

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

September 24, 2013
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

The following information comprises the agenda for a regular meeting of the City Council, a joint meeting of the City Council and the City Council Sitting in Its Capacity of a Successor Agency, a joint meeting of the City Council and the Banning Utility Authority, and a joint meeting of the Banning City Council and the Banning Housing Authority.

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

I. CALL TO ORDER

- . Invocation – Pastor Steve Bierly, Church of the Nazarene
- . Pledge of Allegiance
- . Roll Call - Councilmembers Botts, Miller, Peterson, Welch, Mayor Franklin

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONSENCE/PRESENTATIONS

PUBLIC COMMENTS – On Items Not on the Agenda

A five-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 five 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.

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

PRESENTATIONS:

1. Banning High School Solar Boat Team Presentation (ORAL)

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 3

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

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

1.	Approval of Minutes – Special Meeting – 09/10/13 (Closed Session)	1
2.	Approval of Minutes – Regular Meeting – 09/10/13	3
3.	Approval of Minutes – Special Meeting – 09/16/13 (Closed Session)	17

- Open for Public Comments
- Make Motion

RECESS REGULAR CITY COUNCIL MEETING AND CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING CITY COUNCIL SITTING IN ITS CAPACITY OF A SUCCESSOR AGENCY

V. CONSENT ITEM

Motion: That the City Council approve Consent Item 1.

1.	Resolution No. 2013-09 SA, Receiving and Adopting Its Recognized Obligation Payment Schedule (“ROPS”) for the Period of January Through June 2014 and Approving Certain Related Actions.	18
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RECESS JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING CITY COUNCIL SITTING IN ITS CAPACITY OF A SUCCESSOR AGENCY AND CALL TO ORDER A JOINT MEETING OF THE CITY COUNCIL AND THE BANNING UTILITY AUTHORITY

VI. CONSENT ITEMS

Motion: That the City Council approve Consent Items 1 & 2.

1.	Resolution No. 2013-17 UA, Approving the Contract Services Agreement with Layne Christensen Company of Fontana, CA For the Repairs to Water Well No. M-7 in the amount of not to exceed \$96,679.79	30
2.	Acceptance of Notice of Completion for Project No. 2010-05R, Irrigation Water Line-Segment A.	36

**RECESS JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING
UTILITY AUTHORITY AND CALL TO ORDER A JOINT MEETING OF THE CITY
COUNCIL AND THE BANNING HOUSING AUTHORITY.**

VII. REPORTS OF OFFICERS

1. Approval of a Subordination Agreement to the Loan Agreement for the First Time Homebuyer Program to Secure Interest on Property Located at 2910 Rainbow Lane (APN 538-323-009).

Staff Report 41

Recommendations: That the Housing Authority: 1) Adopt Resolution No. 1013-01 HA, Approving a Subordination Agreement to the Loan Agreement for the First Time Homebuyer Program to Secure Interest On Property Located at 2910 Rainbow Lane (APN 538-323-009); and 2) Authorize the City Manager to process future Subordination Agreements requests administratively.

Adjourn Joint Meeting and reconvene the regular City Council Meeting.

VIII. PUBLIC HEARINGS

1. Ordinance No. 1469, Amending Various Sections of the Zoning Ordinance Pertaining to Mixed Use Developments in the Airport Industrial Zoning District, Security Fencing in the Commercial Zones, and Government Office Uses in the Downtown Commercial and Business Park Zoning Districts.

Staff Report 82

Recommendation: That the City Council adopt Ordinance No. 1469.

Mayor asks the City Clerk to read the title of Ordinance No. 1469:

"An Ordinance of the City Council of the City of Banning, California, Approving Zoning Text Amendment No. 13-97503 Amending Various Sections of the Zoning Ordinance (Title 17 of the Banning Municipal Code) Pertaining to Mixed Use Developments in the Airport Industrial Zoning District, Security Fencing in the Commercial Zones, and Government Office Uses in the Downtown Commercial and Business Park Zoning Districts."

Motion: I move to waive further reading of Ordinance No. 1469.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1469 pass its first reading.

2. Resolution No. 2013-86, A Resolution Initiating a General Plan Amendment and Zone Change for Five (5) Properties Located at the Northeast Corner of Hargrave and Charles from Industrial to Very Low Density Residential.

Staff Report 98

Recommendation: **That the City Council adopt Resolution No. 2013-86, Initiating General Plan Amendment No. 13-2505 and Zone Change No. 13-3503 for five (5) parcels that are located at the northeast corner of Hargrave and Charles – Parcels: 542-090-003, 543-090-004, 543-090-014, 543-090-016, and 543-090-017 for a Total of 9.28 Acres.** The proposed General Plan Amendment and the Zone Change are to designate the properties from the current General Plan and Zoning designations of Industrial to Very Low Density Residential.

3. Appointment of Mayor Ordinance
Staff Report 112

Recommendation: Consider whether to change the rotational system of appointment Mayor pursuant to the attached proposed Ordinance: An Ordinance of the City Council of the City of Banning, California, Setting Forth a Procedure for the Annual Appointment of the Office of Mayor and Mayor Pro Tem by Councilmembers.

Mayor asks the City Clerk to read the title of Ordinance No. 1471:

“An Ordinance of the City Council of the City of Banning, California Setting Forth a Procedure for the Annual Appointment of the Office of Mayor and Mayor Pro Tem by Councilmembers.”

Motion: I move to waive further reading of Ordinance No. 1471.
(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1471 pass its first reading.

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

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

X. ITEMS FOR FUTURE AGENDAS

New Items – None

Pending Items

1. Schedule Meetings with Our State and County Elected Officials (Sept./Oct.)
2. Let's Move – Healthy Initiative (Nov. 12)
3. Workshop Regarding Future of Airport
4. Report on Moving Station 20 back to original firehouse. (wait for new Battalion Chief)
5. Workshop on how appointments are made to City Commissions/Committees, attendance, and look at advisory boards/citizens review committee.
6. Open House: 5 to 7 p.m. – Wed. in October – Open to Public

XI. 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, 7 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 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. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (951) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II].

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

09/10/13
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on September 10, 2013 at 4:04 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
David J. Aleshire, City Attorney
Melanie Poturica, Attorney - Liebert Cassidy Whitmore
Glen Tucker, Deputy City Attorney
Duane Burk, Public Works Director
Marie A. Calderon, City Clerk

CLOSED SESSION

City Attorney said that there are three items of potential litigation pursuant to Government Code Section 54956.9, a pending litigation matter Ely vs. City of Banning, and a pending litigation item City of Banning vs. Mary Ann Dureau.

City Attorney said he said that he would like the Council to add an existing litigation matter to the agenda Fields vs. City of Banning where the need to take action arose subsequent to the posting of the agenda.

Motion Botts/Peterson to add this item to the agenda. Motion carried, all in favor.

Mayor Franklin opened the other items for public comments. There were none.

Council went into closed session at 4:05 p.m. and reconvened at 4:48 p.m. City Council returned to closed session at 7:50 p.m. and returned to open session at 8:07 p.m.

The City Attorney reported that the City Council met in closed session on the items that were not finished and in regards to Fields versus the City of Banning, a staff report was given and

there was no reportable action. In the matter of Ely vs. the City of Banning a staff report was given and no reportable action was taken and direction was given to the City's negotiators.

ADJOURNMENT

By common consent the meeting adjourned at 8:12 p.m.

Marie A. Calderon, City Clerk

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

09/10/2013
REGULAR MEETING

A regular meeting of the Banning City Council and a joint meeting of the City Council and the Banning Utility Authority, and a joint 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 September 10, 2013 at 5:11 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
 David J. Aleshire, City Attorney
 Duane Burk, Public Works Director
 Leonard Purvis, Chief of Police
 Zai Abu Bakar, Community Development Director
 Fred Mason, Electric Utility Director
 Bill Manis, Economic Development Dir./Public Information Officer
 Richard Diaz, Sr., Electrical Operations Manager
 Jessica Hicks, Office Specialist
 Marie A. Calderon, City Clerk

The invocation was given by District Elder Preston Norman Jr., Praise Tabernacle Community Church. Councilmember Miller led the audience in the Pledge of Allegiance to the Flag.

REPORT ON CLOSE SESSION

City Attorney stated that the City Council discussed in closed session two matters; the Eley matter and the Fields matter. After the Regular City Council meeting the City Council will go back into closed session to continue discussion on these two topics. One matter of potential litigation was discussed, a status report was given and no reportable action was taken. The litigation matter, City of Banning vs. Mary Ann Dureau, regarding an oil spill was discussed, a status report was given and it was reported that a favorable judgment was given for the full amount requested for reimbursement. The matter is settled but there is a possibility of appeal.

PUBLIC COMMENTS/CORRESPONSENCE/PRESENTATIONS/ANNOUNCEMENTS

PUBLIC COMMENTS – On Items Not on the Agenda

Rosa Gascoigne, member of the Banning Centennial Committee, invited the City Council and Banning residents to a series of upcoming events, including a soccer tournament on September 15th as part of the International Family Week. There is also a set of workshops available to the public including cooking, dancing and music. The International Family Festival will take place on Saturday, September 21st at Repllier Park.

Barbara Hanna, Banning resident and member of the Banning Centennial Committee, addressed the Council and added that Inn-N-Out Burger will be present at the International Family Festival. Saturday, September 21st, Duane Burk will be speaking about the history of water at the Dorothy Ramon Learning Center. October 19th and 20th there will be a Train Festival and the Centennial Gala will be on Saturday, November 2nd at Morongo Casino. Individual tickets are \$35.00. The Committee is also looking for sponsors to the event; to sponsor a table it cost \$800.00.

Fred Sakurai, Banning resident, recognized and thanked the Stagecoach Days Committee for a wonderful event. He asked Councilmember Peterson if the large SUV parked in the handicap parking was his vehicle and asked if it is his vehicle, to please not park in handicap parking and instead park in the assigned City Council parking.

David Ellis, 324 Meadowlark Lane, asked Councilmember Botts to read the Sun Lakes Country Club CC&R Section 1017 Business and Commercial activities and said cottage food operations are not allowed or authorized in the Sun Lakes Community. He gave a copy of the CC&R to the City Clerk.

CORRESPONDENCE: None

INTRODUCTIONS:

1. Ben Coffey, Utility Services Assistant

City Manager introduced Ben Coffey who is the new Utility Services Assistant. He has over ten years of customer service experience with five of those years in the public sector. When not working, he enjoys spending time with family and friends, cooking, playing fantasy football, and collecting Michael Jordan Basketball Shoes. He is honored to be a part of the City of Banning and looks forward to a prosperous career.

PRESENTATIONS:

1. Results from the First Inland Empire Underwater Robotics Competition held by the Banning Science and Technology Center

Henri De Roule, Founder and CEO of Science Experience, addressed the Council stating Science Experience held a science summer camp where kids built remote operated vehicles AKA underwater robots. He explained the process of building two robots and how they did in the competition. He introduced Science Experience Board Members Bill Souder, David Fisher, Rita Middendorf and himself. He also asked three students that attended the summer camp and

participated in the competition, to come forward and talk about their experience at the camp. Emma Whamood, Gabriel Ramirez and Brooklyn Hubbs talked about the positive experiences they had at the camp. Mr. De Roule said Science Experience has been asked to organize the Seaperch competition for the Inland Empire and coordinate with Los Angeles and San Diego and bring a regional competition together, so that competitors can be qualified to go to the nationals. A video was presented highlighting the competition.

CONSENT ITEMS

Consent Items 11 and 14 were pulled by Councilmember Miller and Consent Item No. 7 was pulled by Councilmember Peterson for questions/discussion.

1. Approval of Minutes – Special Joint Meeting – 07/16/13

Recommendation: That the minutes of the Special Joint Meeting of July 16, 2013 be approved.

2. Approval of Minutes – Special Meeting – 07/23/13 (Closed Session)

Recommendation: That the minutes of the Special Meeting of July, 23, 2013 be approved.

3. Approval of Minutes – Regular Meeting – 07/23/13

Recommendation: That the minutes of the Regular Meeting of July 23, 2013 be approved.

4. Approval of Minutes – Special Meeting – 08/13/13 (Closed Session)

Recommendation: That the minutes of the Special Meeting of August 13, 2013 be approved.

5. Approval of Minutes – Regular Meeting – 08/13/13

Recommendation: That the minutes of the Regular Meeting of August 13, 2013 be approved.

6. Approval of Accounts Payable and Payroll Warrants for Month of June 2013

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

8. Acceptance of Notice of Completion for Project No. 2013-01, Repairs to Water Well M-3.

Recommendation: That the City Council accepts Project 2013-01, Repairs to Water Well No. M-3, as complete and direct the City Clerk to record the Notice of Completion.

9. Resolution No. 2013-74, Awarding the Bid for Project No. 2013-03 EL, Downtown Underground Project – Phase 2 to Southern California West Coast Electric, Inc. of Beaumont, CA in the amount not to exceed \$368,482.00 including taxes.

Recommendation: That the City Council adopt Resolution No. 2013-74.

10. Resolution No. 2013-80, Approving the Local Resources Adequacy Capacity Purchase with Shell Energy North America for Calendar Year 2014.

Recommendation: That the City Council adopt Resolution No. 2013-80.

12. Resolution No. 2013-82, Awarding the Construction Contract for Project No. 2013-05, Construction of a New Restroom at City Hall to Whitmore Construction, Inc., of Banning, CA in an amount of \$29,990.00 and allowing a 10% contingency of \$2,999.00 and Rejecting All Other Bids.

Recommendation: That the City Council adopt Resolution No. 2013-82.

13. Resolution No. 2013-83, Approving the Freeway Maintenance Agreement with the State of California Department of Transportation.

Recommendation: That the City Council adopt Resolution No. 2013-83, Approving the Freeway Maintenance Agreement with the State of California Department of Transportation and authorizing the City Manager to execute the agreement.

Motion Welch/Peterson to approve Consent Items 1-6, 8-10, 12 & 13. Mayor Franklin opened the item for public comments.

Gary Hironimus was concerned with the amount of money that is being spent on Consent Item No. 9 with no engineering estimates provided and only one bid provided for the project. He explained his experience at the City of Riverside and how similar situations were handled there.

Fred Mason, Electric Utility Director, addressed the Council and explained the bid process for this project and how it was marketed. He said only one bid came back and that it is difficult to find contractors interested in projects of this size.

Councilmember Miller asked why more bids were not received

Director Mason stated that the only explanation he has is that these type of contractors are busy with other jobs with other agencies.

Seeing no other comments, Mayor Franklin closed public comment. **Motion carried, all in favor.**

7. Approval of Accounts Payable and Payroll Warrants for Month of July 2013.

Councilmember Peterson asked why we were still contracting with HCI Environmental after they overcharged the City for the oil spill.

Duane Burk, Public Works Director, for legal reasons we do have a contract with HCI but we have not done any work with them since the oil spill. Director Burk said he would not recommend doing business with them.

11. Resolution No. 2013-81, Awarding the Bid for Project No. 2013-04 EL, City of Banning Hydroelectric Facility Rehabilitation Contract to Charles King Company, Inc. of Signal Hill, CA in the amount not to exceed \$638,500.00 including taxes.

Councilmember Miller asked staff to explain why there is only one bid on this project and if there is any possibility of getting more bids.

Director Mason said this is a unique project and that it was not repaired in the past because there weren't any local vendors that could do it without rebuilding the entire unit. The bid was marketed but only one bid was turned in.

Councilmember Miller asked why does the hydroelectric facility need to be repaired now after being inoperable since 2006.

Director Mason said because the units will meet RPS requirements that have recently come into action. He said it is cheaper to repair the units and generate renewable energy than it is to purchase it. The payback will be less than 2 years.

Councilmember Miller asked if there is a concern that the water supply will not suffice. Director Mason said he spoke with the water department and that does not seem to be an issue.

Councilmember Botts confirmed that it has been difficult to get bids on this project. He asked if the company being awarded was competent.

Director Manson confirmed that the company has done this work before and are experienced and capable.

Mayor Franklin opened the item for public comments.

Don Smith, a Banning resident, said he is concerned about sufficient water running down them to create energy.

Councilmember Peterson asked if this would affect the Flume.

Director Mason said this is separate from the Flume. He said the units currently have water running through them but the units are not operating and producing electricity.

Director Burk said in 2013 we have different needs for the hydroelectric units so it is necessary to upgrade the units. He confirmed that water run through the units and that this has nothing to do with the Flume right now.

Mayor Franklin asked if we are currently using the water. Director Burk said yes, the water is currently used and that will not change with the repairs.

Councilmember Miller asked Director Burk to speak about the likelihood of having sufficient water running through the plant.

