When evaluating a request for defense 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. Failure of the Legislative Body to censure the conduct of a member does not constitute waiver of the Body's right to refuse to defend the member in an action.

(d) 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 charged member shall be given notice and an opportunity to be heard as follows:

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

(ii) Proceedings shall be commenced by the presentation of a written statement of charges to the subject Legislative Body member with a copy delivered concurrently to the Clerk/Secretary 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 ten days 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. The statement of charges shall be delivered to all other Legislative Body persons.

(iii) Within seven (7) days after delivery of the statement of charges, the charged member should deliver a written response to the other members of the Legislative Body unless the charged member chooses to defer the response to the hearing.

(e) The motion for censure shall be agendaized and considered at the first regular meeting occurring 10 days following the delivery of the statement of charges to the member and Clerk/Secretary. 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 by the Presiding Officer unless the Presiding Officer is a party to the action, in which case the Vice Chair or some other member shall conduct the proceedings.
- (ii) The hearing shall generally proceed by a reading of the charges by the charging member. The charging member may present witnesses; the charged member may answer in rebuttal; members of the public may speak in favor or opposed to the charge; and the remaining members may speak to the charges in that order.
- (iii) Passage of the motion for censure shall require a majority vote of the members of the Legislative Body. The voting members shall not go into closed session for deliberation.

(f) 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.

(g) 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.

## **10.6 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.

## **10.7 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.

# **ARTICLE XI – PARLIMENTARY PROCUEDRES**

## **11.1 Procedures In Absence Of Rules**

(a) 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.

(b) 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.

(c) Motions, motion procedures and precedence of motions shall be conducted in accordance with Exhibit "A" hereto.

## **11.2 Voting**

(a) After a full opportunity for debate 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. The Presiding Officer may also determine that a consensus exists following a call for a vote by any member of the Legislative Body by a Motion to Call the Question.

(b) Except as in Subsection (a) above, 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.

## **11.3 Votes Needed**

(a) 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.

(b) 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:

- (i) Levying Taxes - Ordinances providing for the Assessment and collection of taxes require the approval of two-thirds of the members of the whole Council.
- (ii) Assessment - Assessments require a two-thirds vote of the whole Council.

- (iii) Bonds and Certificates of Participation - Authorizing these financial instruments the issuing requires a two-thirds vote of the total Council.
- (iv) Eminent Domain - The exercise of Eminent Domain requires a two-thirds vote of the total Council.
- (v) Certain Parliamentary Motions - Motions requiring a supermajority vote are noted in the Motions Chart attached hereto.

(c) 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.

#### **11.4 Reconsider**

Any Legislative Body member who voted with the majority may move to reconsider any action at the same meeting or, within sixty (60) calendar days, request in writing to the Clerk/Secretary that it be agendized for consideration at the following meeting, provided that reconsideration shall not be permitted where a party other than the City has acted in reliance on the Legislative Body's action and would be substantially prejudiced by such reconsideration. The Clerk shall apprise the City Attorney of any facts constituting substantial prejudice and may rely upon the determination of the City Attorney. 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. The member seeking reconsideration must have the matter agendized unless the motion will be made at the same meeting where the original action was taken. 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.

#### **11.5 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. In such case the findings in support of the decision shall be those of the lower body. 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.

## **11.6 Abstentions**

Members of the Legislative Body are discouraged from abstaining from a vote for reasons other than a legally-disqualifying, financial conflicts of interest. However, if a member chooses to abstain from voting as a result of what he/she perceives as a personal or non-financial conflict of interest, the member may do so after stating for the record the nature of the perceived conflict. In the event of such a perceived conflict (as opposed to a legally-disqualifying conflict), the member is not required to leave the dais.

(a) A Legislative Body member shall generally express their positions on all matters except those where they are required to abstain due to legally recognized conflict of interest.

(b) 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, may participate in the hearing on the appeal, unless there is clear and convincing evidence that such member is not objective or the member feels that they are unable to remain neutral, or as may be otherwise advised by the General Counsel. Notwithstanding any contrary provisions herein, in bringing an appeal, the Legislative Body member need not give reasons for making the appeal.

(c) A Legislative Body member may abstain from action on a matter where in the member's opinion, there might be a public perception that participation in the discussion or decision would be inappropriate even though the member has no disqualifying financial interest within the meaning of FPPC rules and regulations.

## **11.7 Votes Of Members Previously Absent**

(a) A Legislative Body member who was not present at a meeting should generally not vote on the approval of minutes for that meeting, but the voting on such minutes shall have no effect on the validity of the minutes.

(b) 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.

(c) 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.

## **11.8 Appeals by Members of Legislative Body**

Except where otherwise provided, a member of the Legislative Body shall be deemed an interested person in any matter by a subordinate body and shall have standing to appeal to the Legislative Body any decision by a Sub-Legislative Body, or any determination made by any official of City by filing a written appeal. The appeal shall not state any grounds for the appeal and the resulting hearing shall be *de novo*. The appeal must be filed within 10 days of the making of the decision being appealed and shall be filed with the Clerk/Secretary who shall give written notice to the applicant, and provide written notice to other persons as required for the original action. The hearing shall be held at the first regular meeting of the Council for which notice can be legally given. No appeal fee shall be required to be paid for such appeals.

## **11.9 Findings and Decisions**

Decisions of a Legislative Body, when acting as a quasi adjudicative body (public hearings) should be framed in terms of “findings” of fact, potentially relevant conclusions of law, and ultimate decisions showing the basis for the decision and the nexus between the findings, the conclusions and the decision. 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 in making their decisions.

# **ARTICLE XII- PROCEDURES FOR CONSIDERATION OF DEMANDS FOR CORRECTIVE ACTION**

## **12.1 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.

## **12.2 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 to reconsider the prior action. The motion to reconsider shall be in order as long as made by a party on the prevailing side. If no motion to reconsider 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. (See, § 11.4 hereof.)

### **12.3 Implementing Corrective Action**

If a motion to reconsider passes, the Presiding Officer may entertain a motion to take corrective action. Any motion taking corrective action shall address the concerns raised in the consideration of corrective action. The motion taking 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 XIII – MISCELLANOUS**

### **13.1 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.

### **13.2 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.

### **13.3 Power to Issue Subpoenas**

The Legislative Body may issue subpoenas requiring attendance of witnesses or production of books or other document for evidence or testimony any action or proceeding pending before it. (Gov't Code Section 37104.) Subpoenas shall be signed by the Presiding Officer and attested by the Clerk. They may be served as subpoenas are in civil actions.

## **EXHIBIT “A”**

## **CHART OF MOTIONS**

Manual Exhibit "A": Chart of Motions

1. Motions listed in the order of precedence

MOTION	YOU SAY THIS:	May you interrupt the speaker?	Do you need a second?	Is it a debatable?	Can it be amended?	What vote is needed?	Can it be reconsidered?
Adjourn meeting	"I move to adjourn"	No	Yes	No	No	Majority	No
Call an intermission <sup>1</sup>	"I move to recess for...".	No	Yes	No	Yes	Majority	No
Register a complaint	"I rise to a question of privilege"	Yes	No	No	No	None	No (usually)
Temporarily suspend consideration of an issue <sup>2</sup>	"I move to table the motion"	No	Yes	No	No	Majority	No
Close debate	"I move the previous question"	No	Yes	No	No	2/3	No, unless they're on question has not been taken
Limit or extend debate	"I move that the debate be limited [or "extended" to ...]"	No	Yes	No	Yes	2/3	Yes
Give closer study of something <sup>3</sup>	"I move to refer the motion to the committee"	No	Yes	Yes	Yes	Majority	Yes, unless the board has already taken up the subject.
Amend a motion	"I move to amend the motion by ..."	No	Yes	Yes	Yes	Majority	Yes
Motion to continue to a certain time	"I move that the motion be continued to ..."	No	Yes	Yes	No	Majority	Yes
Introduce business (bring a main motion)	"I move that [or "to"] ..."	No	Yes	Yes	Yes	Majority	Yes

<sup>1</sup> Should specify period of recess.

<sup>2</sup> A motion to take up a matter previously tabled must be made at the same meeting as the motion to table. If not, the motion tabled dies.

<sup>3</sup> May contain specific instructions for board members and a date for certain for reconsideration. If not date is not certain, restored by a motion to "take up matter previously tabled" which is permissible in this case even if not same or next meeting.

2. Incidental Motions – no order or precedence. Arise incidentally and decided immediately.

MOTION	YOU SAY THIS:	May you interrupt the speaker?	Do you need a second?	Is it a debatable?	Can it be amended?	What vote is needed?	Can it be reconsidered?
Protest breach of rules (i.e., Point of Order) <sup>4</sup>	"I rise to a point of order..."	Yes	No	No	No	None	No
Motion to appeal the ruling <sup>5</sup>	"I appeal from the decision of the Presiding Officer for [Chair]"	Yes	Yes	Yes	No	Majority	Yes
Suspend rules temporarily	"I move to suspend the rules so that...."	No	Yes	No	No	2/3	No
Avoid considering an improper matter	"I object to the consideration of the question..."	Yes	No	No	No	2/3	No, only if the main question or motion was no, in fact considered.
Divide motion	"I move to divide the question	No	Yes	No	Yes	Majority	No
Parliamentary law question	Parliamentary inquiry	Yes; if urgent	No	No	No	None	No
Motion to depart from the agenda	"I move to consider matter _____ out of order"	No	Yes	Yes	Yes	Majority	Yes
Take up matter previously tabled <sup>6</sup>	"I move to take from the table..."	No	Yes	No	No	Majority	No
Cancel or change previous action <sup>7</sup>	"I move to rescind/amend something previously adopted..."	No	Yes	Yes	Yes	2/3 or majority with notice	No
Reconsider motion	"I move to reconsider the vote on..."	Yes	Yes	Only if motion to be reconsidered is debatable <sup>8</sup>	No	Majority	No

<sup>4</sup> Decision of the Presiding Officer is final, unless overturned by motion to appeal the ruling.  
<sup>5</sup> Presiding Officer may participate in debate. Negative or tie vote sustains ruling.

6. A motion to take up a matter previously tabled must be made at the same meeting as the motion to table. If not, the motion tabled dies.

<sup>7</sup> Does not void action *ab initio*, only from point of rescission. Motion is out of order if relates to contract upon which another party has detrimentally relied, relates to issuance of bonded indebtedness, or relates to the collection of any tax.

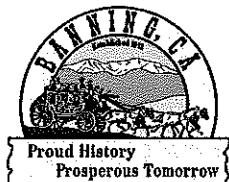
<sup>8</sup> Cannot be made on a quasi-judicial matter or matters requiring a noticed public hearing. Can only be made by a member who voted with the previously prevailing side. May be made at the same meeting or a subsequent meeting subject to the same restrictions as a motion to rescind.

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# **EXHIBIT “B”**

## **BANNING CITY COUNCIL MEETING PRESENTATION POLICY**



## **BANNING CITY COUNCIL MEETING PRESENTATION POLICY**

### **Presentation Purpose**

City Council presentations are for providing information to the Mayor and Council, City management, and the community about activities of interest and value including:

- Activities, events and infrastructure projects relating to the City
- Honors and celebrations for organizations, corporations and residents related to Banning
- Honors and celebrations for organizations, corporations and resident which reflect their service to the Banning community.
- Honors and recognitions for City staff for outstanding service or commitment to the City's mission and goals.
- Please note this is not the appropriate time to seek funds from the City and/or endorsements from City Council or discuss politics.

### **Presentation Length**

All presentations are to be no more than five minutes in length; this is to include all speakers for the group being recognized.

### **Presentation Schedule**

City Council begins at 5:00 p.m. with an invocation and pledge to the American flag followed by presentations. All honorees or groups are to arrive no later than 4:45 p.m.

### **Presentation Location**

Presentations take place in the Council Chambers inside Banning City Hall located at 99 E. Ramsey Street. Parking is available in the Police Department parking lot located at 125 E. Ramsey Street (just off Hays Street) adjacent to the Council Chambers, or in the City Hall parking lot located at the corner of Hays and San Gorgonio.

### **Presentation Technical Support**

The City has the capability to display PowerPoint during the presentation. If a PowerPoint is to be used during the presentation:

- The PowerPoint is to be no more than 10 slides with limited text; and
- To be submitted to the City Clerk's Office no later than the Thursday prior to the scheduled Tuesday City Council meeting (2<sup>nd</sup> and 4<sup>th</sup> Tuesdays of the month).
  - PowerPoints are subject to editing for appropriateness
  - PowerPoints which do not meet these standards will not be used

## CITY COUNCIL AGENDA

**Date:** April 23, 2013  
**TO:** Honorable Mayor and City Council  
**FROM:** Fred Mason, Electric Utility Director  
**SUBJECT:** Update on San Juan Generating Station

**RECOMMENDATION:** The City Council accept this report which reviews the impacts of the various State and Federal regulatory mandates on the San Juan Generating Station, and summarizes the activities that Banning is taking to mitigate these impacts.

**BACKGROUND:** The City of Banning entered into a power sales contract with the Southern California Public Power Authority (“SCPPA”) in 1993 to procure a 20 megawatt ownership entitlement in the San Juan Coal Powered Generating Station Unit 3 (“SJ3”) located in Farmington, New Mexico. Four other SCPPA members (the cities of Azusa, Colton, and Glendale, and the Imperial Irrigation District) entered into similar agreements for shares of SJ3 at that time. The participating SCPPA members procured a total of 204 megawatts of the unit’s 544 megawatt total gross capacity. SCPPA issued tax exempt bonds in the amount of \$237,375,000 to finance the SJ3 purchase. Banning had a 9.8% share of the SCPPA project, which equaled an initial bond debt of \$23,262,750. Banning’s current SJ3 bond balance is \$9,720,000, and is scheduled to be paid off in 2020.