Director Burk said there should be sufficient water as long as the City implements and manages their resources as done through the Urban Water Management plan and identified through regulations.

Paul Lewis, a Banning resident, asked for clarification on how the payback will be done in two years.

Director Mason explained how the payback is determined.

14. Resolution No. 2013-84, Authorizing the Submittal of an Application, Acceptance of an Allocation of Funds and Execution of a Grant Agreement with the California Department of Transportation for an Airport Improvement Project Matching Grant.

Councilmember Miller asked if this would be done before or after the change in the taxiway relocation and what is the estimated cost of the taxiway relocation.

Director Burk said this will be done before the taxiway relocation and the cost is \$2.1 million.

Councilmember Miller said he would like to discuss what will be done with the airport. Mayor Franklin explained a workshop is being scheduled within the next 60 days.

Councilmember Botts asked staff to provide the airport master plan to the new councilmembers for them to review.

City Manager said all master plans are being gathered together for the councilmembers.

Motion Miller/Peterson to approve Consent Items 7, 11 & 14. Mayor Franklin opened the item for public comments. There was none. **Motion carried, all in favor.**

JOINT MEETINGS

Mayor Franklin recessed the regular City Council Meeting and called to order a Joint Meeting of the Banning City Council and the Banning City Council Sitting in its Capacity of a Successor Agency.

CONSENT ITEM

1. Approval of the Settlement Agreement, Release of All Claims, and Bill of Sale for Personal Property between The Haven Company, Inc. and the Banning Successor Agency.

Recommendation: That the City Council, acting in its capacity as the Successor Agency to the Dissolved Community Redevelopment Agency of the City of Banning, approve the Settlement Agreement, Release of all Claims, and Bill of Sale for Personal Property between The Haven Company, Inc. and the Banning Successor Agency.

Motion Welch/Peterson that the Successor Agency Board approve Consent Item No. 1. Mayor Franklin opened the item for public comments. There was none. **Motion carried, all in favor.**

REPORTS OF OFFICERS

1. Long-Range Property Management Plan
(Staff Report - Bill Manis, Economic Development Director/Public Information Officer)

Director Manis addressed the Council and explained that by October 26th we have to submit to the State our long-range property management plan. In accordance with the Health and Safety code staff request that the plan presented tonight be approved with the various uses identified for the six individual parcels. Once approved this will go before the Banning Oversight Board for approval and then to the State for approval. Once the State approves it the City can move forward with action on the parcels.

Mayor Franklin asked if changes can be made after the approval. Director Manis answered yes changes can be made afterward.

Motion Welch/Botts that the City Council, acting as the Successor Agency to the Dissolved Community Redevelopment Agency, adopt Resolution No. 2013-10 SA, Approving the Long-Range Property Management Plan Pursuant to California Health and Safety Code Section 34191.5 and Approving Certain Related Actions. Motion carried, all in favor.

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

REPORTS OF OFFICERS

1. Resolution No. 2013-15 UA, Awarding the Construction Contract for Project No. 2011-01W, Water Department Parking Lot and Perimeter Wall Improvement and Rejecting All Other Bids.
(Staff Report - Duane Burk, Public Works Director)

Director Burk addressed the Council and explained security has been breached on multiple occasions at the Water Department located at 3333 N. Bluff. A few years ago the City hired Sight

Tech Engineering to design a security plan and building. Tonight is to approve the contract to work on the parking lot and secure the facility.

Councilmember Miller asked if the perimeter wall be sufficient security or will additional security be needed. Director Burk said the current security cameras will be upgraded but it is not currently apart of this project.

Councilmember Botts asked what the source of funding is for this project. Director Burk said the funding for this project is the water capital facility fund which has a balance of \$299,000.00

Councilmember Peterson asked Director Burk to elaborate of the breakdown of the funds. Director Burk explained the breakdown of the project cost.

Motion Botts/Welch that the Banning Utility Authority: I) adopt Resolution No. 2013-15 UA, Awarding the Construction Contract for Project No. 2011-01W, Water Department Parking Lot and Perimeter Wall Improvements to Cooley Construction, Inc. of Hesperia, CA for An Amount of \$530,086.70 and Allowing a 10% Contingency of \$53,008.67; and II) Authorizing the Administrative Services Director to make the necessary budged adjustments, appropriations, and transfers to fund this project and to approve change orders within the 10% contingency of \$53,008.67. Motion carried, all in favor.

2. Resolution No. 2013-16, Approving the First Amendment to the Maintenance and Operations Agreement with United Water Environmental Services, Inc.
(Staff Report – Duane Burk, Public Works Director)

Director Burk explained the amendment to this contract with United Water Environmental Services, Inc. will extend the termination date from September 30, 2013 to September 30, 2018. He explained this company has provided and continues to provide quality service. The new contract reflects an addition \$7,968.00 annually to the Waste Water Utility and the funds for this contract are available in the waste water division's operation account.

Councilmember Welch said his question was answered earlier about if there is a clause allowing termination of the contract if they do not meet job specifications. He said there is a clause in there at 120 days.

Councilmember Miller asked why there are not three bids for this project.

Director Burk said if it is the desire of the Council an Request for Proposal (RFP) can be done but the scope of practice would have to be defined and this operation does a great job of being in compliance every month, so we have a good relationship with them and the employees are local employees.

Councilmember Miller requested an RFP be done on this. He understands that the contract must be continued right now since they are currently running it but he would like an RFP done instead of going another 5 years.

Councilmember Peterson agrees that an RFP be done to examine competitive bids.

Mayor Franklin asked how does approving this contract with what we have to do in the future regarding moving forward with a tertiary plant and what the time frame would be on getting the details of a tertiary plant.

Director Burk said if Council moves forward with a tertiary plant an RFP would be done because it would be a different scope to have them operate and bid on. He said regulations will drive the timeline but he is hoping for 2015. The goal is to have a workshop to work out a 15 year plan and get Council feedback as to what will be done in the future.

Councilmember Botts asked isn't the lack of funds a key component in the delay of moving forward with the project besides regulation.

Director Burk confirmed that is a key component and that would be a part of the workshop.

Councilmember Miller asked City Attorney if we approved the project tonight can we do an RFP within the 120 day termination period.

Councilmember Botts said his motion is to approve this Resolution with the amendment to go out for an RFP with the caveat that the contract can be rejected within 120 days.

Mayor Franklin stated for clarification that Councilmember Miller is recommending the motion be carried as well as to add an RFP.

Motion Botts/Miller that the Banning Utility Authority: I) adopt Resolution No. 2013-16 UA, Approving the First Amendment to the Maintenance and Operations Agreement with United Water Environmental Services, Inc. to extend the scope of services for an additional five (5) years and thereby amend the termination date of the Original Agreement to September 20, 2018; and II) Authorizing the City Manager to execute the First Amendment to the Maintenance and Operations Agreement with United Water Environmental Services, Inc. with the addition for an RFP to review competitive costs. Mayor Franklin opened the item for public comments.

Paul Lewis, Banning resident, asked what the difficulty is in getting an RFP for this scope of practice. He is concerned this will come back in a couple years as an item that needs to be passed immediately.

Seeing no other comments, Mayor Franklin closed public comment. **Motion carried, all in favor.**

Mayor Franklin recessed the Joint Meeting of the Banning City Council and the Banning Utility Authority and reconvened the regular City Council Meeting.

REPORTS OF OFFICERS

1. Resolution No. 2013-85, Typographical Correction and Clarification Regarding the the 26-Acre Property that was Rezoned to Very High Density Residential for the Housing Element.
(Staff Report – Zai Abu Bakar, Community Development Director)

Director Abu Bakar explained after the adoption of Ordinance 1466 there was confusion regarding if entire parcel 537-190-018 was rezoned or just a 26 acre portion. She explained the 26 acre portion was rezoned. She apologized for the oversight and to clarify she said the 26 acre portion of the parcel was rezoned. She presented a map showing the rezoned areas (see Exhibit B).

City Attorney clarified that you can have 2 different zoning areas on one parcel. He reiterated that only a portion of the parcel was rezoned and not the entire parcel.

Councilmember Miller asked Director Abu Bakar to explain why these 26 acres were chosen.

Director Abu Bakar said the state required the City to rezone a large parcel and after much review and discussion this parcel was designated the best choice for rezoning.

Councilmember Miller asked Director Abu Bakar to explain how difficult it was to satisfy the State and explain why there are additional units in the rezoning.

Director Abu Bakar explained the reason there are excess units is because if with mixed use zoning areas if the commercial zoning is the only zoning used then the residential units do not count so as part of the approval residential/office project the City Council is required to prove there are sufficient sites in other areas of the City for housing.

Councilmember Peterson asked City Attorney why didn't the public get a say in what portion of the 60 acre parcel would be rezoned.

City Attorney said there was a series of public hearings and a number of different parcels were considered and public input was given. Through the process there was lots of opposition with these areas. He also explained the access to this area of the parcel is best for development.

Councilmember Welch addressed past public comments and concerns and how this impacted the decision in choosing the rezoned areas.

Mayor Franklin thanked the public for their concerns and patience in rectifying this oversight. She opened the item for public comments.

David Ellis, Banning resident, thanked the Banning Informer for reporting on this error. He recommended the City Council send this back to the Planning Commission for review and public input. He said the rezone is incompatible with the surrounding ranch and agricultural land. He read a sample “buffer and right to farm” ordinance.

Don Smith, Banning resident, said he has been present at every meeting regarding the rezone and has given suggestions that would be better fitting for the rezone. He was pleased with how the last

meeting ended because it was stated that this rezone can be amended. There will be a public hearing before the next housing element is adopted and there is the possibility that the rezone can be moved to a better location.

Paul Lewis, Banning resident, recommends that the property owner split the parcel to define the rezoned area. He agrees that this should go back to the Planning Commission.

Seeing no other comments, Mayor Franklin closed public comment.

City Attorney said there aren't any changes in the rezone and that this report is to simply show what the council intended and clear up any confusion. He does not suggest a lot split for the 26 acres since there is a possibility that this might not be the final location since amendments can be made.

Councilmember Botts clarified Don Smith's comment by saying this is not low income housing; it is market rate high density housing.

Councilmember Miller explained the City is on a deadline and this can't be delayed.

Mayor Franklin reiterated that there are no changes to the rezone; the action is just being clarified.

Councilmember Welch stated this is just a clarification, no changes were made.

Motion Welch/Peterson that the City Council adopt Resolution No. 2013-85, Providing Clarification Regarding the 26-Acre Property that was Rezoned from Medium Density Residential to Very High Density Residential for Conformance with the Housing Element (Property located at the westerly portion of Sunset Avenue and Bobcat Road and south of Pershing Creek.) Motion carried, all in favor.

2. Resolution No. 2013-62, Authorizing the City Manager to Execute and Send Letters of Support or Opposition Consistent with Goals Adopted by the City Council.

This item was pulled from the agenda. No action taken.

3. Appointment of Mayor Ordinance
Staff Report – David Aleshire, City Attorney

City Attorney explained that in the past the Mayor was selected by a majority vote of the Council for a 2-year term but currently the title of Mayor is designated by a rotational system, where the office of Mayor, Mayor Pro Tem, Chair of the Redevelopment Agency, Vice Chair and Chairs of the Housing Authority are rotated. This rotation system was adopted last year. With the direction of Council the process and term length can be changed and an ordinance can be available by the next council meeting.

Mayor Franklin opened the item for public comments.

Gary Hironimus, Banning resident, asked why this item is on the agenda when there are more important issues to address. He said the old system didn't work and that is why it was changed.

Dorothy Familetti-McLean, Banning resident, said a 2-year term is justified and she would like to see the term changed to two years rather than one year.

Charlene Sakurai, Banning resident, said a system was chosen and should be given the opportunity to work.

Don Smith, Banning resident, said Gary has made some good points. The problem with the old system is that politics got involved and it caused a division in Council. Either system will work but said to keep in mind that it caused a division in Council.

Fred Sakurai, Banning resident, agreed that the system eliminates a lot of hard feelings and should be given the opportunity to work.

Seeing no other comments, Mayor Franklin closed public comment.

Councilmember Welch said the job is the same for all five Councilmembers and it is important that the Council work as a team. The difference is the Mayor is the face of Banning.

Councilmember Miller said it is best to vote on who is best for the position. He would like to revert back to the election of Mayor.

Motion Councilmember Miller that we revert back to election of the Mayor by the City Council and have the City Attorney prepare an ordinance to that effect and have it available at the next City Council meeting.

Mayor Pro Tem Botts said he is concerned about going back to a political system. He said Councilmember Hanna, Councilmember Franklin and Dorothy McLean lead the change from the voting system to the rotation system. He said the public reached out to him saying all elected officials should have a chance to be Mayor. He believed the rotation system is the fair system to use.

Motion seconded by Councilmember Peterson.

Councilmember Peterson said there are pro's and con's to both sides, but he prefers to vote on the best person for the position.

Mayor Franklin corrected Councilmember Botts comment and said she suggested the public select the Mayor not the Council. She agrees that the Mayor position should be held for 2 years to give time for relationships to be built.

There was a request by the public to address the Council.

Mayor Franklin opened the item for public comments.

Dorothy Familetti-McLean addressed the Council and corrected Councilmember Botts saying she had nothing to do with the rotation system and she was never in favor of it.

Motion carried with Councilmember Botts voting no.

City Attorney asked the Council for clarification of the term of the Mayor and asked if it was for a 2-year term. There was consensus that the term be for two years.

ANNOUNCEMENTS/REPORTS

City Council

Mayor Franklin –

- Thanked the Stagecoach Days Committee, City staff and the public that participated. The public had a lot of positive feedback. An attendants report should be available soon.
- The Riverside Conservation Authority annual report has been distributed and is available. She gave a short description of the organization and what their goals are.
- Several reports were given at the Western Riverside Council of Governments (WRCOG) meeting. Chairman Martin reported that Morongo is one of the biggest employers in the County. The Leadership Institute of Riverside County (LIRC) talked about the characteristics of effective school leadership and the impact that has on our City. The Home Energy Renovation Opportunity (HERO) program has approved over 10,000 applications in the amount of \$311,000,000.00 and continues to expand throughout the state.
- The Advancing the Choice Expo is Thursday, September 26th at the Tukwet Canyon Golf Course. There will be demonstrations and presentations regarding alternative vehicle fuels and air quality issues.
- An update on the new prisoner release program should be coming soon. Several bills should be coming forward after being amended.
- The Water Task Force meeting was yesterday. They are narrowing down what projects can be worked on as a region and putting together a memorandum of understanding so that all members of the Taskforce has a frame work to work with.
- Announced Jessica Hicks, Assistant City Clerk, will be leaving and wished her good luck and goodbye.
- Asked for a consensus in adjourning our meeting in honor of the victims of 9/11

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

Report by City Manager –

- The Electric Company's float finished first at the Stagecoach Day's Parade.
- The Job Fair held on September 5th had 500 job seekers & 32 companies with over 100 jobs available. The event was very successful.
- An Ad Hoc Committee is needed for the CDBG and it needs to be done tonight.
- There will be a sewer replacement on Florida between Theodore and Indian School.

- The new housing element workshop will be located at Banning City Council Chambers at 6:30PM on September 30 2013. +
- There is a FERC meeting on September 12th from 10:00AM to 1:00PM
- The EIR scoping meeting scheduled for September 11th from 7:00AM-9:00AM and from 2:00PM-4:00PM on Thursday have both been cancelled.

The Ad Hoc Committee must be assigned tonight. The Mayor asked if there were any volunteers. Seeing none she appointed herself and Councilmember Welch to the committee.

ITEMS FOR FUTURE AGENDAS

New Items – None

Pending Items

1. Schedule Meetings with Our State and County Elected Officials (*Sept./Oct.*)
2. Let's Move – Healthy Initiative (*Nov. 12*)
3. Workshop Regarding Future of Airport
4. Report on Moving Station 20 back to original firehouse. (*wait for new Battalion Chief*)
5. Workshop on how appointments are made to City Commissions/Committees, attendance, and look at advisory boards/citizens review committee.
6. Open House: 5 to 7 p.m. – Wed. in October – Open to Public

ADJOURNMENT

By common consent the meeting adjourned in honor of the victims of 9-11 at 7:40 p.m.

Prepared By:

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.

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

09/16/13
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on September 16, 2013 at 4:00 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
Colin Tanner, Deputy City Attorney
Marie A. Calderon, City Clerk

CLOSED SESSION

City Manager said that the City Council will meet in closed session in regards to conference with labor negotiators pursuant to Government Section 54957.6 regarding negotiations with Banning Police Officers Association (BPOA).