The SJ3 asset has been a valuable resource for Banning over the past twenty years. In addition to providing over 60% of the City’s electricity requirements, the excess electricity from SJ3 has generated over \$25,000,000 in wholesale revenue in the past 12 years alone.

Unfortunately, the political and environmental climate has changed since the City purchased SJ3 in 1993. A number of legislative bills that have been passed in California have had a significant impact on Banning’s Electric Utility including: A 33% renewable energy mandate by 2020, a mandate to significantly reduce greenhouse gas emissions, implementation of a Cap & Trade program, and significant restrictions on investments in coal plants. In addition, the environmental community has been waging a war on coal plants, and has filed lawsuits against a number of them, including SJ3. The lawsuit by the Sierra Club against the entire four unit San Juan Generating Station cost \$330,000,000 in capital improvements to resolve, and Banning’s share of that was \$4,000,000. This is but one of a number of lawsuits the San Juan Generating Station has had to deal with, and it appears that there will be more. The environmental community has made it clear that they will continue with litigation against coal plants until they are all shut down and replaced with clean energy resources. While the idea of clean energy is one that we all work toward, the cost to electric utility ratepayers will be significant, and the impact of replacing baseload coal plants with intermittent renewable resources, such as wind and solar, could have unintended negative consequences on the overall reliability and stability of the electricity grid.

Due to the change in the political and environmental climate and the impact it was having on the Utility, staff had obtained approval from the City Council to pursue divestiture of its ownership

interest in SJ3. At this same time, the City of Azusa (“Azusa”) was also looking to divest of its ownership interest in SJ3 and approached Banning with the proposal to combine its shares and market them together. This marketing endeavor resulted in a MOU between Azusa, Banning, and the Utah Association of Municipal Power Systems (“UAMPS”) to develop an agreement to transfer Azusa and Banning’s SJ3 shares to UAMPS. The City Council approved the MOU on October 23, 2011, and the three parties started working on developing the final agreement.

Unfortunately, before the agreement could be finalized, the Environmental Protection Agency (“EPA”) issued a Federal Implementation Plan (“FIP”) to the state of New Mexico, which mandated that the San Juan Generating Station install Selective Catalytic Reduction (“SCR”) technology on all four units, at an estimated cost of \$1 Billion (Banning’s share would have been approximately \$13,000,000). New Mexico responded by issuing its own State Implementation Plan (“SIP”) which called for installing Selective Non-Catalytic Reduction (“SNCR”) technology on the four units, which they said would achieve nearly the same clean air standard, at a cost of approximately \$80,000,000, or less than 1/10<sup>th</sup> of the cost of SCR technology. The EPA denied New Mexico’s SIP, and in turn New Mexico sued the EPA.

Due to the ongoing litigation and uncertainty, UAMPS did not want to finalize the agreement with Azusa and Banning until it had been resolved. After many months of negotiations, the EPA and New Mexico came to a settlement agreement which would shut down units 2 and 3 of the San Juan Generating Station by December 31, 2017, and install SNCR technology on the remaining two units. This agreement, in effect, nullified the agreement Banning had been developing with UAMPS, because SJ3 would be shut down.

While having SJ3 shut down accomplishes the ultimate goal of divestiture, it has other consequences. The SCPPA bonds which are scheduled to be paid off in 2020, now must be paid off by December 31, 2017, because you can’t have outstanding bonds on an asset that doesn’t exist anymore. This will result in higher debt service payments over the next 5 years to ensure the bonds are paid off at the same time the plant is shut down. Additionally, all the owners of the entire San Juan Generating Station have to develop an agreement on how to handle all the common operating expenses that have been shared pro rata – including the remaining coal stock, as well as the decommissioning and reclamation costs that will be incurred when the entire plant ultimately shuts down. All these negotiations could result in additional expense for Banning to completely divest of its ownership entitlements in SJ3.

Unfortunately, there is still additional uncertainty with the agreement between New Mexico and the EPA. New Mexico must go through a public hearing process, which can take up to 12 months to complete. At that point, they will resubmit the revised SIP to the EPA for approval. It is anticipated that the EPA will accept the revised SIP, but there is no guarantee.

Once all the agreements and negotiations are complete, and it is certain that SJ3 will be shut down, staff will begin the process of identifying viable projects and negotiating power purchase agreements to replace the energy it will be losing from SJ3. Per previous City Council direction, all new energy contracts will be for renewable energy resources. This will ensure that Banning meets California’s 33% renewable energy mandate.

**FISCAL DATA:** The overall fiscal impact is unknown at this time. However, the increase to the SJ3 debt service payment would be approximately \$500,000 per year over the five years. In

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addition, the ongoing negotiations between all the San Juan Generating Station owners could result in millions of dollars of additional expense to Banning to divest itself of SJ3. In addition, the renewable energy that Banning will purchase to replace the SJ3 resource will be approximately 40% more expensive, which may result in higher operating costs to the Utility. Staff will keep the Council apprised of the developments as they occur.

**RECOMMENDED BY:**

  
Fred Mason

Electric Utility Director

**APPROVED BY:**

  
Andrew J. Takata

City Manager

**CITY COUNCIL AGENDA  
PUBLIC HEARING**

**Date:** April 23, 2013

**TO:** Honorable Mayor and City Council

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

**SUBJECT:** Resolution No. 2013-45 Approval of Proposed Electric Rate Schedules

**RECOMMENDATION:**

Option One:

1. Adopt Resolution No. 2013-45 approving the Electric Rate Schedules, attached herewith as Exhibit "A", and authorize the City Manager, or his designee, to implement said Rate Schedules effective May 1, 2013.
2. Authorize the Administrative Services Director, or her designee, to make the necessary transfers between the applicable Electric Funds to resolve the deficit in FY 2012-13.

Option Two:

1. Adopt Resolution No. 2013-45 approving the Electric Rate Schedules, attached herewith as Exhibit "A", and authorize the City Manager, or his designee, to implement said Rate Schedules effective May 1, 2013.
2. Authorize the Administrative Services Director, or her designee, to make the necessary transfers between the applicable Electric Funds to resolve the deficit in FY 2012-13.
3. Authorize staff to analyze and report on the concept of an annual inflation index electric rate adjustment mechanism.

**JUSTIFICATION:** The Banning Electric Utility ("Utility") implemented its last rate increase in October 2009. Since that time, Regulatory Compliance and general operating expenses have increased, most significantly during the past 18 months. As a result of this, the Utility is currently operating in a financial deficit. In addition, the Utility is in default of its Electric Bond Covenant coverage requirement of 115 percent. It is essential that the electric rates assessed by the Utility are sufficient to cover its revenue requirement and provide the resources necessary to ensure the reliability of the distribution system.

**BACKGROUND:** Changes in both the State and Federal Regulatory environment have had significant impacts on electric utilities in California and throughout the entire country. California has imposed numerous Regulatory mandates on electric utilities including: A 33 percent Renewable Energy requirement, significant reduction in Greenhouse Gas emissions, and the Cap & Trade program – which penalizes utilities with coal resources. Each of these State mandates result in increased costs to the electric utilities. In addition, the Federal Environmental Protection Agency ("EPA") has implemented regulations that are having a significant impact on coal generation plants throughout the country, by requiring them to install very expensive

Selective Catalytic Reduction (“SCR”) technology in an effort to reduce emissions. Banning has a small ownership interest in the coal powered San Juan Generating Station – Unit 3, located in New Mexico. The EPA and New Mexico have been conducting lengthy negotiations, which have resulted in an agreement to shut down two of the four units in the San Juan Generating Station, including Unit 3, by December 31, 2017. This is being done in lieu of installing the very expensive SCR technology on all four units. While having Unit 3 shut down has a positive long-term effect on the Utility, in the short-term, it will increase Debt Service expense over the next five years. The cumulative financial impact of these Regulatory mandates is increased operating expense for the Utility, resulting in a structural deficit.

Electric rates should be structured to collect the required revenue, be reflective of the Utility’s cost to provide electric service, be fair and equitable between various rate classes and within the rate classes, be competitive with other service providers in the area, and be easily understood by customers. Staff believes that these principles have been integrated into the proposed Electric Rate Schedules.

Staff will continue to perform an annual analysis utilizing the rate model that Navigant Consulting created for the Utility to ensure that the Utility’s revenue requirements are being met, and will keep the City Council informed of any necessary rate adjustments as required.

Staff recommends that the City Council approve the proposed Electric Rate Schedules, attached as Exhibit “A”, to become effective May 1, 2013.

**FISCAL DATA:** If approved, the new Electric Rate Schedules will result in an overall 12 percent increase in annual retail sales or approximately \$2,800,000 in Fiscal Year 2013-14. The actual financial deficit for Fiscal Year 2012-13 is unknown at this time, but will be identified after the fiscal year ends. However, the deficit is estimated at approximately \$1,500,000. At that time, funds will be transferred from the Electric Rate Stabilization Fund to the applicable account(s) in the Electric Operating Fund 670-7000.

**RECOMMENDED BY:**

  
\_\_\_\_\_  
Fred Mason  
Electric Utility Director

**APPROVED BY:**

  
\_\_\_\_\_  
Andrew J. Takata  
City Manager

**REVIEWED BY:**

  
\_\_\_\_\_  
June Overholt  
Deputy City Manager/  
Administrative Services Director

# **OPTION 1**

## **RESOLUTION NO. 2013-45**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE PROPOSED ELECTRIC RATE SCHEDULES**

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

**WHEREAS**, the Electric Utility implemented its last general electric rate increase in October 2009; and

**WHEREAS**, the Electric Utility must ensure the reliability of the electric distribution system and recover the required operating revenue through its rates; and

**WHEREAS**, the Electric Rate Schedules, attached herewith as Exhibit "A", are fair and equitable between the rate classes, reflect the Utility's cost to provide electric service, and provide the means to ensure the reliability of the electric distribution system.

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

**SECTION 1.** Adopt Resolution No. 2013-45 approving the Electric Rate Schedules, attached herewith as Exhibit "A", and authorize the City Manager, or his designee, to implement said Rate Schedules effective May 1, 2013.

**SECTION 2.** Authorize the Administrative Services Director, or her designee, to make the necessary transfers between the applicable Electric Funds to resolve the deficit in FY 2012-13.

**PASSED, APPROVED, AND ADOPTED** this 23<sup>rd</sup> day of April 2013.

---

Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

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Marie A. Calderon, City Clerk

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

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

## **OPTION 2**

### **RESOLUTION NO. 2013-45**

#### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE PROPOSED ELECTRIC RATE SCHEDULES**

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

**WHEREAS**, the Electric Utility implemented its last general electric rate increase in October 2009; and

**WHEREAS**, the Electric Utility must ensure the reliability of the electric distribution system and recover the required operating revenue through its rates; and

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**SECTION 1.** Adopt Resolution No. 2013-45 approving the Electric Rate Schedules, attached herewith as Exhibit "A", and authorize the City Manager, or his designee, to implement said Rate Schedules effective May 1, 2013.

**SECTION 2.** Authorize the Administrative Services Director, or her designee, to make the necessary transfers between the applicable Electric Funds to resolve the deficit in FY 2012-13.

**SECTION 3.** Authorize staff to analyze and report on the concept of an annual inflation index electric rate adjustment mechanism.

**PASSED, APPROVED, AND ADOPTED** this 23<sup>rd</sup> day of April 2013.

---

Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

---

Marie A. Calderon, City Clerk

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

---

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

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-45 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 23<sup>rd</sup> day of April, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

## **Exhibit “A”**

# **CITY OF BANNING**

## **ELECTRIC UTILITY RATE SCHEDULE**

**May 2013**

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CITY OF BANNING  
Electric Division

GENERAL PROVISIONS

SYSTEM COST ADJUSTMENT FACTOR

The System Cost Adjustment Factor (SCAF) is a charge per kWh that is used to ensure an adequate revenue stream to cover all costs incurred by Banning's electric system, and will be assessed to all customer classes. System costs will include: Power purchases, debt service, transmission, distribution and O&M expense, as well as all overhead costs of the electric system including inter-fund transfers.

The SCAF shall be calculated quarterly for the periods (January-March, April-June, July-September, and October-December) and shall become effective the first day of the 2<sup>nd</sup> quarter following the calculated period (i.e. January-March SCAF would become effective July 1<sup>st</sup>).

The SCAF shall be determined using the following formula and be expressed to the nearest \$0.0001 per kWh:

$$\text{SCAF} = (a+b+c+d-e)/f$$

Where:

a = revenue from retail sales during the period.

b = revenue from bulk sales to other utilities.

c = fees collected from contractors in aid of construction or for other services provided.

d = miscellaneous revenues.

e = total cost of Banning's electric system including power purchases, debt service, transmission, distribution and operating expense, as well as all overhead costs of the electric system including inter-fund transfers.

f = the retail energy sales during the period in kWh.

SCAF will not exceed \$0.02/kWh during any quarter. The uncollected revenue in excess of the \$0.02 cap, if any, will be carried over as an expense in the next quarter. The Electric Utility shall maintain an operating reserve of \$3M. Surplus revenue, if any, collected during any fiscal year, will be set aside in the Capital Improvement fund for system upgrades and future improvements.