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

Meeting went into closed session at 4:01 p.m. and reconvened at 6:48 p.m. with no reportable action.

ADJOURNMENT

By common consent the meeting adjourned at 6:48 p.m.

Marie A. Calderon, City Clerk

**SUCCESSOR AGENCY TO THE DISSOLVED
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING
CONSENT**

DATE: **September 24, 2013**

TO: **Chair and Successor Agency Board Members**

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

SUBJECT: **Approval of the Recognized Obligation Payment Schedule for the Period of January through June 2014 for the Successor Agency to the Dissolved Community Redevelopment Agency of the City of Banning**

RECOMMENDATION:

That the City Council, acting in its capacity as the Successor Agency to the Dissolved Community Redevelopment Agency of the City of Banning adopt Resolution No. 2013-09 SA (*Attachment A*) approving the Recognized Obligation Payment Schedule (*Attachment B*) for the period of January through June 2014 and approving certain related actions.

BACKGROUND:

Pursuant to Health and Safety Code § 34172 (a)(1), the Community Redevelopment Agency of the City of Banning was dissolved on February 1, 2012. Consistent with the provisions of the Health and Safety Code, the City Council previously elected to serve in the capacity of the Successor Agency to the Dissolved Community Redevelopment Agency of the City of Banning, (the “Successor Agency”). Per Health and Safety Code § 34177 (l)(1), the Successor Agency is required to prepare a Recognized Obligation Payment Schedule (“ROPS”) before each six-month fiscal period, which corresponds to equal halves of a fiscal year (i.e., July through December and January through June). The ROPS is the basis for the Successor Agency’s authority to make payments due for enforceable obligations. Subsequent to its approval by the Successor Agency, the ROPS must also be approved by the Oversight Board (“OS Board”) to the Successor Agency and is reviewable by the County Auditor-Controller, the County Administrative Officer, the California Department of Finance and the California State Controller’s Office.

Staff, together with Urban Futures, Inc., has prepared the ROPS for the period January through June 2014, which consists of several spreadsheets that are appended to the attached Resolution as Exhibit “A”. Pursuant to Health and Safety Code § 34177 (m), an Oversight Board-approved ROPS for the period of January through June 2014 must be submitted to the County Auditor-Controller, the County Administrative Officer, the California Department of Finance and the California State Controller’s Office not later than October 1, 2013. Approval of the attached Resolution will authorize the City Manager, or designee, to:

1. Post the ROPS for the period of January through June 2014 on the City’s website;
2. Transmit the ROPS for the period of January through June 2014 to the Oversight Board for their review and consideration;

3. Transmit the ROPS for the period of January through June 2014 to the County Auditor-Controller, County Administrative Officer, the State Controller and the State Department of Finance within the timeframe prescribed by the Health and Safety Code; and
4. Make ministerial revisions to the ROPS which may include, but is not limited to restating the information included within the ROPS in any format that may be requested by the State Department of Finance, take such other actions and execute such other documents as are necessary to effectuate the intent of the Resolution, and to implement the ROPS for the period of January through June 2014 on behalf of the Successor Agency, including authorizing and causing such payments.

The attached Resolution has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, §§ 15000 *et seq.*, hereafter the "Guidelines"), and the City's environmental guidelines. The attached Resolution does not constitute a "project" for purposes of CEQA, as that term is defined by Guidelines § 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per § 15378(b)(5) of the Guidelines.

FISCAL IMPACT:

Pursuant to Health and Safety Code § 34177, the Successor Agency is legally required to continue to make payments due for enforceable obligations. Approval of the ROPS will ensure that the Successor Agency has the authority to continue to pay its enforceable obligations. The recommended action does not, in itself, cause any new financial obligations.

RECOMMENDED BY:



Bill R. Manis
Economic Development Director

REVIEWED BY:



June A. Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andrew J. Takata
City Manager

Attachments & Exhibit:

- A. Resolution No. 2013-09 SA
- B. ROPS 2013-14B (Exhibit A to Reso)

ATTACHMENT A

Resolution No. 2013-09 SA

RESOLUTION NO. 2013-09 SA

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY TO THE DISSOLVED COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, CALIFORNIA RECEIVING AND ADOPTING ITS RECOGNIZED OBLIGATION PAYMENT SCHEDULE (“ROPS”) FOR THE PERIOD OF JANUARY THROUGH JUNE 2014 AND APPROVING CERTAIN RELATED ACTIONS

WHEREAS, pursuant to Health and Safety Code § 34172 (a)(1), the Community Redevelopment Agency of the City of Banning was dissolved on February 1, 2012; and

WHEREAS, consistent with the provisions of the Health and Safety Code, the City Council previously elected to serve in the capacity of the Successor Agency to the Dissolved Community Redevelopment Agency of the City of Banning (the “Successor Agency”); and

WHEREAS, per Health and Safety Code § 34177 (l)(1), the Successor Agency is required to prepare a Recognized Obligation Payment Schedule (“ROPS”) before each six-month fiscal period, which corresponds to equal halves of a fiscal year (i.e., July through December and January through June); and

WHEREAS, the ROPS is the basis for the Successor Agency’s authority to make payments due for enforceable obligations; and

WHEREAS, the ROPS must also be approved by the Oversight Board (“OS Board”) to the Successor Agency and is reviewable by the County Auditor-Controller, the County Administrative Officer, the California Department of Finance and the California State Controller’s Office; and

WHEREAS, staff, together with Urban Futures, Inc., has prepared the ROPS for the period of January through June 2013, which consists of several spreadsheets that are appended to this Resolution as Exhibit “A”; and

WHEREAS, subsequent to the approval of this Resolution and approval by the OS Board, the ROPS will be forwarded to the County Auditor-Controller, the County Administrative Officer, the California Department of Finance and the California State Controller’s Office for their review; and

WHEREAS, this Resolution has been reviewed with respect to applicability of the California Environmental Quality Act (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, §§ 15000 *et seq.*, hereafter the “Guidelines”), and the City’s environmental guidelines; and

WHEREAS, this Resolution is not a “project” for purposes of CEQA, as that term is defined by Guidelines § 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per § 15378(b)(5) of the Guidelines; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, the City Council of the City of Banning, in its capacity as Successor Agency, resolves as follows:

SECTION 1. The foregoing Recitals are true and correct and are incorporated herein.

SECTION 2. The Successor Agency's ROPS for the period of January through June 2014, which is attached hereto as Exhibit "A", is approved and adopted.

SECTION 3. The City Manager, or designee, is hereby authorized and directed to: i) post the ROPS for the period of January through June 2014 on the City's website, ii) transmit the ROPS for the period of January through June 2014 to the OS Board for their review, iii) transmit the ROPS for the period of January through June 2014 to the County Auditor-Controller, the County Administrative Officer, the State Controller and the State Department of Finance for their review within the timeframe prescribed by the Health and Safety Code; and iv) make ministerial revisions to the ROPS which may include, but is not limited to restating the information included within the ROPS in any format that may be requested by the State Department of Finance, take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution, and to implement the ROPS for the period of January through June 2014 on behalf of the Successor Agency, including authorizing and causing such payments.

SECTION 4. This Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines § 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per § 15378(b)(5) of the Guidelines.

SECTION 5. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED, AND ADOPTED at a joint meeting of the City Council of the City of Banning, acting at its capacity as the Successor Agency, this 24th day of September 2013.

Deborah Franklin, Mayor
City of Banning – Successor Agency

ATTEST:

Marie Calderon, Secretary

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

David J. Aleshire, General Counsel
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, sitting as the Secretary of the Successor Agency, do hereby certify that Resolution No. 2013-09 SA was adopted by the City of Banning, sitting as the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning, California at a joint meeting held on the 24th day of September, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie Calderon, Secretary
Successor Agency
City of Banning, California

ATTACHMENT B to Staff Report

EXHIBIT A to Resolution

Recognized Obligation Payment Schedule (2013-14 B)

Recognized Obligation Payment Schedule (ROPS 13-14B) - Summary

Filed for the January 1, 2014 through June 30, 2014 Period

Name of Successor Agency: Banning
Name of County: Riverside

Current Period Requested Funding for Outstanding Debt or Obligation

	Six-Month Total
A Sources (B+C+D):	\$ 64,377
B Bond Proceeds Funding (ROPS Detail)	64,377
C Reserve Balance Funding (ROPS Detail)	-
D Other Funding (ROPS Detail)	-
E Enforceable Obligations Funded with RPTTF Funding (F+G):	\$ 1,593,217
F Non-Administrative Costs (ROPS Detail)	1,468,217
G Administrative Costs (ROPS Detail)	125,000
H Current Period Enforceable Obligations (A+E):	\$ 1,657,594

Successor Agency Self-Reported Prior Period Adjustment to Current Period RPTTF Requested Funding

I Enforceable Obligations funded with RPTTF (E):	1,593,217
J Less Prior Period Adjustment (Report of Prior Period Adjustments Column U)	-
K Adjusted Current Period RPTTF Requested Funding (I-J)	\$ 1,593,217

County Auditor Controller Reported Prior Period Adjustment to Current Period RPTTF Requested Funding

L Enforceable Obligations funded with RPTTF (E):	1,593,217
M Less Prior Period Adjustment (Report of Prior Period Adjustments Column AB)	-
N Adjusted Current Period RPTTF Requested Funding (L-M)	\$ 1,593,217

Certification of Oversight Board Chairman:

Pursuant to Section 34177(m) of the Health and Safety code, I hereby certify that the above is a true and accurate Recognized Obligation Payment Schedule for the above named agency.

/s/ _____
Signature _____
Name _____
Title _____
Date _____

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Recognized Obligation Payment Schedule (ROPS) 13-14B - Report of Fund Balances
(Report Amounts in Whole Dollars)

A	B	C	D	E	F	G	H	I	J	K
Fund Balance Information by ROPS Period										
ROPS III Actuals (01/01/13 - 6/30/13)										
Beginning Available Fund Balance (Actual 01/01/13)										
1	Note that for the RPTTF, 1 + 2 should tie to columns L and Q in the Report of Prior Period Adjustments (PPAs)	9,085,957	-	109,510	-	-	-	-	\$ 9,195,467	
2	Revenue/Lincome (Actual 06/30/13) Note that the RPTTF amounts should tie to the ROPS III distributions from the County Auditor-Controller	-	-	-	-	1,477,228	125,000	\$ 1,602,228		
3	Expenditures for ROPS III Enforceable Obligations (Actual 06/30/13) Note that for the RPTTF, 3 + 4 should tie to columns N and S in the Report of PPAs	214,377	-	55,326	-	1,477,228	125,000	\$ 1,871,931		
4	Retention of Available Fund Balance (Actual 06/30/13) Note that the Non-Admin RPTTF amount should only include the retention of reserves for debt service approved in ROPS III	-	-	-	-	-	-	\$ -	-	
5	ROPS III RPTTF Prior Period Adjustment Note that the net Non-Admin and Admin RPTTF amounts should tie to columns O and T in the Report of PPAs.	-	-	No entry required	-	-	-	\$ -	-	
6	Ending Actual Available Fund Balance (1 + 2 - 3 - 4 + 5)	\$ 8,871,580	\$ -	\$ 54,184	\$ -	\$ -	\$ -	\$ -	\$ 8,925,764	
ROPS 13-14A Estimate (07/01/13 - 12/31/13)										
7	Beginning Available Fund Balance (Actual 07/01/13) (C, D, E, G, H = 4 + 6, F = H4 + F6, and I = 5 + 6)	\$ 8,871,580	\$ -	\$ 54,184	\$ -	\$ -	\$ -	\$ -	\$ 8,925,764	
8	Revenue/Lincome (Estimate 12/31/13) Note that the RPTTF amounts should tie to the ROPS 13-14A distributions from the County Auditor-Controller	-	-	-	-	1,582,620	125,000	\$ 1,707,620		
9	Expenditures for 13-14A Enforceable Obligations (Estimate 12/31/13)	293,846	-	54,184	-	-	1,582,620	125,000	\$ 2,055,650	
10	Retention of Available Fund Balance (Estimate 12/31/13) Note that the RPTTF amounts may include the retention of reserves for debt service approved in ROPS 13-14A	-	-	-	-	-	-	\$ -	-	
11	Ending Estimated Available Fund Balance (7 + 8 - 9 - 10)	\$ 8,577,734	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,577,734	

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Recognized Obligation Payment Schedule (ROPS) 13-14B - ROPS Detail
January 1, 2014 through June 30, 2014

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**Recognized Obligation Payment Schedule (ROPS) 13-14B - Report of Prior Period Adjustments
Reported for the ROPS III (January 1, 2013 through June 30, 2013) Period Pursuant to Health and Safety Code (HSC) 9**

Report Date: 2013-07-01 | Report Type: Item | Item ID: 11367 | Item Name: 34186 (Report Amounts in Whole Dollars)

Reported for the ROPS III (January 1, 2013 through June 30, 2013) Period Pursuant to Health and Safety Code (HSC) section 34186 (b) ROPS III Successor Agency (SA) Self-reported Prior Period Adjustments (PPAs). Pursuant to HSC Section 34186 (a), SAs are required to report the differences between their actual available funding and their actual expenditures for the ROPS III (January through June 2013) period. The amount of Redevelopment Property Tax Trust Fund (RPTTF) approved for the ROPS III (January through June 2014) period will be offset by the SAs self-reported ROPS III prior period adjustment. HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by SAs are subject to audit by the County Auditor-Controller (CAC) and the State Controller.

Reported for the ROPS II (January 1, 2013 through June 30, 2013) period pursuant to Health and Safety Code (HSC) 11530.1. The following is a summary of the financial information for the ROPS II period. The financial information is presented in accordance with the financial reporting requirements of the California State Auditor's Office.

Report Amounts in Whole Dollars

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Recognized Obligation Payment Schedule 13-14B - Notes

January 1, 2014 through June 30, 2014

Item #	Notes/Comments
1	None
2	None
3	Project Completed
4	None
5	None
6	None
7	Project Completed
8	None
9	None
10	None
11	Project Completed
12	None
13	None
14	Per DOF Letter of April 26, 2013; all bond proceeds derived from pre-Janauary 2011 TABs to be used consistent with HSC § 34191.4 (c).
15	Project Completed
16	Project Completed
17	No arbitrage this period
18	Per claim made by Riverside County Office of Education. The amount is subject to concurrence by the Riverside CAC. Eligibility to be determined by DOF.
19	Per claim made by Beaumont USD. The amount is subject to concurrence by the Riverside CAC. Eligibility to be determined by DOF.

CITY COUNCIL/BANNING UTILITY AUTHORITY JOINT MEETING

Date: **September 24, 2013**

TO: **Banning Utility Authority**

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

SUBJECT: **Banning Utility Authority Resolution No. 2013-17UA , “Approving the Contract Services Agreement with Layne Christensen Company of Fontana, California, for the Repairs to Water Well No. M-7”**

RECOMMENDATION: Adopt Resolution No. 2013-17UA:

- I. Approving the Contract Services Agreement with Layne Christensen Company of Fontana, California, for the Repairs to Water Well No. M-7 in the amount of not to exceed \$96,679.79.
- II. Authorizing the Administrative Services Director to make the necessary budget adjustments and appropriations in the amount of \$96,679.79 from the Water Division Operations Fund to Account No. 660-6300-471.95-08.

JUSTIFICATION: City Staff recently noticed that Well No. M-7 is operating at an unacceptable efficiency rate and therefore repairs must be made in order to ensure uninterrupted water supplies to the City’s customers.

BACKGROUND: Banning Water Well No. M-7 is located adjacent to the intersection of Sun Lakes Boulevard and Country Club Drive in the City of Banning. Staff noticed an approximate 300 gallon per minute production loss during the last couple of months. The well was originally drilled in 1978 and was fully equipped in 2005. City staff has determined that the well has deteriorated and should be rehabilitated in order to maximize its production and has therefore solicited proposals from three specialized contractors resulting in the following:

1. Layne Christensen company	\$ 96,679.79
2. Tri County Pump Company	\$ 99,442.08
3. General Pump Company	\$ 113,757.85

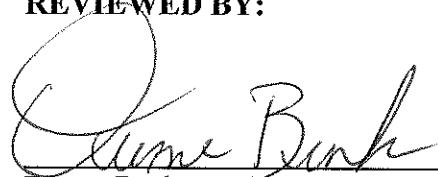
Staff recommends the award of a Contract Services Agreement to Layne Christensen Company, as per the proposal attached as Exhibit “A”. The scope of work will include the brush and bail of the casing, installation of a new stainless steel cone strainer, installation of new shaft sections and couplings, installation of new bowl assemblies, installation of new tube and shaft assemblies, bearings, suction pipe, gaskets, bolts, and miscellaneous materials.