PUBLIC BENEFITS CHARGE

All bills rendered under the above rate shall be subject to the Public Benefits Charge as established by the City Council.

## **General Provisions (continued)**

### SEASONS

The Summer season shall commence at 12:00 a.m. on the first day in June and continue until 12:00 a.m. on the first day in October of each year. The Winter season shall commence at 12:00 a.m. on the first day in October of each year and continue until 12:00 a.m. on the first day in June of the following year. Utility bills generated during each applicable season will reflect any appropriate seasonal rate variances.

CITY OF BANNING  
Electric Division

SCHEDULE A

RESIDENTIAL SERVICE

APPLICABILITY

This schedule is applicable to single family and multiple family accommodations devoted primarily to domestic use, and includes services for lighting, cooking, heating and power consuming appliances.

CHARACTER OF SERVICE

Alternating current with regulated frequency of 60 hertz, delivered at 120 or 240 volts, single phase, as may be specified by the Division.

TERRITORY

Within the area served by the City of Banning

RATES

		<u>Per Meter</u>
		<u>Per Month</u>
1.	Standard Residential Service	
	Customer Charge	\$ 3.00
	Energy Charge	<u>Per kWh</u>
	Baseline Service	
	All kWh	\$ .1688
	Low Income Qualified Baseline Service	
	All kWh as described below	\$ .0972
	Non-baseline Service (Winter)	
	All kWh above baseline through 1,000	\$ .2190
	All kWh above 1,000	\$ .2880
	Non-baseline Service (Summer)	
	All kWh above baseline through 1,500	\$ .2190
	All kWh above 1,500	\$ .2880

## **Schedule A – Residential Service (continued)**

Non-baseline service includes all kWh in excess of applicable baseline allowance as described below.

### **MINIMUM CHARGE**

The Customer Charge plus the Energy Charge shall be subject to a minimum charge of \$3.00 per billing cycle.

### **MINIMUM REQUIREMENTS**

All services through one meter.

#### **Multiple Family Dwellings**

Whenever two or more individual family accommodations (in an apartment house, duplex, court, mobile home park, etc.) receive electric service from the Division through a master meter, the service shall be billed under this Schedule. The customer charge per month will be \$3.00 multiplied by the number of individual dwelling units served. The baseline service allocation shall be 308 kWh per month multiplied by the number of individual dwelling units served, plus additional baseline kWh as specified below. In no case shall the base rate billing be less than the Minimum Charge.

#### **Energy Surcharge**

The charges in the above rate are subject to California State Energy surcharge tax and shall be adjusted accordingly.

### **LOW INCOME SENIOR CITIZEN SERVICE**

Upon application to the City, each eligible low-income senior citizen (62 years or older) residential customer shall pay a customer charge of \$1.00 only. The customer shall notify the City when the conditions of the application are no longer valid.

### **LOW INCOME QUALIFIED BASELINE SERVICE**

Upon application to the City, each approved low-income residential customer shall be placed on the Low Income Qualified Baseline rate as described below. The customer shall be required to recertify their eligibility on an annual basis. Failure to recertify will result in removal from the Low Income Qualified Baseline rate.

### **BASELINE SERVICE**

All domestic customers on this schedule are entitled to an allocation of a baseline quantity of electricity that is necessary to supply the minimum energy needs of the average residential user. The total baseline allocation to a customer is the sum of all

## Schedule A – Residential Service (continued)

applicable baseline quantities described in items A through F shown below. However, the Low Income Qualified Baseline rate will only be applied to items A and B. If a Low Income Qualified customer is also eligible for items C through F, any baseline allocation in excess of A and B will be charged at the regular Baseline Service rate:

	<u>kWh Per Month</u>
A. For basic standard residential use	308
B. For air conditioning use during June through September.	250
C. For life support devices	500
D. For all-electric residential heat use during November through March	498
E. For all-electric basic residential use (year around)	150
F. For residential water-well pump use (year around)	500

The all-electric residential heat allowance applies only to residences in which the sole source of heat consists of electric resistance heating. Upon application to the City, the account of each eligible customer shall be provided with the all-electric allocation, including heat use and the year around basic residential use to cover water heaters and cooking.

### LIFE SUPPORT DEVICES

Medical Baseline Allocation: Upon application to the City, the account of each eligible residential customer will be provided a year-around Medical Baseline Allocation.

#### A. Eligibility

For an account to be eligible for the standard Medical Baseline Allocation, the residential customer will provide certification as set forth in Paragraph E below to the City that:

- (1) Regular use in the customer's home of one or more medical life support devices is essential to maintain the life of a full-time resident of the household; and/or
- (2) A full-time resident of the household is a paraplegic, hemiplegic, quadriplegic, multiple sclerosis, or scherodemic patient.

#### B. Life-support Devices

The account of each eligible residential customer will be provided a standard Medical Baseline Allocation following certification acceptable to the City that a full-time resident of the household requires the regular use in the customer's home of one or more life-support devices.

Life-support devices means those devices or equipment which utilize mechanical or artificial means to sustain, restore, or supplement a vital function, or mechanical equipment which is relied upon for mobility both within and outside of buildings. Life-support devices or equipment include the following:

## **Schedule A – Residential Service (continued)**

Aerosol Tent	Electrostatic Nebulizer
Compressor	Electric Nerve Stimulator
Iron Lung	Ultrasonic Nebulizer
Pressure Pump	Motorized Wheel Chair
IPPB Machine	Kidney Dialysis Machine
Suction Machine	Respirator (all types)
Oxygen Generator (Electrically Operated)	

### **C. Paraplegic, Hemiplegic, Quadriplegic, Multiple Sclerosis or Scherodemic Patients**

The account of each eligible residential customer, who provides certification that a full-time resident of the household is a paraplegic, hemiplegic, quadriplegic, multiple sclerosis or scherodemic patient or suffers from abnormality of centrally controlled body thermostat will be provided a standard Medical Baseline Allocation in consideration of special heating and/or cooling needs.

### **D. Hardship Cases**

If the customer believes that the life-support device and/or a patient's space conditioning equipment (as set forth in Paragraph B and C above) requires more than 500 kWh per month to operate, the customer may apply for a higher allocation than the standard Medical Baseline Allocation. Upon receipt of such application, the City shall make a determination if any additional monthly baseline quantity is required to operate the device or equipment based on the nameplate rating and operating hours. The monthly amount of the Medical Baseline Allocation shall be increased to the number of kWh so determined.

### **E. Certification**

The City may require the following Certification:

- (1) The Customer shall have a medical doctor or osteopath licensed to practice medicine in the State of California provide the City with a certification letter, acceptable to the City. The letter shall describe in detail the type of life-support device(s) regularly required by the patient and the utilization requirements, and/or certify that the full-time resident is a paraplegic, hemiplegic, quadriplegic, multiple sclerosis, or scherodemic patient; or
- (2) County, State, or Federal agencies, using an established notification letter to electric utilities, shall provide the City with information relative to a patient who regularly requires the use of a life-support device in a customer's residence.

Within 15 days after acceptance of the above certification, the City will provide a Medical Baseline Allocation to the customer's account. The City may require a new or renewed application and/or certification when needed, in the opinion of the City.

## **Schedule A – Residential Service (continued)**

### **F. Termination of Use**

The Customer shall notify the City of termination of use of equipment or devices set forth above.

### **WATER WELL PUMPS**

This allocation is for Banning Electric Utility customers that are not connected to the City's water distribution system, and have a water well onsite. Customers must request this designation, and an onsite inspection must be completed before the allocation is authorized.

CITY OF BANNING  
Electric Division

SCHEDULE B

SMALL GENERAL SERVICE

APPLICABILITY

Applicable to service for all types of uses, including lighting, power and heating, alone or combined.

CHARACTER OF SERVICE

Alternating current with regulated frequency of 60 hertz single-phase, three-phase, or a combination single and three-phase served through one meter, at a standard voltage not to exceed 240 volts, or as may be specified by the Electric Division. When the energy use for this service exceeds 5,000 kWh per month, the City will install a demand meter. If the maximum demand exceeds 20.0 kW in any three months during the preceding 12 months, the service will be transferred to Schedule C.

TERRITORY

Within the area served by the City of Banning.

RATES

	<u>Per Meter</u>	<u>Per Month</u>
Customer Charge		\$ 9.00
Energy Charge (to be added to Customer charge)		
All kWh, per kWh		\$.1958

MINIMUM CHARGE

The Customer Charge plus the Energy Charge shall be subject to a minimum charge of \$9.00 per billing cycle.

## Schedule B – Small General Service (continued)

### SPECIAL CONDITIONS

1. Voltage will be supplied at one standard voltage.
2. **BILLING DEMAND**: Billing demand shall be the kilowatts of measured maximum demand, but no less than 50 percent of the highest demand established in the preceding eleven (11) months. Billing demand shall be determined to the nearest 1/10 kW.
3. **MAXIMUM DEMAND MEASUREMENT**: in any month shall be the maximum average kilowatt input, indicated or recorded by instruments to be supplied by the Electric Division, during any 15 minute interval in the month. Where demands are intermittent or subject to violent fluctuations, a five minute interval may be used.
4. **TEMPORARY DISCONTINUANCE OF SERVICE**: Where the use of energy is seasonal or intermittent, no adjustment will be made for a temporary discontinuance of service. Any customer prior to resuming service within twelve months after such service was discontinued will be required to pay all charges which would have been billed if service had not been discontinued.
5. **X-RAY INSTALLATIONS**: Where the utility installs standard transformer capacity requested by the customer to serve an x-ray installation, the customer charge will be increased by \$1.00 per kva of transformer capacity requested.
6. **ENERGY SURCHARGE**: The charges in the above rate are subject to California State Energy surcharge tax and shall be adjusted accordingly.

CITY OF BANNING  
Electric Division

SCHEDULE C

GENERAL AND INDUSTRIAL SERVICE

APPLICABILITY

Applicable to service for large general and industrial establishments. This schedule is limited to customers with demands below 500.0 kW. Customers with demands exceeding 500.0 kW must receive service under Schedule TOU.

CHARACTER OF SERVICE

Alternating current with regulated frequency of 60 hertz, three-phase, or a combination single and three-phase served through one meter, at a standard voltage not to exceed 480 volts, or as may be specified by the Electric Division. All customers will have a demand meter. If the Maximum Demand drops below 20.0 kW for 12 consecutive months, the customer will be transferred to Schedule B.

TERRITORY

Within the area served by the City of Banning.

<u>RATES</u>	Per Meter Per Month <u>Summer</u>	Per Meter Per Month <u>Winter</u>
Customer Charge	\$12.00	\$12.00
Demand Charge (to be added to the Customer Charge)		
All kW of billing demand, per kW	\$17.50	\$ 11.95
Energy Charge (to be added to the Demand Charge)		
All kWh, per kWh	\$1.1692	\$1.1587

MINIMUM CHARGE

The monthly minimum charge shall be the Demand Charge.

## Schedule C – General and Industrial Service (continued)

### SPECIAL CONDITIONS

1. Voltage will be supplied at one standard voltage.
2. **BILLING DEMAND:** Billing demand shall be the kilowatts of measured maximum demand, but no less than 50 percent of the highest demand established in the preceding eleven (11) months. Billing demand shall be determined to the nearest 1/10 kW.
3. **MAXIMUM DEMAND MEASUREMENT:** The measured maximum demand in any month shall be the maximum average kilowatt input, indicated or recorded by instruments to be supplied by the Electric Division, during any 15 minute interval in the month. Where demands are intermittent or subject to violent fluctuations, a five minute interval may be used.
4. **TEMPORARY DISCONTINUANCE OF SERVICE:** Where the use of energy is seasonal or intermittent, no adjustment will be made for a temporary discontinuance of service. Any customer prior to resuming service within twelve months after such service was discontinued will be required to pay all charges which would have been billed if service had not been discontinued.
5. **X-RAY INSTALLATIONS:** Where the utility installs standard transformer capacity requested by the customer to serve an x-ray installation, the customer charge will be increased by \$1.00 per kva of transformer capacity requested.
6. **POWER FACTOR ADJUSTMENT:** When the billing demand has exceeded 200.0 kW for three consecutive months, a kilovar hour meter will be installed as soon as practicable and thereafter until the billing demand has been less than 150 kW for twelve (12) consecutive months. The charges will be adjusted each month for the power factor as follows:

#### **Reactive Energy Charge (kvarh)**

The Reactive Energy Charge shall be based on the lagging kilovar-hours (kvarh) recorded during each Billing Period, dependent upon the Average Power Factor during the billing cycle. If reactive energy is unknown, or unmetered, due to a metering malfunction then the Reactive Energy Charge will be based upon the average kvarh used from a similar billing period.

**Schedule C – General and Industrial Service (continued)**

**Reactive Energy Charge Rate**

Metered - per kvarh per Power Factor level below

Power Factor Range	Rate
0.99-1.00	\$ -
0.95-0.98	\$ 0.00088
0.90-0.94	\$ 0.00167
0.80-0.89	\$ 0.00509
0.70-0.79	\$ 0.00853
0.60-0.69	\$ 0.01185
0.00-0.59	\$ 0.01293

7. ENERGY SURCHARGE: The charges in the above rate are subject to California State Energy surcharge tax and shall be adjusted accordingly.