Layne Christensen Company is a reputable firm in the water utility industry and has extensive experience with well equipment, design, and construction. This company has successfully completed numerous projects for the City.

If approved, the project will commence immediately and it is anticipated that the project will be completed by November, 2013.

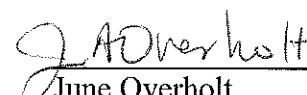
FISCAL DATA: An appropriation in the amount of \$96,679.79 from the Water Operations Fund to Account No. 660-6300-471.95-08 (Wells/Pumping Equipment) is necessary in order to fund the repairs.

REVIEWED BY:



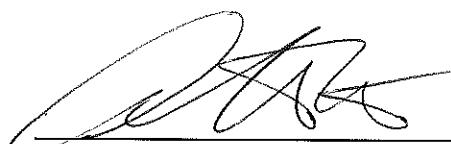
Duane Burk
Director of Public Works

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2013-17 UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE CONTRACT SERVICES AGREEMENT WITH LAYNE CHRISTENSEN COMPANY, OF FONTANA CALIFORNIA FOR THE REPAIRS TO WATER WELL NO. M-7

WHEREAS, Banning Water Well No. M-7 is located adjacent to the intersection of Sun Lakes Boulevard and Country Club Drive in the City of Banning and has recently experienced an approximate 300 gallon per minute production loss during the last couple of months; and

WHEREAS, City staff has determined that the well has deteriorated and should be rehabilitated in order to maximize its production and has therefore solicited proposals from three specialized contractors; and

WHEREAS, the scope of work will include the brush and bail of the casing, installation of a new stainless steel cone strainer, installation of new shaft sections and couplings, installation of new bowl assemblies, installation of new tube and shaft assemblies, bearings, suction pipe, gaskets, bolts, and miscellaneous materials; and

WHEREAS, Layne Christensen Company of Fontana, California is considered the lowest, responsive and responsible bidder to complete the scope of work in an amount “not to exceed” \$96,679.79 as shown in the submitted proposal attached as Exhibit “A”.

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

SECTION 1. Banning Utility Authority adopts Resolution No. 2013-17 UA, “Approving the Contract Services Agreement with Layne Christensen Company of Fontana, California for the repairs to Water Well No. M-7” in an amount “not to exceed” \$96,679.79.

SECTION 2. The Administrative Services Director is hereby authorized to make the necessary budget adjustments and appropriations in the amount of \$96,679.79 from the Water Division Operations Fund to Account No. 660-6300-471.95-08.

SECTION 3. The City Manager is authorized to execute the Contract Services Agreement with Layne Christensen Company. This authorization will be rescinded if the contract agreement is not executed by the parties within sixty (60) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 24th day September, 2013.

Deborah Franklin, Chairman
Banning Utility Authority

ATTEST:

Marie A. Calderon, Secretary

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

David J. Aleshire, Authority Counsel
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, Secretary of the Banning Utility Authority do hereby certify that the foregoing Resolution No. 2013-17 UA was duly adopted by the Utility Authority Board of the City of Banning at a joint meeting thereof held on the 24th day of September, 2013, by the following vote, to wit.

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, Secretary
Banning Utility Authority
City of Banning, California

EXHIBIT "A"

**PROPOSAL SUBMITTED BY
LAYNE CHRISTENSEN COMPANY**

LAyne



City of Banning
Public Works Department

Request for Quotation

August 26, 2013

The City of Banning is inviting you to quote on the repair of irrigation Well M-7 located at 4780 W. Westward Avenue, Banning CA. Over the last few months City staff noticed a gradual drop in production from 300 to 100 GPM. The well was designed with a Total Dynamic Head (TDH) of 650' using a 200 HP motor producing 400 GPM that would flow into a irrigation pond at a local golf course.

In this quote we are asking you to price each portion of the job as a line item so that if awarded the pump and motor can be pulled and inspected to determine the full extent of the repairs necessary. Once the repairs have been determined the total cost then will be determined by the price per line item.

Tasks to be performed:

- A. Pull pump and motor, teardown, inspect and evaluate conditions.
- B. Deliver motor to Brithinee Electric for analysis.
- C. Video log well before and after brush and bail.
- D. Brush and bail, dispose of all debris.
- E. Install Pump, Column, Tube & Shaft, Motor, Electric.
- F. Start up.
- G. Efficiency Test.

Lump Sum Price
\$7,540
\$0
\$1,700
\$7,100
\$7,200
\$1,600
\$770

New Materials

- 1 New Head Shaft.
- 2 SS Poly Coated .25" Airline & Gauge.
- 3 6" x 20' Heavy wall .365 Column.
- 4 3" x 1 11/16" x 20 Tube & Shaft Assembly.
- 5 3" x 1 11/16" Tube end bearings.
- 6 1 11/16" 10 thread carbon steel line shaft coupling.
- 7 1 11/16" 10 thread x 1 15/16" 10 thread change over coupling.
- 8 Rubber Centralizer.
- 9 Bowl assembly designed for 400 gpm @ 650 TDH.
- 10 6" x 10' Suction Pipe.
- 11 6" Stainless Steel cone strainer.
- 12 Gaskets, Bolts and misc. materials.

Qty	Units	Unit Price	Ext. Price
1	Ea	\$952.38	\$952.38
1	LS	\$1,460.32	\$1,460.32
32	Ea	\$771.70	\$24,694.40
32	Ea	\$804.29	\$25,737.28
1	Ea	\$78.57	\$78.57
1	Ea	\$25	\$25
1	Ea	\$190	\$190
13	Ea	\$20	\$260
1	Ea	\$10,967.74	\$10,967.74
1	Ea	\$253.97	\$253.97
1	Ea	\$207.94	\$207.94
1	Ea	\$700	\$700
Sub Total			\$91,437.60
Tax			\$5,242.19
Price			\$96,679.79

Request for information due September 9, 2013.
 Quotes due on September 12, 2013 by 4:00 PM
 Request for information can be directed through:
 Perry Gerdes (Water/Wastewater Superintendent)
 176 E. Lincoln Street
 Banning CA, 92220
Pgerdes@ci.banning.ca.us
 951-849-3273

CITY COUNCIL/BANNING UTILITY AUTHORITY JOINT MEETING

DATE: September 24, 2013

TO: Banning Utility Authority

FROM: Duane Burk, Director of Public Works

SUBJECT: Notice of Completion for Project No. 2010-05R, "Irrigation Water Line-Segment 'A'"

RECOMMENDATION: That the City Council accepts Project No. 2010-05R, "Irrigation Water Line-Segment 'A'" as complete and direct the City Clerk to record the Notice of Completion.

JUSTIFICATION: Staff has determined that the project has been completed per the City of Banning Plans and Specifications.

BACKGROUND: On October 23, 2012, the City Council adopted Resolution No. 2012-12UA, "Awarding the Construction Contract for Project No. 2010-05R, 'Irrigation Water Line – Segment 'A' and Rejecting All Other Bids and Approving Related Professional Services Agreements and Purchases."

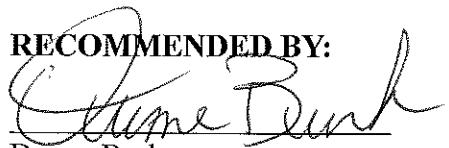
The scope of work included the installation of a 24 inch ductile iron pipe irrigation main line from the intersection of Sun Lakes Boulevard and Highland Home Road to the intersection of 22nd Street and Lincoln Street via Westward Avenue, Sunset Avenue and Lincoln Street. The project also included the installation of fire hydrants, valves, blow-offs, air release valves and the repair of the street disturbed by the project. All work was completed in accordance with the City of Banning Standard Plans and Specifications.

During construction of the project staff approved additional work in the amount of \$79,732.98 resulting from unforeseen conditions. The change orders included: labor and materials for the installation of additional aggregate material to replace existing, unsuitable soils; labor for removing unknown, abandoned utilities; and labor and materials for additional paving. Additionally, the change orders included labor required for the excavation and replacement of defective 24 inch pipe installed by the contractor. The labor costs were approved due to the fact that the City of Banning purchased and supplied the 24 inch pipe. The pipe supplier has reimbursed the City the full amount, equal to \$21,557.66, of the labor cost incurred due to the defective pipe.

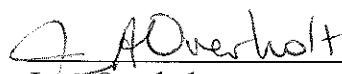
FISCAL DATA: The original contract amount for this project was \$908,080.54. The final contract amount is equal to \$987,813.52, which equals \$79,732.98 over the contract amount and within the approved 15% contingency (\$136,212.00).

(SIGNATURES ON NEXT PAGE)

RECOMMENDED BY:


Duane Burk,
Director of Public Works

REVIEWED BY:


June Overholt,
Administrative Services Director
Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

1 WHEN RECORDED MAIL TO:

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

8 FREE RECORDING:

9 Exempt Pursuant to
10 Government Code §6103
11

12
13 NOTICE OF COMPLETION

14 PROJECT NO. 2010-05R

15 IRRIGATION WATER LINE – SEGMENT A

16
17 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the
18 City of Banning, a municipal corporation, pursuant to the provisions of Section 3093 of
19 the Civil Code of the State of California, and is hereby accepted by the City of Banning,
20 pursuant to authority conferred by the City Council this September 24, 2013, and the
21 grantees consent to recordation thereof by its duly authorized agent.

22 That the OWNER, the City of Banning, and Tri-Star Contracting II, Inc. of Desert Hot
23 Springs, California, the vendee, entered into an agreement dated October 23, 2012, for
24 Construction of Project No. 2010-05R, "Irrigation Water Line – Segment A."

25 The scope of work for Project No. 2010-05R included the installation of a 24 inch ductile
26 iron pipe irrigation main line from the intersection of Sun Lakes Boulevard and Highland
27 Home Road to the intersection of 22nd Street and Lincoln Street via Westward Avenue,
28 Sunset Avenue and Lincoln Street. The project also included the installation of fire
29 hydrants, valves, blow-offs, air release valves and the repair of the street disturbed by the
30 project. All work was completed in accordance with the City of Banning Standard Plans
31 and Specifications.

32 That the work of improvement was completed on July 31, 2013, for Project No. 2010-
33 05R, Irrigation Water Line – Segment A.

34 (1) The Nature of Interest was to provide water infrastructure improvements.

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

(3) That said work of improvement was performed along Westward Avenue, Sunset Avenue and Lincoln Street in Banning, California 92220.

(4) That the original contractor for said improvement was Tri Star Contracting II, Inc., State Contractor's License No. 909195.

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

(6) The nature of interest is in fee.

Dated: September 24, 2013

CITY OF BANNING
A Municipal Corporation

By _____
Andy Takata
City Manager

APPROVED AS TO FORM:

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

JURAT

State of California
County of Riverside

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 2013 by _____ proved to me on this basis of satisfactory evidence to be the person(s) who appeared before me.

(Seal)

Notary Public in and for said County
and State

STATE OF CALIFORNIA)

) ss

COUNTY OF RIVERSIDE)

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

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

Executed on _____, 2013 at Banning, California.

City Clerk of the City of Banning

40

**CITY COUNCIL / HOUSING AUTHORITY
REPORT OF OFFICERS**

DATE: September 24, 2013

TO: Housing Authority

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: Approval of a Subordination Agreement to the Loan Agreement for the First Time Homebuyer Program to Secure Interest on Property Located at 2910 Rainbow Lane (APN 538-323-009)

RECOMMENDATION:

That the Housing Authority adopt Resolution No. 2013-01 HA:

1. Approving a Subordination Agreement relating to the property located at 2910 Rainbow Lane; and
2. Authorize the City Manager to process future Subordination Agreements requests administratively.

JUSTIFICATION: In support of home ownership in Banning, the former Community Redevelopment Agency provided second deeds of trusts in the amount of \$20,000.00 to qualified applicants as part of the First Time Home Buyer Program. In order for a homeowner to refinance an existing loan a subordination agreement is necessary.

BACKGROUND/ANALYSIS: On August 13, 2009 the applicant, Sharon Kay Harris, entered into a loan agreement with the former Banning Community Redevelopment Agency. The subordination of the loan is an agreed upon term contained in the Agency loan for the First Time Homebuyer Program as shown in the attached loan documents (Exhibit "A"). Should a participating borrower refinance their home during the term of the Agency loan, it is commonplace for financial institutions to request the Agency to subordinate its original loan to the new first deed of the trust holder.

On June 29, 2011, AB1X 26, was enacted providing for the dissolution of all California redevelopment agencies. Pursuant to AB1X 26, the Banning Redevelopment Agency dissolved on February 1, 2012 by operation of law, with all interests, enforceable obligations and housing assets of the former Agency being assumed by the Banning Housing Authority.

In July of 2013, the City received a request from the property owner/homeowner to subordinate the Agency's second deed of trust in order to facilitate the refinancing of the home located at 2910 Rainbow Lane. Upon receipt of the subordination request and agreement, staff requested that legal staff review the proposed agreement for appropriateness, correctness, and legal compliance. Legal staff has approved the attached subordination agreement (Exhibit "B"). The requested subordination is in the amount of \$20,000.00 which is the program award for the First Time Homebuyer Program. The first deed of trust will be in the amount of \$95,600.00. The

second deed of trust (Agency loan) represents approximately 21 percent of the first deed of trust. The original note and first deed of trust amounted to \$96,662.00. As conveyed in the letter submitted by the applicant (Exhibit "C"), the processing of this agreement will enable the property owner to obtain a lower interest rate and monthly payment.

Staff is also seeking the Housing Authority's approval to, at an administrative level, process future subordination agreements for those First Time Homebuyer recipients that meet the requirements. With this and future subordination agreements, the Housing Authority Chairperson's authorization and signature will be required before final processing can occur.

FISCAL DATA: There is no cost associated with approving the recommended action.

RECOMMENDED BY:



Zai Abu Bakar
Community Development Director

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andrew J. Takata
City Manager

Attachments:

1. Resolution No. 2013-01 HA
2. Exhibit "A" Loan Agreement dated 8/13/2009
3. Exhibit "B" Subordination Agreement
4. Exhibit "C" Letter from applicant requesting subordination

ATTACHMENT 1

HOUSING AUTHORITY RESOLUTION NO. 2013-01HA

RESOLUTION NO. 2013-01 HA

**A RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF BANNING,
CALIFORNIA, APPROVING A SUBORDINATION AGREEMENT TO THE LOAN
AGREEMENT FOR THE FIRST TIME HOMEBUYER PROGRAM TO SECURE
INTEREST ON PROPERTY LOCATED AT 2910 RAINBOW LANE (APN 538-323-009)**

WHEREAS, on August 13, 2009 the applicant entered into a loan agreement with the former Banning Community Redevelopment Agency (Exhibit "A"); and

WHEREAS, the subordination of the loan is an agreed upon term contained in the Agency loan for the First Time Homebuyer Program; and

WHEREAS, should a participating borrower refinance their home during the term of the Agency loan it is commonplace for financial institutions to request the Agency to subordinate its original loan to the new first deed of the trust holder; and

WHEREAS, on June 29, 2011, AB1X 26, was enacted providing for the dissolution of all California redevelopment agencies and pursuant to AB1X 26, the Banning Redevelopment Agency dissolved on February 1, 2012 by operation of law, with all interests, enforceable obligations and assets of the former Agency being assumed by the Banning Successor Agency and all housing assets are assumed by the Banning Housing Authority; and

WHEREAS, in July of 2013, the City received a request from Sharon Kay Harris, the property and homeowner, to subordinate the Agency's second deed of trust in order to facilitate the refinancing of the home located at 2910 Rainbow Lane; and

WHEREAS, legal staff reviewed the proposed agreement for appropriateness, correctness and legal compliance and has approved the subordination agreement; and

WHEREAS, the requested subordination is in the amount of \$20,000.00 which is the program award for the First Time Homebuyer Program. The first deed of trust in this case is for \$95,600.00. The second deed of trust (Agency loan) represents approximately 21 percent of the first deed of trust.

NOW, THEREFORE, BE IT RESOLVED that the Banning Housing Authority acting in its capacity as the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning for housing assets, hereby finds as follows:

SECTION 1. The above recitals are true and correct and are incorporated herein by reference.

SECTION 2: A) Authorize a Subordination Agreement to the First Time Homebuyer Loan Agreement on the subject property included herein as Exhibit "B" and authorize the Agency Chairperson to execute the Subordination Agreement. B) Authorize the City Manager to process future Subordination Agreement administratively subject to review and signature by the Housing Authority Chairperson.

SECTION 3: The authority granted herein shall become void and no further effect if the agreement is not executed by all parties within 90 days of the date of this resolution.