CITY OF BANNING  
Electric Division

SCHEDULE TOU

LARGE GENERAL AND INDUSTRIAL SERVICE

APPLICABILITY

Applicable to service for all types of uses, including lighting, power and heating, alone or in combination. This rate shall be mandatory for customers whose monthly demand exceeds 500.0 kW for any three months during the preceding 12 months. Any customer whose monthly maximum demand has fallen below 450.0 kW for 12 consecutive months may elect to take service on any other applicable schedule. This schedule is an option for customers whose monthly demands are between 200.0 kW and 499.9 kW; however, participation for one year in the rate is required.

CHARACTER OF SERVICE

Alternating current with regulated frequency of 60 hertz, three-phase, or a combination single and three-phase served through one meter, at a standard voltage not to exceed 480 volts, or as may be specified by the Electric Division.

TERRITORY

Within the area served by the City of Banning.

RATES

Charges are calculated for customer billing using the components shown below:

	<u>Per Meter</u>	<u>Per Month</u>
	<u>Summer</u>	<u>Winter</u>
Customer Charge	\$340.00	\$340.00
Demand Charge (to be added to Customer Charge)		
All kW of non-time related component, per kW	\$ 8.50	\$ 12.00
Plus all kW of on-peak billing demand, per kW	\$18.08	N/A
Plus all kW of mid-peak billing demand, per kW	\$ 4.88	\$0.00
Plus all kW of off-peak billing demand, per kW	\$ 0.00	\$0.00

## Schedule TOU – Large General and Industrial Service (continued)

Energy Charge (to be added to the Customer and Demand Charges)

	<u>Summer</u>	<u>Winter</u>
All kWh of on-peak energy, per kWh	\$1.298	N/A
Plus all kWh of mid-peak energy, per kWh	\$0.0960	\$1.098
Plus all kWh of off-peak energy, per kWh	\$0.0698	\$0.0748

### SPECIAL CONDITIONS

1. Time periods are defined as follows:

On-Peak	Noon to 6:00 p.m. summer weekdays except holidays
Mid-Peak	7:00 a.m. to Noon and 6:00 p.m. to 11:00 p.m. summer weekdays except holidays. 7:00 a.m. to 11:00 p.m. winter weekdays except holidays.
Off-Peak	All other hours

Holidays are New Year's Day (January 1), Washington's Birthday (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Veterans Day (November 11), Thanksgiving Day (fourth Thursday in November), and Christmas (December 25).

2. Voltage will be supplied at one standard voltage.
3. MAXIMUM DEMAND: Maximum demands shall be established for on-peak, mid-peak, and off-peak periods. The maximum demand for each period shall be the measured maximum average kilowatt input, indicated or recorded by instruments to be supplied by the Electric Division, during any 15 minute interval, but (except for new customers or existing customers electing Contract Demand as defined in these Special Conditions) not less than the diversified resistance welder load computed. Where demands are intermittent or subject to violent fluctuations, a five minute interval may be used.
4. BILLING DEMAND: The Demand Charge shall include the following billing components. The Time Related Component shall be for the kilowatts of Maximum Demand recorded during the monthly billing period for each of the On-Peak, Mid-Peak, and Off-Peak time periods. The Non-Time Related Component shall be for the total kilowatts of demand recorded in the demand period with the highest Maximum Demand during the monthly billing period. Separate Demand Charges for the On-Peak, Mid-Peak, and Off-Peak time periods shall be established for each monthly billing period as applicable. The Demand Charge for each time period shall be based on the maximum demand for that time period occurring during the respective monthly billing period. The Maximum Demand shall be determined to the nearest 1/10 kW.

## **Schedule TOU – Large General and Industrial Service (continued)**

5. **CONTRACT DEMAND:** A contract demand will be established by the City, based on the applicant's demand requirements for any customer newly requesting service on this schedule and for any customer of record on this schedule who requests an increase or decrease in transformer capacity.

A contract demand arrangement is available upon request for all customers of record on this schedule. The contract demand will be used only for purposes of establishing the minimum demand charge for facilities required to provide service under the rate and will not be otherwise used for billing purposes.

The contract demand is based upon the nominal kilovolt-amperes rating of the City's serving transformer(s) or the standard transformer size determined by the City as required to serve the customer's stated measurable kilowatt demand, whichever is less, and is expressed in kilowatts.

6. **MINIMUM DEMAND CHARGE:** Where a contract demand is established, the monthly minimum demand charge shall be \$1.00 per kilowatt of contract, but not less than \$500.00.
7. **EXCESS TRANSFORMER CAPACITY:** Excess Transformer Capacity is the amount of transformer capacity requested by a customer in excess of that which the City would normally install to serve the customer's Maximum Demand. Excess Transformer Capacity shall be billed at \$1.00 per KVA per month.
8. **POWER FACTOR ADJUSTMENT:** When the billing demand has exceeded 200.0 kW for three consecutive months, a kilovar hour meter will be installed as soon as practicable and thereafter until the billing demand has been less than 150 kW for twelve (12) consecutive months. The charges will be adjusted each month for the power factor as follows:

### **Reactive Energy Charge (kvarh)**

The Reactive Energy Charge shall be based on the lagging kilovar-hours (kvarh) recorded during each Billing Period, dependent upon the Average Power Factor during the billing cycle. If reactive energy is unknown, or unmetered, due to a metering malfunction then the Reactive Energy Charge will be based upon the average kvarh used from a similar billing period.

## **Schedule TOU – Large General and Industrial Service (continued)**

### **Reactive Energy Charge Rate**

Metered - per kvarh per Power Factor level below

Power Factor Range	Rate
0.99-1.00	\$ -
0.95-0.98	\$ 0.00088
0.90-0.94	\$ 0.00167
0.80-0.89	\$ 0.00509
0.70-0.79	\$ 0.00853
0.60-0.69	\$ 0.01185
0.00-0.59	\$ 0.01293

9. **TEMPORARY DISCONTINUANCE OF SERVICE:** Where the use of energy is seasonal or intermittent, no adjustment will be made for a temporary discontinuance of service. Any customer prior to resuming service within twelve months after such service was discontinued will be required to pay all charges which would have been billed if service had not been discontinued.
10. **SUPPLEMENTAL VISUAL DEMAND METER:** Subject to availability, and upon written application by the customer, the City will, within 180 days, supply and install a City owned supplemental visual demand meter. The customer shall provide the required space and associated wiring beyond the point of interconnection for such installation. Said supplemental visual demand meter shall be in parallel with the standard billing meter delineated in Special Condition 3 above. The reading measured or recorded by the supplemental visual demand meter are for customer information purposes only and shall not be used for billing purposes in lieu of meter readings established by the standard billing meter. If a meter having visual display capability is installed by the City as the standard billing meter, no additional metering will be installed pursuant to this Special Condition.

One of the following types of supplemental visual demand meters will be provided in accordance with provisions above at no cost to the customer: Dial Watt-meter, Recording Watt-meter, or Paper-Tape Printing Demand Meter.