PASSED, APPROVED AND ADOPTED this 24th day of September 2013.

Don Peterson, Chairman
Banning Housing Authority

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

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

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

CERTIFICATION:

I, Marie A. Calderon, Authority Secretary of the Banning Housing Authority, Banning California, do hereby certify that the foregoing Resolution No. 2013-01 HA was duly adopted at a joint meeting of the Banning City Council and the Banning Housing Authority thereof held on the 24th of September, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, Secretary
Banning Housing Authority
City of Banning, California

ATTACHMENT 2

EXHIBIT “A”

LOAN AGREEMENT DATED 8/13/09

STEWART TITLE-Riverside

RECORDING REQUESTED BY:
STEWART TITLE OF CALIFORNIA

DOC # 2009-0438699
08/21/2009 08:00A Fee:NC
Page 1 of 24
Recorded in Official Records
County of Riverside
Larry W. Ward
Assessor, County Clerk & Recorder



AND WHEN RECORDED MAIL TO:
City of Banning
99 E Ramsey
Banning, CA 92220

ORDER NO: 235529

S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
M	A	L	465	426	PCOR	NCOR	SMF	NCHC	EXW
			24					009	

APN :

TRA :

DIT : \$



Loan Agreement
TITLE OF DOCUMENT

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION

(\$3.00 ADDITIONAL RECORDING FEE APPLIES)

47

REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Banning
Attn: Community Redevelopment Agency
99 E. Ramsey
Banning, Ca 92220

LOAN AGREEMENT
BANNING COMMUNITY REDEVELOPMENT AGENCY
FIRST TIME HOME BUYER PROGRAM

(This lien created by this loan agreement is subordinate to the first deed of trust recorded as of event date)

THE LOAN AGREEMENT (the "Agreement") is made 8/13/2009, by and between **Sharon Kay Harris, An Unmarried Woman, ("Participant(s)")** and the Banning Community Redevelopment Agency ("Agency"), a governmental agency.

RECITALS

- A. Participant has entered into an agreement (the "Purchase Agreement") to purchase a single family home at **2910 Rainbow Lane, Banning, CA 92220**, and as said certain real property is more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property").
- B. Participant requires financial assistance to purchase the Property and would not be able to purchase the Property without such assistance. Participant is a person or family of low to moderate income who currently earns 120% or less of the current annual median income for the Riverside-San Bernardino County area, adjusted for family size, as those terms are defined by HUD.
- C. Participant has represented to the Agency that Participant and Participant's immediate family intend to reside in the Property as the family's primary residence at all times throughout the term of this Agreement.
- D. The agency desires to assist persons and families of low to moderate income to purchase residential property to preserve, improve and increase the supply of affordable housing (as defined in Health and Safety Code Sections 50052.5 and 50093) within Southern California in accordance with the Community Redevelopment Law, Health and Safety Code Section 33000, specifically section 33834.2.
- E. To promote these goals the Agency, has established the First Time Home Buyer Program (the "Program"), under which the Agency may provide a subsidy to a Participant toward the purchase price of a single family home, or condominium, which subsidy shall in no event exceed Twenty Thousand Dollars (\$20,000.00). The Agency intends that the subsidy is to assist persons of low and moderate income to purchase single family homes at affordable housing cost.
- F. The Agency wishes to lend, and Participant wishes to borrow, Program funds (the "Agency Loan") to assist Participant to purchase the Property upon the terms and

Neighborhood Housing Services of the Inland Empire, Inc.

-3-

48

conditions set forth herein. The Agency Loan will not accrue any interest. Payments on the Agency Loan will be deferred for the life of the loan. The principal will be forgiven by the Agency provided the Participant continues to own and occupy the Property as a primary residence and is in compliance with all other terms and conditions of this Agreement, based on the following schedule:

<u>Tenure of Ownership</u>	<u>Principal</u>
1-30 years	100 % Payback
30 and up years	100 % Forgiven

The Agency Loan will become due upon the sale or the occurrence of certain events described in Section 3 herein.

NOW, THEREFORE, for good and valuable consideration the parties agree as follows:

1. Agency Loan

The Agency shall loan to Participant (the "Agency Loan") the amount of Twenty Thousand Dollars (\$20,000.00) subject to the conditions and restrictions set forth herein and those set forth in the Promissory Note, and Loan Agreement for the Redevelopment Agency (as those terms are hereinafter defined) for the Program. The Agency Loan shall be paid to the seller of the Property (the "Seller") by the Agency through deposit of the Agency Loan proceeds into escrow with Stewart Title of California, Inc (the "Escrow Agent") (Escrow No. 235529). The Agency shall direct the Escrow Agent to apply the proceeds of the Agency Loan on behalf of Participant to the purchase price of the Property, and at Participant's election, to the costs of closing, escrow fees, recording fees, loan points and fees, home warranty protection plan and/or document fees directly associated with the purchase of the Property. At such time, Participant shall execute, as maker, and deliver to the Agency a Promissory Note in favor of the Agency holder, in the principal amount of the Agency Loan substantially in the form of Exhibit "B" attached hereto and incorporated herein by this reference (the "Note" or "Promissory Note"). Participant shall also execute and deliver to the Agency a Loan Agreement, which shall secure the Note.

2. Maintenance of Property

The Participant shall maintain the improvements and landscaping on the Property, including keeping the Property free from an accumulation of debris or waste materials, consistent with City standards. Participant also agrees to comply with any and all covenants and agreements established by any homeowner's association or other regulatory entity recognized by area property owners and to comply with all applicable federal, state and local laws.

3a. Due on Sale, Transfer or Cessation of Owner-Occupied Status

Participant agrees to notify the Agency not less than thirty (30) days prior to (I) the sale of the Property, (II) the transfer of any interest in the Property, or (III) the cessation of owner occupied status as the principal residence of the Participant. The Agency Loan shall be due and payable upon the earlier of (I) such sale or transfer of the Property, or (II) such time if or when Participant is no longer an occupant of the Property pursuant to Section 5 of this Agreement or is in default of

Neighborhood Housing Services of the Inland Empire, Inc.

any other obligation under this Agreement. For the purposes of this section, none of the following shall be deemed a sale or transfer of title which would trigger the due on sale provision: (a) a transfer by gift, devise, or inheritance to the owner's spouse, (b) transfer of title by an owner's death to a surviving joint tenant, tenant by entireties, or a surviving spouse of community property, (c) transfer of title to a spouse as part of divorce or dissolution proceedings; or (d) transfer of title or an interest in the Property to the spouse in conjunction with marriage.

3b. Acceleration

An acceleration clause shall be in effect when the property is no longer the borrower's principal residence; upon failure to report changes, including but not limited to additions, fire, and vandalism; or upon discovery of willful misrepresentations in connection with the program. *Exception: Borrowers may request from the agency a temporary waiver of the principal residence requirement for situations involving extreme hardship.

4. Prohibition Against Refinance or Additional Encumbrances

Participant is prohibited from refinancing the lien of the Agency Loan Agreement or any lien to which the lien of the Agency Loan Agreement is subordinate (the "First Lien") without the prior written consent of the Agency. Participant also agrees to not further encumber the property with additional liens. A violation of said provision would cause the Agency Loan to become immediately due and payable. At the request of the Participant, the Agency may, in its sole discretion, in writing waive the requirements of Section 4 and defer repayment and/or extend the term of the Agency Loan.

5. Occupancy Standards

The Property shall be used as the primary personal residence of Participant and Participant's family and for no other purpose.

6. Income Information

Participant has submitted an eligibility verification form to the Agency prior to execution of this Agreement. Participant represents, warrants, and declares under penalty of perjury to the Agency that all information Participant has provided and will provide in the future to the Agency is and will be true, correct and complete. Participant acknowledges that the Agency is relying upon Participant's representations that Participant is a person or family of low to moderate income, and Agency would not have entered into this Agreement if Participant did not so qualify. Area income for Riverside-San Bernardino Counties, adjusted for family size pursuant to Health and Safety Code Section 50093 is 120% or less of medium income for each respective area. Participant will provide to the Agency on an annual basis for the life of the Agency Loan, information relative to household composition and income as may be requested by the Agency.

7. First Time Buyer

Participant represents and warrants to the Agency that neither Participant nor any of Participant's family residing in the Property has had an ownership interest in any residential real property during all or any part of three (3) years immediately prior to funding of the Agency Loan.

8. Eligible Property
The Property eligible for the Program shall be a single family residence, condominium, or townhouse located in the City of Banning.
9. Loan Servicing
The Agency will service its Loan Agreement or assign the responsibility to an approved servicer.
10. Participant Financing
Participant shall obtain first mortgage financing for the purchase of the Property from a reputable institutional lender approved by the Agency (the "Lender"). First mortgage financing shall be a fully amortized fixed-rate or an adjustable rate loan containing no negative amortization. Participant must accept the highest ratio (loan-to-value) loan for which Participant qualifies and Participant is required to participate in the Community Home Buyer's Educational Program. In addition, not less than One Thousand Dollars (\$1,000) of the Purchase Price of the Property shall be paid in cash from Participant's own resources and not from the proceeds of a loan.
11. Subordination
Any first lien on the Property ("First Lien") held by an institutional lender or investor (the "Lender") shall be prior and superior to this Loan Agreement. Thus, any party, its successors and assigns receiving title to the Property through a trustee's sale, judicial foreclosure sale, or deed in lieu of foreclosure, and any conveyance or transfer thereafter, shall receive title free and clear of the Agency's Loan Agreement and covenants contained in the Loan Agreement. Participant agrees it shall instruct the escrow holder for the acquisition of the Property by the Participant that the order of recording in the escrow for the purchase of the Property by the Participant shall occur as follows: 1) the First Lien; 2) the Loan Agreement; 3) the Promissory Note; The Participant shall cause a Request for Notice to be recorded on the Property subsequent to the recordation of the First Lien deed of trust or mortgage requesting a statutory notice of default as set forth in the California Civil Code. Such notice shall be sent to:

City of Banning
Attn: City Clerk
99 E. Ramsey
Banning, Ca 92220

12. Non-Waiver
Failure to exercise any right the Agency may have or be entitled to, in the event of default hereunder, shall not constitute a waiver of such right or any other right in the event of a subsequent default.
13. Indemnification
The Participant shall defend, indemnify, and hold harmless the Agency and its respective officers, agents, employees, representatives and volunteers from and against any loss, liability, claim or judgment relating in any manner to the Property or this Agreement. The Participant shall remain fully obligated for the payment of taxes, liens, and assessments related to the Property. There shall be no reduction

Neighborhood Housing Services of the Inland Empire, Inc.

In taxes for Participant, nor any transfer of responsibility to the Agency to make such payments, by virtue of the Agency Loan.

14. Insurance

Participant shall maintain, during the term of the Agency Loan, an all-risk property insurance policy insuring the Property in an amount equal to the full replacement value of the structures on the Property. The policy shall name the Agency as loss payee and shall contain a statement of obligation on behalf of the carrier to notify the Agency of any material change, cancellation or termination of coverage at least thirty (30) days in advance of the effective date of such material change, cancellation or termination. Participant shall transmit a copy of the certificate of insurance and loss payee endorsement to the Agency within thirty (30) days of the effective date of this Agreement, and Participant shall annually transmit a copy of the certificate of insurance and a loss payee endorsement, signed by an authorized agent of the insurance carrier setting forth the general provisions of coverage. The copy of the certificate of insurance and loss payee endorsement shall be transmitted to the City as follows:

City of Banning
Attn: City Clerk
99 E. Ramsey
Banning, Ca. 92220

Any certificate of insurance must be in a form, content and with companies approved by the Agency. Participant must establish and maintain an impound account with the first lien holder for the payment of insurance premiums and property taxes.

15. Defaults

Failure or delay by either party to perform any term or provision of this Agreement which is not cured within thirty (30) days after receipt of notice from the other party constitutes a default under this Agreement; provided, however, if such default is of the nature requiring more than thirty (30) days to cure, the defaulting party shall avoid default hereunder by commencing to cure within such thirty (30) day period, and thereafter diligently pursuing such cure to completion. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

16. Documents

Participant is aware that the Agency has prepared certain documents to implement the Program and secure repayment of the Agency Loan. Participant has reviewed and agrees to execute the following documents in substantially the form as

Neighborhood Housing Services of the Inland Empire, Inc.

attached hereto prior to receiving the Agency Loan, and any other documents reasonably required by the Agency or a participating entity to complete the transaction contemplated herein:

- (a) Loan Agreement
- (b) Promissory Note
- (c) Participant agrees and acknowledges that the Agency Loan Agreement for 2723 Hazy Way, Banning, CA 92220, Shall be recorded against the Property with the County Recorder of the County of Riverside and shall appear of record with respect to and as an encumbrance to the Property. Participant agrees that this Agreement will be recorded.

17. Further Assurances

The Participant shall execute any further documents consistent with the terms of this Agreement, including documents in recordable form, as the Agency shall from time to time find necessary or appropriate to effectuate its purposes in entering into this Agreement and making the Agency Loan. Participant further agrees to provide on an annual basis, at the request of the Agency, information related to the guidelines set forth by the Community Home Buyers Educational Program and applicable Redevelopment Law.

18. Governing Law

This Agreement shall be governed by the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of the County of Riverside, State of California, in an appropriate municipal court in that county, or in the Federal District Court in the Central District of California.

19. Amendment of Agreement

No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by the Participant and the Agency.

20. Agency May Assign

Agency may, at its option, assign its right to receive repayment of the Agency Loan proceeds without obtaining the consent of the Participant. The payment may only be assigned to a governmental organization to assist low to moderate-income housing needs.

21. Participant Assignment Prohibited

In no event shall Participant assign or transfer any portion of this Agreement without the prior express written consent of the Agency, which consent may be given or withheld in the Agency's sole discretion. No assumption of the Agency Loan shall be permitted at any time. This section shall not affect or diminish the Agency's right to assign all or any portion of its rights to the proceeds of the Agency Loan hereunder.

22. Entire Agreement

This Agreement, together with all attachments hereto, constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between the Agency and the Participant concerning all or any part of the subject matter of this Agreement.

23. Notices

Any notices, requests or approvals given under this Agreement from one party to another may be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, registered or certified mail, return receipt requested to the following address:

To Participant(s): Sharon Kay Harris
2910 Rainbow Lane
Banning, CA 92220

To City: City of Banning
Attn: City Clerk
99 E. Ramsey
Banning, Ca 92220

Either party may change its address for notice by giving written notice thereof to the other party.

24. Attorneys' Fees and Costs

In the event that any action is instituted to enforce payment or performance under this Agreement, the parties agree the non-prevailing party shall be responsible for and shall pay all costs and all attorneys' fees incurred by such prevailing party in enforcing this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

PARTICIPANT(S):

Date: 8/15/09

By: Sharon Kay Harris
Sharon Kay Harris

AGENCY:

Date: 8/20/09

CITY OF BANNING COMMUNITY
REDEVELOPMENT AGENCY
By: Sam Racadio
Print Name: SAM RACADIO

Title: Executive Director
Neighborhood Housing Services of the Inland Empire, Inc. -9-

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

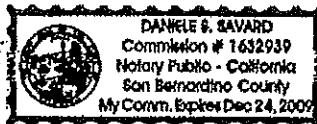
COUNTY OF RIVERSIDE

On August 20, 2009, before me, DANIELE S. SAVARD, NOTARY PUBLIC, personally appeared SAM RACADIO, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: 



OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

INDIVIDUAL
 CORPORATE OFFICER

TITLE(S)

PARTNER(S) LIMITED
 GENERAL
 ATTORNEY-IN-FACT
 TRUSTEE(S)
 GUARDIAN/CONSERVATOR
 OTHER: EXECUTIVE DIRECTOR

LOAN AGREEMENT – Sharon Kay Harris
2910 Rainbow Lane, Banning, CA 92220
TITLE OR TYPE OF DOCUMENT

9 Pages (#01 to #09) of the Loan Agreement Package
NUMBER OF PAGES

LOAN AGREEMENT DATED 08/13/09
DATE OF DOCUMENT

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))
CITY OF BANNING
COMMUNITY REDEVELOPMENT AGENCY

NONE
SIGNER(S) OTHER THAN NAMED ABOVE

55

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

On

8/15/2009

Date

before me, Hawne O. Welch, Notary Public

Here Insert Name and Title of the Officer

personally appeared

Sharon Kay Harris

(Name(s) of Signer(s))



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

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

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document:

Document Date:

Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

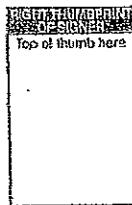
Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney In Fact
 Trustee
 Guardian or Conservator
 Other: _____

Signer Is Representing:

Signer's Name:

Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney In Fact
 Trustee
 Guardian or Conservator
 Other: _____

Signer Is Representing:



STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

On _____ before me, _____
personally appeared _____

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

WITNESS my hand and official seal

Signature: _____

old language

LEGAL DESCRIPTION

Exhibit "A"

Lot 291 of Tract No. 18063, in the City of Banning, County of Riverside, State of California; as shown by map on file in Book 134 Pages 71-76 of Maps, records of Riverside County, California.

APN: 538-323-009-7

CITY OF BANNING
FIRST TIME HOMEBUYER PROGRAM
PROMISSORY NOTE
Exhibit "B"

Date: 8/13/2009

Address: 2910 Rainbow Lane, Banning, CA 92220

FOR VALUE RECEIVED, the undersigned, **Sharon Kay Harris, An Unmarried Woman**, ("Maker(s)") promise to pay to the Banning Community Redevelopment Agency ("Holder") at **2910 Rainbow Lane, Banning, CA 92220**, or at such other address as Holder may direct from time to time in writing, Twenty Thousand Dollars (\$20,000.00) (the "Note Amount"). All sums hereunder shall be payable in lawful one of the United States of America. There will be no interest charges payable on this loan.

1. Loan Agreement

This Promissory Note is made and delivered pursuant to and in implementation of the Loan Agreement entered by and between the Holder and the Maker dated 8/13/2009, (the "Agreement"), a copy of which is on file as a public record with the Holder and is incorporated herein by reference. The Maker acknowledges that but for the execution of this Promissory Note, the Holder would not enter into the Agreement or make the loan contemplated therein. Unless definitions of terms have been expressly set out at length herein, each term shall have the same definition as set forth in the Agreement.

2. Repayment

In the event there is not adequate "Property Appreciation" (as defined below) the second loan amount shall follow the guidelines established in this document concerning Property Appreciation. In this event the second loan shall be forgiven, regardless of the tenure of ownership of the Maker. Property appreciation shall be defined as any increase in subsequent sales price or fair market value of the Property, as determined by an independent appraisal, above the initial sales price at the time of Holder's origination of this second loan amount as indicated above, less normal and reasonable costs of sale.

3. Maturity Date

The balance of all unforgiven unpaid principal shall be due and payable on 8/12/2039 [Thirtieth (30th) anniversary date of this Promissory Note], which balance shall be zero dollars, providing Participant has continued in compliance with all the terms and conditions of the Loan Agreement.

4. Acceleration

The whole of the Note Amount and all other payments due hereunder and under the Loan Agreement shall become due and be immediately payable to the Holder by the Maker upon the occurrence of any one of the following events:

- (a) Maker sells the Property;
- (b) Maker transfers any interest in the Property without the express written consent of the Holder;
- (c) Maker refinances any lien or encumbrance to which the Loan Agreement is subordinate without the express written consent of the Holder;

Neighborhood Housing Services of the Inland Empire, Inc.

- 12 -

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(d) Maker pays off any lien or encumbrance to which Banning Redevelopment Agency's Loan Agreement is subordinate.
(e) Maker fails to occupy the Property as a principal residence or is in default of any obligation under the Loan Agreement between the Holder and Maker dated

5. Security for Note

This Promissory Note shall be secured by a loan agreement encumbering the Property (the Banning Community Redevelopment Agency's Loan Agreement"), executed by Maker as Trustor in favor of Holder as Trustee.

6. Prepayment

Maker may prepay to Holder the full Note Amount with no penalty thereon, at any time prior to the due date of the Note.

7. Holder May Assign

Holder may, at its option, assign its right to receive payment under this Promissory Note without necessity of obtaining the consent of the Maker. The Note can only be assigned to another non-profit organization or governmental agency.

8. Maker Assignment Prohibited

In no event shall Maker assign or transfer any portion of this Promissory Note and/or the Banning Community Redevelopment Agency's Loan without the prior express written consent of the Holder, which consent may be given or withheld in the Holder's sole discretion. This Section shall not affect or diminish the Holder's right to assign all or any portion of its rights to the loan proceeds hereunder.

9. Attorney's Fees and Costs

In the event that any action is instituted to enforce payment under this Promissory Note, the parties agree the non-prevailing party shall be responsible for and shall pay to the prevailing party all court costs and all attorneys' fees incurred in enforcing this Note.

10. Non-Waiver

Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment.

11. Successors Bound

This Promissory Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

"MAKER(S)"

By: Sharon Kay Harris
Sharon Kay Harris.

DATE: 8-15-09

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

On 8/15/2009 before me,

Date

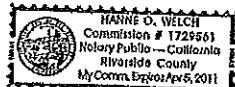
personally appeared

Riverside } Hanne O. Welch, Notary Public

Here Insert Name and Title of the Officer

Name(s) of Signer(s)

Sharon Kay Harris



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

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

WITNESS my hand and official seal.

Signature 
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Individual

Corporate Officer — Title(s): _____

Partner — Limited General

Attorney In Fact

Trustee

Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Individual

Corporate Officer — Title(s): _____

Partner — Limited General

Attorney In Fact

Trustee

Guardian or Conservator

Other: _____

Signer Is Representing: _____



STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On _____ before me, _____
personally appeared _____

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

WITNESS my hand and official seal

Signature: _____

old unpage

City of Banning
First Time Homebuyer Program

REGULATIONS AND PROCEDURES
Exhibit "C"

I. Introduction

The Banning Community Redevelopment Agency's First Time Home Buyer Program has been designed to meet the needs of low and moderate income families and individuals who wish to purchase a home, but are unable to qualify and/or come up with the necessary down payment without financial assistance.

- A. Banning Community Redevelopment Agency's funds are co-invested with the funds of the prospective homebuyer to enable the household to qualify to purchase a home. The funds are in the form of a deferred second mortgage. The second mortgage is for a period of thirty years.
- B. The second mortgage is a silent second loan; the entire repayment is deferred until sale, refinancing, or full payment of the first mortgage, or conversion to rental housing.

II. General Eligibility Requirements

- A. **Location:**
Loans will be made on single-family homes, condominiums, and townhouses within the City of Banning
- B. **Maximum purchase price:**
The maximum purchase price for the program is the maximum FNMA, FREDDIE MAC, and FHA Loan amounts.
- C. **Characteristics of the home buyer:**
 1. Household adjusted gross income shall be no more than 120% of what has been determined by the medium income guidelines established by the U.S. Department of Housing and Urban Development, adjusted for family size.
 2. Co-owners, other than owner occupants, will not be permitted. This rule is included to prohibit investors from utilizing qualified persons to purchase a property for their own investment purposes. A co-signatory or grantor, who is not on the title, will be permitted if the primary lender permits this action.
 3. Household shall have sufficient income and credit worthiness to qualify for primary financing as defined by their selected lender.
 4. Household shall have sufficient assets to provide a minimum down payment equal to \$1000.00 or the required down payment for the first trust deed lender, plus closing costs.
 5. Household liquid assets shall not exceed the combined total of the applicants portion of the down payment, estimated closing costs, up to six months' total monthly housing costs, and an emergency allowance of two months reserves in additional liquid or convertible assets shall be allowable.
 6. Household shall not have owned residential property or have owned principal residence during the last three years unless relocated from a redevelopment area. (A mobile home not affixed to a permanent foundation is not considered residential property.) At the discretion of the

Redevelopment Agency this requirement may be modified or waived in order to allow households meeting all other eligibility criteria to participate in the program. Special circumstances shall be documented and consideration given to households that have sold or transferred an ownership interest because of death or illness of spouse or dissolution of marriage, job related relocation, or other significant reasons.

D. Determination of Adjusted Gross Income

1. In calculating adjusted gross income, all of the income of the applicant or applicants and other household members who share the same dwelling unit or share in the ownership of the unit, whether in cash or in kind, shall be considered, as set forth below:
 - a. the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, and bonuses;
 - b. the net income from an operation of a business or profession, as calculated by averaging the net income manifested by their Federal Income Taxes for the past three years;
 - c. interest, dividends, and other net income of any kind from real or personal property (where the family has assets in excess of \$5,000, excluding property, adjusted gross income shall include the greater of the actual income derived from all assets or percentage of such assets based on the current passbook savings rate);
 - d. the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;
 - e. payment in lieu of earnings, such as unemployment, worker's compensation, severance pay, and welfare assistance (Such payments may be excluded by the lending institution providing the first mortgage for purposes of underwriting, but shall be included in eligibility determinations for this program.);
 - f. periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling to the extent that such payments are reasonably expected to continue;
 - g. all regular pay, special pay, and allowances of a member of the armed forces (whether or not living in the dwelling) who is head of the family, spouse, or other person whose dependents are residing in the unit;
 - h. any earned income tax credit to the extent it exceeds income tax liability; and
 - i. any other income that must be reported for federal and state income tax purposes.
2. The following exceptions shall apply in the determination of adjusted gross income:

- a. payments received for the care of foster children;
- b. amounts specifically excluded by any federal or state statute from consideration as income;
- c. casual, sporadic, or irregular gifts;
- d. amounts that are specifically for, or in reimbursement of, the cost of medical expenses;
- e. lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses (these items shall be considered as assets for the purpose of this program); and
- f. amounts of education scholarships paid directly to the student or to the educational institution, and amounts paid by the government to veterans for use in meeting the costs of tuition, fees, books, and equipment.

3. The applicant shall be required to provide federal and state income tax returns for the prior three years and verification of current income to document eligibility for the program.

E. Assets

1. For purposes of this program, the following types of assets shall be considered in eligibility determination:
 - a. cash savings;
 - b. marketable securities, stocks, bonds, and other forms of capital investment, including tax exempt securities other than Individual Retirement or KEOGH plans;
 - c. inheritance, lump-sum insurance payments, already received;
 - d. settlements for personal or property damage already received;
 - e. equity in real estate, except as stated below; and
 - f. other personal property which is readily convertible into cash.
2. The following are not considered assets:
 - a. ordinary household effects, including furniture, fixtures, and personal property;
 - b. automobiles used for personal use; and
 - c. depreciable property used in a business, which generates a significant proportion of household income.

III. Terms and Conditions

A. Purchase Price:

The maximum purchase price allowed under this program shall not exceed 120% of the median cost of housing in California as defined by the published IRS Average Area Purchase Price Safe Harbor Limitations. This figure shall be modified each year based upon information available from the IRS.

B. **Loan Limit:**

Second Mortgage Loan Limit – \$20,000 for down payment, non-recurring, and recurring closing costs (dependent upon reserves in the bank and lending institution).

C. **Terms:**

1. The second mortgage is a thirty-year loan, with all payments deferred until sale, refinancing, full payment of the first mortgage or where an acceleration clause (as referenced below) is triggered. The loan is not assumable.
2. An acceleration clause shall be in effect when the property is no longer the borrower's principal residence; upon failure to report changes, including but not limited to additions, fire, and vandalism; or upon discovery of willful misrepresentations in connection with the program.
*Exception: Borrowers may request temporary waiver of the principal residence requirement in situations involving extreme hardship. However, rentals of the property shall be prohibited without the express written consent of the City.
3. A promissory note and second deed of trust on the property shall secure the loan.
4. The borrower shall maintain current payments on the first deed of trust, property taxes, and hazard insurance. If these payments are not met the second trust deed shall be due and payable immediately.

D. **Recertification:**

1. Annual
 - a. borrower shall be required to submit an annual affidavit form of occupancy;
 - b. lender shall, upon receipt, provide the Redevelopment Agency with any Notice of Default on taxes; and
 - c. The City of Banning and the Banning Community Redevelopment Agency shall be named as a beneficiary on hazard insurance policies and shall be notified of modifications or cancellations of insurance coverage.

E. **Resales, Refinancing, Payment of First Mortgage and Subordination:**

1. Property shall not be sold for less than the sum of the existing liens, encumbrances, and interest, including property tax liability, without the express written consent of the Agency.
2. Requests for subordination shall be considered on a case-by-case basis.

NOTE: The Agency shall grant conditional approval on items 1 & 2 based on the Redevelopment Agency's sole and absolute discretion.

F. **Violations and Penalties:**

1. The acceleration clause shall be invoked if the borrower willfully and knowingly makes a false statement or representation, or knowingly fails to disclose a material fact for the purpose of qualifying for the program, or, in

Neighborhood Housing Services of the Inland Empire, Inc.

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completing certifications, affidavits, or rectification documents. The City shall demand full repayment of the principal and interest on the loan, compounded at the prime interest rate plus 6%, from the date of violation.

G. Evaluations:

1. Each participant/applicant shall be afforded the opportunity to comment on the processing and administration of this program.

H. Attorney's Fees and Costs:

1. In the event that any action is instituted to enforce payment or performance under this Agreement, the parties agree the non-prevailing party shall be responsible for and shall pay all costs and all attorney's fees incurred by such prevailing party in enforcing this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

PARTICIPANT(S):

Date: 8-15-09

By: Sharon Kay Harris
Sharon Kay Harris

AGENCY:

Date: 8/20/09

CITY OF BANNING COMMUNITY
REDEVELOPMENT AGENCY

By: Sam Racadio

Print Name: Sam Racadio

Title: EXECUTIVE DIRECTOR

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

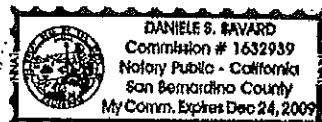
COUNTY OF RIVERSIDE

On August 20, 2009, before me, DANIELE S. SAVARD, NOTARY PUBLIC, personally appeared SAM RACADIO, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: 



OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

INDIVIDUAL
 CORPORATE OFFICER

REGULATIONS & PROCEDURES, EXHIBIT "C"
Sharon Kay Harris / 2910 Rainbow Lane, Banning, CA
TITLE OR TYPE OF DOCUMENT

PARTNER(S) LIMITED
 ATTORNEY-IN-FACT GENERAL
 TRUSTEE(S)
 GUARDIAN/CONSERVATOR
 OTHER: EXECUTIVE DIRECTOR

5 Pages, (#15 to 19) of the Loan Agreement Package
NUMBER OF PAGES

SAM RACADIO EXECUTED ON 8/20/09
DATE OF DOCUMENT

SIGNER IS REPRESENTING:

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

CITY OF BANNING

COMMUNITY REDEVELOPMENT AGENCY

NONE

SIGNER(S) OTHER THAN NAMED ABOVE

18

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

On

Date

Riverside

before me,

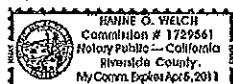
Hanne O'Welch, Notary Public

Here Insert Name and Title of the Officer

personally appeared

Sharon Kay Harris

Name(s) of Signer(s)



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

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

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Signer's Name: _____

Individual

Individual

Corporate Officer — Title(s): _____

Corporate Officer — Title(s): _____

Partner — Limited General

Partner — Limited General

Attorney in Fact

Attorney in Fact

Trustee

Trustee

Guardian or Conservator

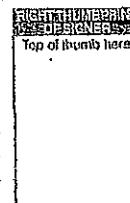
Guardian or Conservator

Other: _____

Other: _____

Signer Is Representing: _____

Signer Is Representing: _____



STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On _____ before me, _____
personally appeared _____

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

WITNESS my hand and official seal

Signature: _____

ATTACHMENT 3

EXHIBIT “B”
SUBORDINATION AGREEMENT

RECORDING REQUESTED BY
WHEN RECORDED RETURN TO:

City of Banning, City Clerk
99 E. Ramsey St.
Banning, CA 92220
Attention: City Clerk

(Space above this Line for Recorder's Use Only)

THIS DOCUMENT IS EXEMPT FROM
THE PAYMENT OF A RECORDING FEE
PURSUANT TO GOVERNMENT CODE
SECTIONS 27383 AND 6103

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST (INCLUDING ANY SECURITY INTEREST) IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT (this "Agreement") is made as of the 9th day of October, 2013, by the CITY COUNCIL OF THE CITY OF BANNING ACTING IN ITS CAPACITY AS THE BANNING HOUSING AUTHORITY TO THE DISSOLVED COMMUNITY REDEVELOPMENT AGENCY, a public body, corporate and politic ("Authority"), and SHARON KAY HARRIS, a unmarried woman ("Borrower"), in favor of BANK OF AMERICA, N.A. ("Lender").

RECITALS:

A. Borrower is the record owner of that certain real property located in the City of Banning, County of Riverside, State of California, commonly known as 2910 Rainbow Lane, Banning CA 92220, which is legally described in Exhibit "A" attached hereto and incorporated herein by reference, and the improvements thereon (collectively, the "Property").