If the customer desires a supplemental visual demand meter having features not available in any of the above listed meters, such as an electronic microprocessor-based meter, the City will provide such a supplemental visual demand meter subject to monthly charge, if the meter and its associated equipment have been approved for use by the City. Upon receipt from the customer of a written application the City will design the installation and will thereafter supply, install, and maintain the supplemental visual demand meter subject to all conditions

## Schedule TOU – Large General and Industrial Service (continued)

stated in the first and last paragraph of this Special Condition. For purposes of computing the monthly charge, any such supplemental visual demand meter and associated equipment shall be treated as Added Facilities. Added investment for computing the monthly charges shall be reduced by the City's estimated total installed cost at the customer location of the Paper-Tape Printing Demand Meter offered otherwise herein at no additional cost.

The City shall have sole access for purposes of maintenance and repair to any supplemental visual demand meter installed pursuant to this Special Condition and shall provide all required maintenance and repair. Periodic routine maintenance shall be provided at no additional cost to the customer. Such routine maintenance includes changing charts, inking pens, making periodic adjustments, lubricating moving parts and making minor repairs. Non-routine maintenance and major repairs or replacement shall be performed on an additional cost basis with the customer reimbursing the City for such cost.

11. CONTRACTS: An initial three-year facilities contract may be required where an applicant requires new or added serving capacity exceeding 2,000 KVA.
12. AUXILIARY/EMERGENCY GENERATION EQUIPMENT: Auxiliary/Emergency Generation Equipment is the customer-owned electrical generation equipment normally used for auxiliary, emergency, or standby electrical generation purpose Auxiliary/Emergency Generation Equipment may be used by a customer to serve that customer's load only during a Period of Interruption, and only when such loads are isolated from the City's system. Other than for Auxiliary/Emergency generation or service, all service under this rate schedule is applicable only for service supplied by the City.
13. REMOVAL FROM SCHEDULE: Customers receiving service under this schedule whose monthly Maximum Demand has registered below 450.0 kW for 12 consecutive months may be changed to another schedule.
14. ENERGY SURCHARGE: The charges in the above rate are subject to California State Energy surcharge tax and shall be adjusted accordingly.

CITY OF BANNING  
Electric Division

SCHEDULE SLS

UNMETERED STREET LIGHTING SERVICE

APPLICABILITY

Applicable for unmetered lighting of public streets, highways and thorough-fares, including City owned and City operated public parks and parking lots which are opened to the general public.

TERRITORY

Within the area served by the City of Banning.

RATES

<u>Customer Class</u>	<u>Monthly Charges</u>
Residential (Rate A)	\$2.00
Small Commercial (Rate B)	\$2.80
Large General & Industrial (Rate C)	\$4.45
Time-of-Use (Rate TOU)	\$6.00
Lights on abutting property	\$6.00

SPECIAL CONDITIONS:

The above charges shall be placed on applicable customers' City Utility bills.

CITY OF BANNING  
Electric Division

SCHEDULE OLS

OUTDOOR LIGHTING SERVICE  
(SECURITY)

APPLICABILITY

Applicable to all customers for outdoor area security lighting service furnished from dusk to dawn, supplied from existing overhead facilities. The Division will install, own operate and maintain the complete lighting installation, including customer owned support.

TERRITORY

Within the area served by the City of Banning.

RATES

Per Lamp  
Per Month

(Fixture installed on existing support)

100 Watt Sodium Vapor	( 9,500 Lumen)	\$ 14.29
150 Watt Mercury Vapor	(16,000 Lumen)	21.44
175 Watt Sodium Vapor	( 7,000 Lumen)	25.01
200 Watt Sodium Vapor	(16,000 Lumen)	28.59
250 Watt Sodium Vapor	(25,000 Lumen)	35.73
400 Watt Mercury Vapor	(20,000 Lumen)	57.17

Pole (Department owned wood pole installation) Per Pole  
Per Month

20' or 35' Wood Pole \$ 2.95

SPECIAL CONDITIONS

1. Service under this schedule will be supplied at a single-phase voltage from the Electric Department's existing overhead lines.
2. The above lamp rates are applicable to Department-owned outdoor area lighting equipment mounted on existing Department owned poles or on customer owned supports acceptable to the Department.

## **Schedule OLS (continued)**

3. Lighting equipment will consist of a Department standard overhead outdoor sodium vapor luminaries with photo electric switch, support and one overhead service drop not to exceed 100'.
4. Mounting height of 175 watt lamp will be approximately 25 to 30 feet, and mounting height of 400 watt lamps will be approximately 30 feet.
5. A customer who requests more than one wood pole, or other than wood poles shall install the poles at the customer's expense. The standard sodium vapor luminaire will be provided and installed by the Department.
6. Customers who do not wish to pay monthly pole charge, may pay a non-refundable amount for the installation of standard wood pole or other pole as the customer desires. The pole will remain the property of the customer at termination of service.
7. A contract for a period of one year will be required for initial installation of facilities under this schedule, and will remain in effect from month to month thereafter subject to termination or cancellation under terms stated therein.
8. Lamp maintenance will be done during regular working hours as soon as reasonably possible after the customer has notified the Department of service failure. Monthly bills will not be adjusted because of a lamp outage.
9. Relocation of an outdoor area lighting installation at the customer's request or because of government requirements will be made providing the customer pays the entire cost of such relocation.
10. Billing for an installation will be to only one account. Prorated billings to more than one account for a unit, or a combination of units will not be made. If the customer prefers to pay on an annual basis, payment shall be done and payable in advance.
11. The Department's dusk to dawn, all night service is based on a lighting period of approximately 4,380 hours per year.
12. If the customer discontinues service during the first three years of service, there will be a \$100.00 charge to remove the service and equipment.
13. Poles will be located in areas where they may be serviced by truck.
14. Customer must execute a waiver in order to participate in this program.

CITY OF BANNING  
Electric Division

SCHEDULE MS

MUNICIPAL SERVICE

APPLICABILITY

Applicable to City of Banning municipal service for all types of uses, including lighting, power and heating, alone or combined (excludes enterprise fund accounts).

CHARACTER OF SERVICE

Alternating current with regulated frequency of 60 hertz single-phase, three-phase, or a combination of single and three-phase served through one meter, at a standard voltage not to exceed 240 volts, or as may be specified by the Electric Division.

TERRITORY

Within the area served by the City of Banning.

RATES

	<u>Per Meter</u>	<u>Per Month</u>
Customer Charge	n/a	
Energy Charge (to be added to Customer charge)		
All kWh, per kWh		\$ .0923

MINIMUM CHARGE

Municipal services are not assessed a minimum charge.

SPECIAL CONDITIONS

1. Voltage will be supplied at one standard voltage.
2. ENERGY SURCHARGE: The charges in the above rate are subject to California State Energy surcharge tax and shall be adjusted accordingly.