B. In order to assist Borrower in their purchase of the Property, the Authority made a loan to Borrower in the original principal amount of Twenty Thousand Dollars (\$20,000.00) (the "Authority Loan"), pursuant to a program by which the Authority provides affordable housing to residents of the City of Banning who qualify as persons and families of low or moderate income, as defined in California Health and Safety Code Section 50093.

C. The Authority Loan was evidenced by that certain Promissory Note dated on or about August 15, 2009, executed by Borrower in favor of Authority (the "Authority Note"). The Authority Loan was secured by that certain Deed of Trust dated August 13, 2009, executed by Borrower in favor of Authority and recorded in the Riverside County Recorder's Office on August 21, 2009, as Instrument No. 2009-0438699, encumbering the Property (the "Authority

Deed of Trust"). The Authority Note and Authority Deed of Trust and any related regulatory agreement are hereinafter collectively referred to as the "Authority Encumbrances."

D. Lender also made a loan to Borrower in the amount of Ninety Six Thousand Six Hundred Sixty Two Dollars (\$96,662.00) (the "Existing Senior Loan"). The Existing Senior Loan was evidenced by that certain Promissory Note dated on or about August 13, 2009, executed by Borrower in favor of Mountain West Financial, Inc. The Existing Senior Loan was secured by that certain Deed of Trust dated August 13, 2009, executed by Borrower in favor of, Lender and recorded in the San Bernardino County Recorder's Office on August 21, 2009, as Instrument No. 2009-0438698 encumbering the Property (the "Existing Deed of Trust").

E. Borrower desires to refinance the Existing Senior Loan in order to obtain a lower interest rate, and Lender is willing to make such a refinancing by paying off the Existing Senior Note requiring Borrower to (i) execute a new note in favor of Lender in the principal amount of up to (but not exceeding) Ninety Five Thousand Six Hundred Dollars (\$95,600.00) (the "Senior Note"), and (ii) execute, acknowledge and record a new deed of trust in favor of Lender against the Property (the "Senior Deed of Trust") to secure such note. The Note and Senior Deed of Trust are hereinafter collectively referred to as the "Senior Loan Documents."

F. As a condition to refinancing the Senior Loan, Lender requires that the Senior Deed of Trust be a lien or charge upon the Property, prior and superior to all rights of Authority under the Authority Encumbrances and all indebtedness secured thereby, and that Authority subordinate the Authority Encumbrances and all the indebtedness secured thereby to the Senior Deed of Trust.

G. Authority and Borrower intend that the Senior Deed of Trust shall be a lien or charge upon the Property prior and superior to Authority's rights under the Authority Encumbrances and all indebtedness secured thereby. Authority has agreed to subordinate and subject the Authority Encumbrances and all indebtedness secured thereby, together with all rights and privileges of Authority thereunder, to the lien and charge of the Senior Deed of Trust.

H. It is to the mutual benefit of the parties hereto that Lender make the Senior Loan to Borrower, and Authority is willing that the Senior Deed of Trust shall, when recorded, constitute a lien or charge upon the Property which is prior and superior to the Authority Encumbrances and all indebtedness secured thereby.

I. Under restrictions imposed by the sources of the Authority Loan funds, the Authority is expressly authorized to subordinate the Authority Encumbrances to the lien of a lender other than the Authority if no economically feasible alternative financing without subordination is reasonably available, but only if the Authority obtains written commitments reasonably designed to protect the Authority's investment in the event of default by the Borrower. Lender has made such commitments by affording the Authority extended cure, negotiation, and other rights as provided for in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, it is hereby declared, understood and agreed as follows:

1. Recitals. The foregoing Recitals are true and correct and hereby incorporated into this Agreement by reference herein.

2. Subordination. The Senior Deed of Trust, and (subject to Paragraph 3 below) any modifications, renewals or extensions' thereof, and any advances (including interest thereon) thereunder or secured thereby, shall be liens or charges on the Property prior and superior to (i) the Authority Encumbrances and all indebtedness secured thereby, (ii) all loans, grants and advances of money made pursuant thereto, and (iii) all rights and privileges of Authority thereunder; and the Authority Encumbrances and all indebtedness secured thereby, and all loans, grants and advances of money made pursuant thereto, together with all rights and privileges of Authority thereunder, are hereby subjected, and made subordinate, to the lien or charge of the Senior Deed of Trust.

3. Limitations. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the Authority Encumbrances and all indebtedness secured thereby, and all loans, grants and advances of money made pursuant thereto, together with all rights and privileges of Authority thereunder, to the lien or charge of the Senior Deed of Trust, and shall supersede and cancel any prior agreements to subordinate the Authority Encumbrances and all indebtedness secured thereby to the Senior Deed of Trust. *The proceeds of any and all financing secured by, or recorded upon, the Property shall be used solely for the Borrower's payments for ownership of the Property itself or the reduction of such payments. Any use of proceeds for any other purpose shall be a default hereunder and make this subordination void.* The subordination herein granted shall not apply to (i) any extension of the scheduled maturity date of the Senior Loan, unless a default has occurred under the Senior Loan Documents, (ii) increases in the interest rate applicable to the Senior Loan resulting from any amendment to or modification of the Senior Loan Documents after the date hereof, (iii) increases in the principal amount of the Senior Loan beyond the original principal amount thereof, except for increases which result from advances made by Lender, following written notice to Borrower and Authority, for payment of taxes or insurance or in order to preserve and protect its security, or (iv) changes in the amortization of the Senior Loan amount, if as a result of such changes the regularly scheduled monthly principal and interest payment amounts are increased, unless a default has occurred under the Senior Loan Documents and except for increases which result from advances made by Lender, following written notice to Borrower and Authority, for payment of taxes or insurance or in order to preserve and protect its security. The subordination herein granted shall apply to any increases in indebtedness resulting from accrued interest, increases in interest from default interest or from other obligations of Borrower to Lender under the Senior Loan Documents.

4. Authority Consent. Authority declares, agrees, and acknowledges that:

(a) Subject to the limitations set forth in Paragraph 3 above, Authority consents to all provisions of the Senior Note, the Senior Deed of Trust, and all other documents and agreements evidencing, securing or otherwise relating to the Senior Loan which have been submitted to the Authority for review;

(b) It intentionally subjects and subordinates the Authority Encumbrances and all indebtedness secured thereby, and all loans, grants, and advances of money pursuant thereto,

together with all rights and privileges of Authority thereunder, in favor of the lien or charge upon the Property of the Senior Deed of Trust and understands that in reliance upon, and in consideration of, this subjection and subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this subjection and subordination.

5. Notice and Rights to Cure. In consideration of Authority's covenants and agreements contained in this Agreement, Lender hereby covenants and agrees, notwithstanding any contrary provisions herein, for the benefit of Authority as follows:

(a) In the event of any default by Borrower of any or all of its obligations with respect to the repayment by Borrower of the Senior Loan or any default under the Senior Note or Senior Deed of Trust, Lender covenants and agrees that Lender shall provide written notice (which may be provided by statutory notice of default, and need not be given thereafter or in addition thereto) of said default to the Authority contemporaneously with Borrower's receipt of the same. Authority shall have the right, but not the duty, to cure such default within the greater of (i) ninety (90) days following Authority's receipt of the written notice, or (ii) any period provided by California law.

(b) In the event that prior to the foreclosure of the Senior Loan, Authority acquires title to or possession of the Property from Borrower pursuant to any provision of the Authority Encumbrances or documents executed pursuant thereto, whether by voluntary or involuntary transfer, Authority may take title to the Property subject to the Senior Deed of Trust and other Senior Loan Documents, and Lender shall restrain from exercising any right it may have to accelerate the Senior Loan by reason of the transfer of title to the Authority. Lender shall recognize Authority as Borrower, on condition that Authority assumes and agrees to perform all of Borrower's obligations under the Senior Loan and timely cures all outstanding defaults of Borrower under the Senior Loan provided that Authority shall have an additional forty-five (45) days to cure such default.

(c) Lender agrees to negotiate in good faith with Authority in the event that Borrower defaults under either Senior Loan or the Authority Encumbrances; provided, however, that nothing in this subparagraph shall obligate the parties to reach an agreement upon the conclusion or termination of negotiations, or to extend the time granted to Borrower under the Senior Loan Documents or Authority under Subparagraph 5(b) above to cure defaults under the Senior Loan Documents.

(d) Upon a default of Borrower under the Authority Encumbrances, which default remains uncured for a period of six (6) months, Lender shall, at any time prior to its acquisition of title to the Property, permit the Authority to purchase the Senior Note and the Senior Deed of Trust upon payment in cash of the then entire remaining balance of principal, accrued and unpaid interest, together with any unpaid late charges, and other expenses to which Lender has been put and any advances made by Lender for the protection of the lien or the protection of the Property.

(e) For a period of forty-five (45) days after Lender has acquired title to the Property, Lender shall permit the Authority to acquire Lender's title to the Property upon payment to Lender, in cash, of the sum of the following:

(i) The unpaid debt including unpaid interest at the time title became vested in Lender (less all receipts of Lender in connection with the Property including, but not limited to, those resulting from collection and application of rentals and other income received during foreclosure proceedings), but excluding any fees paid to Lender for services rendered before the time title becomes vested in Lender; foreclosure;

(ii) All expenses incurred by Lender with respect to foreclosure

(iii) The net expenses, if any (less all revenues and exclusive of general overhead), incurred by Lender as a direct result of the management of the Property after the time title became vested in Lender;

(iv) The costs of any improvement to the Property made by Lender which was permitted by the Authority Encumbrances; and

(v) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the indebtedness of Borrower and such indebtedness had continued in existence from the time title became vested in Lender, or in the case of Subparagraphs 5(e)(ii), 5(e)(iii) and 5(e)(iv) above, from the date the expenses were incurred by Lender to the date of payment by the Authority.

6. Survival. The provisions of this Agreement shall survive a foreclosure of the Senior Deed of Trust or any taking of the Property by Lender, and Lender or any person who acquires title to the Property shall be subject to the provisions hereof.

7. Notices. Formal notices, demands and communications between the parties shall be delivered (i) personally, (ii) by nationally recognized overnight courier service, or (iii) dispatched by U.S. first class registered or certified mail, return receipt requested, postage prepaid, to the addresses set forth below. Such notices, demands and communications shall be deemed given three (3) days after mailing, the next business day after deposit with a nationally recognized overnight courier service, or immediately upon personal delivery.

If to Authority: Banning Successor Authority
99 E. Ramsey St.
Banning, CA 92220
Telephone: Ph: (951) 922-3105
Attn: Executive Director

With a copy to: Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 1700
Irvine, California 92612
Telephone: (949) 223-1170
Facsimile: (949) 223-1180
Attn: City Attorney

If to Lender: Bank of America, N.A.
 4008 Harwick Street, Suite 140
 Lakewood, CA 90712

If to Borrower: Sharon Kay Harris
 2910 Rainbow Lane
 Banning, CA 92220

8. Enforcement.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(b) In the event of any dispute, venue shall be the Superior Court in Riverside County.

(c) In the event any legal action is commenced by any party hereto concerning this Agreement or the rights and duties hereunder of any party hereto, whether such action be an action for damages, or for equitable or declaratory relief, the prevailing party in such litigation shall be entitled to, in addition to all other relief as may be granted by the court, reasonable sums as and for attorneys' fees in an amount to be set by the court.

9. Good Faith. Each of the parties hereto will, whenever and as often as they shall be requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.

10. Integration; Successors. This Agreement sets forth in full the terms of Lender's and Authority's agreement with respect to the subject matter hereof, and may not be modified or amended, nor may any rights hereunder be waived, except in a writing signed by Lender and Authority. This Agreement shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties hereto. This Agreement is solely for the benefit of Lender and Authority and their respective, successors and assigns, and except as expressly provided for herein, neither the Borrower nor any other person shall have any right, benefit, priority or interest under, or because of the existence of, this Agreement.

11. Counterparts. This Agreement may be signed by different parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Agreement.

12. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OR CHARGE OF SOME OTHER OR LATER INSTRUMENT.

AUTHORITY

BANNING HOUSING AUTHORITY,
a public body, corporate and politic

By: _____
Don Peterson

Its: Agency Chairman

ATTEST:

By: _____
Marie A. Calderon, Secretary
Successor Authority

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Authority Counsel

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OR CHARGE OF SOME OTHER OR LATER INSTRUMENT.

APPLICANT

SHARON KAY HARRIS

By: _____

Name: Sharon Kay Harris

Title: Owner

Address: 2910 Rainbow Lane
Banning, CA 92220

LENDER

BANK OF AMERICA

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

Address: 4008 Harwick Street, Suite 140
Lakewood, CA 90712

Exhibit "A"

Legal Description

Lot 291 of Tract No. 18063, in the City of Banning, County of Riverside, State of California, as shown by map on file in Book 134 Pages 71-76 of Maps, records of Riverside County, California.

APN:538-323-009-7

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State of California)
) ss
County of Riverside)

On _____, 20____ before me, _____ a Notary Public, personally appeared _____, personally known to me or proved to me on this basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: _____

(seal)

State of California)
) ss
County of Riverside)

On _____, 20____ before me, _____ a Notary Public, personally appeared _____, personally known to me or proved to me on this basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: _____

(seal)

**CITY COUNCIL
PUBLIC HEARING**

DATE: September 24, 2013

TO: Honorable Mayor and City Council Members

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: ORDINANCE NO. 1469
AMENDING VARIOUS SECTIONS OF THE ZONING ORDINANCE
PERTAINING TO MIXED USE DEVELOPMENTS IN THE AIRPORT
INDUSTRIAL ZONING DISTRICT, SECURITY FENCING IN THE
COMMERCIAL ZONES, AND GOVERNMENT OFFICE USES IN THE
DOWNTOWN COMMERCIAL AND BUSINESS PARK ZONING DISTRICTS

RECOMMENDATION:

That the City Council takes the following actions:

1. Adopt Ordinance No. 1469 (Attachment 1) amending Various Sections of the Zoning Ordinance (Title 17 of the Banning Municipal Code) Pertaining to Mixed Use Developments in the Airport Industrial Zoning District, Security Fencing in the Commercial Zones, and Government Office Uses in the Downtown Commercial and Business Park Zoning District.

Planning Commission Recommendation

At their regularly scheduled meeting on August 7, 2013, the Planning Commission held a public hearing for proposed Ordinance No. 1469. The Planning Commission then considered the information provided in the staff report and public comment, and voted (5 yes-0 no) to approve Resolution No. 2013-12 recommending that City Council adopt Ordinance No. 1469.

JUSTIFICATION: The City Council adopted the present Zoning Ordinance in January 2006. The Zoning Ordinance ensures the orderly development of all lands within the City's corporate boundaries to protect the public health, safety, and welfare. The Zoning Ordinance is further intended to provide standards and guidelines for new and existing development consistent with the General Plan, which respect and enhance the character of existing neighborhoods, secure more open space, and encourage high quality development proposals. However, the Zoning Ordinance regulations may, from time to time, need minor revisions to encourage and facilitate development and in this case the purpose of the amendment is to encourage and facilitate commercial and government development.

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BACKGROUND/ANALYSIS:

Mixed Use Development in the Airport Industrial Zoning District

Mixed use development projects are those that combine both residential and commercial uses within the same zoning district. At this time, the Zoning Ordinance allows mixed use developments in the Downtown Commercial and General Commercial zoning district by right, and the Highway Serving Commercial, Professional Office, and Business Park through approval of a Conditional Use Permit; the Zoning Ordinance prohibits mixed use developments in the Airport Industrial zoning district.

Historically, some residential uses are associated with commercial developments located near airports. For example, hotels are often located on or near airport uses. Some airport specific uses like flight schools, air ambulance services, and other aviation businesses find it convenient to have a place where employees may live while performing their duties. The City has recently had interest on the part of a developer in a live/work loft arrangement where the owner of the property would have a residential space (loft) located above the work space. This type of development is advantageous for those who are just starting out in business and cannot afford to purchase both a residence and work space. To encourage and facilitate this unique type of development, it is proposed to permit the mixed use project subject to approval of a Conditional Use Permit (CUP). The purpose of the CUP process would be to address the unique characteristics related to placing a residential space near a work space in the Airport Industrial zoning district. Specific concerns such as noise, parking requirements, and other unique attributes related to such a proposal could be addressed through this process. Staff proposes changing the use table from prohibited in the Airport Industrial zoning district to conditionally permitted through the CUP process. Therefore the following amendments are proposed:

Amend the *Mixed use, residential/commercial* use as listed in Table 17.12.020 *Permitted, conditional and prohibited uses* as follows:



Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Mixed use, residential/commercial	P	P	C	C	X	C	C	X

Amend paragraph 6, in subsection B of Section 17.12.010 *Purpose-Districts designated* as follows:

6. Airport Industrial (AI). Land uses must be focused on airport-related and transportation-related functions, including machining, manufacturing, warehousing, flight schools, restaurants and office uses. Aircraft maintenance, repair and catering services are also appropriate; and mixed-use projects may also be permitted, subject to a conditional use permit.



Security Fencing in Commercial Zones

At this time, the Zoning Ordinance limits fence height to 6 feet in the Downtown Commercial, General Commercial, Highway Serving Commercial, Professional Office, and Business Park zoning districts; and, 8 feet in the Industrial, Airport Industrial, and Industrial-Mineral Resources zoning districts. There is no provision in the Zoning Ordinance for additional fence height.

From time to time businesses request additional fence height for security fencing applications. For example, a retailer that offers high value recreational vehicles for sale in a commercial zoning district desires to protect their property with an 8 foot tall fence. Currently, the Zoning Ordinance limits fence height to 6 feet. This may be a reasonable request in consideration of the value of the goods and the potential sales tax revenue that may result from said sales. At other times individuals desire to develop a project in less desirable areas and need the additional fence height to provide adequate security for their business. It is proposed that through the Technical Staff Review process the Community Development Director be granted the flexibility to approve additional height for security fencing only. Staff proposes adding a notation to the development standards for the maximum height allowed for fences and walls that would permit the Community Development Director to allow additional height only for security fences through the Technical Staff Review process. Therefore the following amendments are proposed:

Amend the *Maximum Fence/Wall Height (ft.)* development standard as listed in Table 17.12.030 *Commercial and Industrial Development Standards* as follows:

	DC	GC	HSC	PO	I	AI	BP	IMR
Fence/Wall Height (ft.) ¹⁶	6	6	6	6	8	8	6	8

→ ¹⁶Additional height may be permitted for security as approved by the Director through a Technical Staff Review.

Amend Section 17.12.130 *Walls and fences* as follows:

- A. Walls should be kept to the lowest height possible to accomplish their screening or buffering function.
- B. Walls should always be decorative, and should be designed to blend with the structure's architectural style.
- C. Security fencing should combine solid walls with wrought iron grill work. Additional height for security fencing may be approved by the Director through Technical Staff Review.
- D. Long walls should include pillars or other treatment every 50 feet to provide visual relief.
- E. Chain link and barbed wire fencing is prohibited.
- F. Precision block walls must be stuccoed.

Amend paragraph B, of Section 17.24.080 *Fences, walls, and hedges* as follows:

B. Fences, walls, and hedges may not exceed six feet in height, unless required by any law or regulation of the city, the State of California, federal government, or agency thereof;  or, as otherwise permitted by the Zoning Ordinance.

Government Office Uses in the Downtown Commercial and Business Park Zoning District

With the approval and construction of the State of California courthouse in the Downtown Commercial (DC) zoning district the City is experiencing a move toward government office uses in the downtown area. Additionally, the County of Riverside has existing offices located within the City's commercial zoning districts and is considering expanding some facilities. At this time, the Zoning Ordinance allows government office uses in the Professional Office and Airport Industrial zoning districts by right, and the General Commercial and Highway Serving Commercial through approval of a Conditional Use Permit; the Zoning Ordinance prohibits government office developments in the Downtown Commercial and Business Park zoning districts. Staff proposes changing the use table from prohibited in the Downtown Commercial and Business Park zoning district to permitted by right. To encourage and facilitate government office development the following amendments are proposed:

Amend the *Government Office* use as listed in Table 17.12.020 *Permitted, conditional and prohibited uses* as follows:



Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Government Office	P	C	C	P	X	P	P	X

ENVIRONMENTAL DETERMINATION:

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the staff report dated September 24, 2013, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. California Environmental Quality Act (CEQA):

CEQA: The City Council has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, as here, it can be seen with certainty that there is no possibility that the activity in question may have a significant

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

2. Multiple Species Habitat Conservation Plan (MSHCP):

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects subject to this resolution will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

REQUIRED FINDINGS FOR ZONE TEXT AMENDMENT NO. 13-97503:

The Zoning Ordinance requires that each Zone Text Amendment meet certain findings in Section 17.116.050 in order to be approved by the City Council. The following findings are provided for Commission consideration:

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

Findings of Fact:

The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations will not change, and the text amendments will result in clarifying the goals, policies and programs of the General Plan. The primary General Plan Land Use element Goal is "*A balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents*". By amending the Zoning Ordinance specifically pertaining to mixed use developments in the Airport Industrial zoning district, security fencing in the commercial zones and government office uses in the Downtown Commercial and Business Park zoning districts, it is anticipated that the amendments will enhance the quality of life for Banning residents who may utilize the commercial and government services provided by these developments.

Furthermore, it is a goal of the Land Use element of the City's General Plan to provide for complimentary commercial uses; specifically the Commercial Goal states that provision for "*Complementary commercial uses which meet the needs of the City's residents, increase the City's revenues, and provide a range of employment opportunities*" shall be provided; and, more specifically Policy 3 states that "*the Zoning Ordinance shall include principles, design standards and guidelines which encourage the development of high quality commercial projects*". It is anticipated that allowing mixed use developments in the Airport Industrial

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Zoning district through a Conditional Use Permit process, will encourage and facilitate small business development that increases tax revenue for the City through the sale of additional goods and services as well as employment opportunities. By allowing a process for obtaining additional height for security fencing, businesses with security concerns may locate within the commercial zoning districts thus providing increased sales tax revenue and opportunities for employment.

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

Findings of Fact:

The Zone Text Amendment is consistent with the existing provisions of the Zoning Ordinance. The proposed amendments will amend the existing Zoning Ordinance pertaining to business and government development within the present limits and development standards established by the Zoning Ordinance. Staff has reviewed and compared the proposed changes and finds no conflicting statements or inconsistencies in the Zoning Ordinance.

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

Findings of Fact:

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

PUBLIC COMMUNICATION

The proposed Zone Text Amendment was advertised in the Record Gazette newspaper on September 13, 2013. As of the date of this report, staff has not received any verbal or written comments for or against the proposal.

STRATEGIC PLAN INTEGRATION: The City Council adopted the current strategic plan in September 2011. The 7 Goals of the plan were approved by City Council on March 22, 2011, and include: (1) Fiscal Stability, (2) Public Safety, (3) Infrastructure and City Facilities, (4) Economic Development, (5) Quality of Life, (6) Community Relations, and (7) Regional Cooperation and Partnerships. Listed under Goal #5, Action Step *“A-5” Continue to build and attractive and walkable downtown* for the Community Development Department, it is anticipated that the proposed changes to the Zoning Ordinance will encourage and facilitate both commercial and government office development in the Downtown zoning district that will make the area more attractive to the community.

FISCAL DATA: No direct fiscal impacts are foreseen as a consequence of the adoption of Ordinance No. 1469. However, it is anticipated that the proposed changes to the Zoning Ordinance will encourage and facilitate both commercial and government office development that will result in increased economic activities.

Prepared by:



Brian Guillot
Associate Planner

Recommended by:



Zai Abu Bakar
Community Development Director

Reviewed by:



June Overholt
Administrative Services Director
Deputy City Manager

Approved by:



Andy Takata
City Manager

Attachments:

1. Ordinance No. 1469

Attachment 1

(Ordinance No. 1469)

ORDINANCE NO. 1469

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING ZONING TEXT AMENDMENT NO. 13-97503 AMENDING VARIOUS SECTIONS OF THE ZONING ORDINANCE (TITLE 17 OF THE BANNING MUNICIPAL CODE) PERTAINING TO MIXED USE DEVELOPMENTS IN THE AIRPORT INDUSTRIAL ZONING DISTRICT, SECURITY FENCING IN THE COMMERCIAL ZONES, AND GOVERNMENT OFFICE USES IN THE DOWNTOWN COMMERCIAL AND BUSINESS PARK ZONING DISTRICTS

WHEREAS, both commercial and government development is a critical component for growth in most communities, as the sale of goods and services can generate significant sales tax revenue and employment opportunities; and

WHEREAS, the City of Banning (“City”) recognizes that zoning regulations may have an indirect effect on both commercial and government development by adding additional regulations and time to review project applications; and

WHEREAS, it is a goal of the Land Use element of the City’s General Plan to provide for complimentary commercial uses; specifically the Commercial Goal states that provision for “Complementary commercial uses which meet the needs of the City’s residents, increase the City’s revenues, and provide a range of employment opportunities” shall be provided; and, more specifically Policy 3 states that *“the Zoning Ordinance shall include principles, design standards and guidelines which encourage the development of high quality commercial projects”*; and

WHEREAS, the City Council desires to respond to the concerns of its citizens regarding improving the development guidelines of the Zoning Ordinance to encourage commercial and government development projects and believes that it is in the best interest of its citizens to amend the Zoning Ordinance to facilitate said development; and

WHEREAS, the City of Banning is amending the Zoning Ordinance specifically pertaining to mixed use developments in the Airport Industrial zoning district, security fencing in the commercial zones, and government office uses in the Downtown Commercial and Business Park zoning districts; and

WHEREAS, the City Council has authority per Chapter 17.116 of the Municipal Code to approve, approve with modifications, or disapprove amendments to the Zoning Ordinance; and

WHEREAS, the Planning Commission at its regularly scheduled meeting held August 7, 2013, recommended adoption of Ordinance No. 1469 amending the Zoning Ordinance at various places by approving Planning Commission Resolution No. 2013-12 as stated in writing; and

WHEREAS, on the 13th day of September, 2013, the City gave public notice as required under Chapter 17.68 of the Zoning Ordinance by advertising in the Record Gazette newspaper of the holding of a public hearing at which the amendment to the Zoning Ordinance would be considered; and

WHEREAS, on the 24th day of September, 2013, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to the proposed amendment, and at which time the City Council considered Zone Text Amendment No. 13-97503; and

WHEREAS, at this public hearing on the 24th day of September, 2013, the City Council considered and heard public comments on the proposed Zone Text Amendment; and

WHEREAS, at this public hearing, the City Council has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act (“CEQA”) under Section 15061(b)(3) of the CEQA Guidelines; and

WHEREAS, the City Council has carefully considered all pertinent documents and the staff report offered in this case as presented at the public hearing held on the 24th day of September, 2013;

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

SECTION 1. ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the staff report dated September 24, 2013, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. California Environmental Quality Act (CEQA):

CEQA: The City Council has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act (“CEQA”) under Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, as here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA. The amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to this ordinance will trigger individual analysis and documentation related to CEQA. Therefore, it can be seen with certainty that there is no possibility that this ordinance may

have a significant adverse effect on the environment, and therefore the adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

2. Multiple Species Habitat Conservation Plan (MSHCP).

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

SECTION 2. REQUIRED FINDINGS.

The Zoning Ordinance requires that each Zone Text Amendment meet certain findings in Section 17.116.050 in order to be approved by the City Council. The following findings are provided for consideration:

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

Findings of Fact:

The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations will not change, and the text amendments will result in clarifying the goals, policies and programs of the General Plan. The primary General Plan Land Use element Goal is "*A balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents*". By amending the Zoning Ordinance specifically pertaining to mixed use developments in the Airport Industrial zoning district, security fencing in the commercial zones and government office uses in the Downtown Commercial and Business Park zoning districts, it is anticipated that the amendments will enhance the quality of life for Banning residents who may utilize the commercial and government services provided by these developments.

Furthermore, it is a goal of the Land Use element of the City's General Plan to provide for complimentary commercial uses; specifically the Commercial Goal states that provision for "*Complementary commercial uses which meet the needs of the City's residents, increase the City's revenues, and provide a range of employment opportunities*" shall be provided; and, more specifically Policy 3 states that "*the Zoning Ordinance shall include principles, design standards and guidelines which encourage the development of high quality commercial projects*". It is anticipated that allowing mixed use developments in the Airport Industrial Zoning district through Conditional Use Permit process, will encourage and facilitate small business development that increases tax revenue for the City through the sale of additional goods and services as well as employment opportunities. By allowing a process for obtaining additional height for security fencing, businesses with security concerns may locate within the commercial zoning districts thus providing increased sales tax revenue and opportunities for employment.

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

Findings of Fact:

The Zone Text Amendment is consistent with the existing provisions of the Zoning Ordinance. The proposed amendments will amend the existing Zoning Ordinance pertaining to business and government development within the present limits and development standards established by the Zoning Ordinance. Staff has reviewed and compared the proposed changes and finds no conflicting statements or inconsistencies in the Zoning Ordinance.

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

Findings of Fact:

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

SECTION 3. Amend the *Mixed use, residential/commercial* use as listed in Table 17.12.020 *Permitted, conditional and prohibited uses* as follows:

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Mixed use, residential/commercial	P	P	C	C	X	“C”	C	X

SECTION 4. Amend paragraph 6, in subsection B of Section 17.12.010 *Purpose-Districts designated* as follows:

6. “Airport Industrial (AI). Land uses must be focused on airport-related and transportation-related functions, including machining, manufacturing, warehousing, flight schools, restaurants and office uses. Aircraft maintenance, repair and catering services are also appropriate; and mixed-use projects may also be permitted, subject to a conditional use permit.”

SECTION 5. Amend the *Maximum Fence/Wall Height (ft.)* development standard as listed in Table 17.12.030 *Commercial and Industrial Development Standards* as follows:

	DC	GC	HSC	PO	I	AI	BP	IMR
“Fence/Wall Height (ft.) ¹⁶	6	6	6	6	8	8	6	8

¹⁶Additional height may be permitted for security as approved by the Director through a Technical Staff Review.”

SECTION 6. Amend Section 17.12.130 *Walls and fences* as follows:

- “A. Walls should be kept to the lowest height possible to accomplish their screening or buffering function.
- B. Walls should always be decorative, and should be designed to blend with the structure's architectural style.
- C. Security fencing should combine solid walls with wrought iron grill work. Additional height for security fencing may be approved by the Director through Technical Staff Review.
- D. Long walls should include pillars or other treatment every 50 feet to provide visual relief.
- E. Chain link and barbed wire fencing is prohibited.
- F. Precision block walls must be stuccoed.”

SECTION 7. Amend paragraph B, of Section 17.24.080 *Fences, walls, and hedges* as follows:

- “B. Fences, walls, and hedges may not exceed six feet in height, unless required by any law or regulation of the city, the State of California, federal government, or agency thereof; or, as otherwise permitted by the Zoning Ordinance.”

SECTION 8. Amend the *Government Office* use as listed in Table 17.12.020 *Permitted, conditional and prohibited uses* as follows:

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
“Government Office	P	C	C	P	X	P	P	X”

SECTION 9. SEVERABILITY.

If any section, subsection, sentence, clause, or portion 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 of the City of Banning hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 10. PUBLICATION; EFFECTIVE DATE.

The City Clerk shall certify to the passage and adoption of this ordinance, and shall make a minute of the passage and adoption thereof in the records of and the proceedings of the City Council at which the same is passed and adopted. This ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) days after its final passage, the City Clerk shall cause it to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2013.

Deborah Franklin, Mayor
City of Banning

ATTEST:

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

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

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1469 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the _____th day of _____ 2013, and was duly adopted at a regular meeting of said City Council on the _____ day of _____, 2013, by the following vote, to wit:

AYES:

NOES:

ABSEN:

ABSTAIN:

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

**CITY COUNCIL
PUBLIC HEARING**

DATE: September 24, 2013

TO: City Council

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: **Resolution No. 2013-86: A resolution Initiating a General Plan Amendment and Zone Change for Five (5) properties located at the Northeast corner of Hargrave and Charles from Industrial to Very Low Density Residential**

RECOMMENDATION: That the City Council adopt Resolution No. 2013-86 initiating a General Plan Amendment (GPA No. 13-2505) and a Zone Change (ZC #13-3503) for five (5) parcels that are located at the northeast corner of Hargrave and Charles. The proposed General Plan amendment and the Zone Change are to designate the properties from the current General Plan and Zoning designations of Industrial to Very Low Density Residential.

BACKGROUND: Four (4) of the five (5) property owners who own properties that are located at the northeast corner of Hargrave and Charles have verbally requested that the City change the current General Plan and Zoning designations of their properties from Industrial to Very Low Density Residential Zone.

The property owners find that it is difficult to qualify for home improvement loans to make improvement to their properties, purchase homeowner's insurance, or sell their homes under the current Zoning. Furthermore, any addition to the homes requires approval of a conditional use permit from the Planning Commission. The size of the addition to the home is limited to a maximum of 50% of the size of their current home.

On May 12, 2012, staff took the proposed General Plan Amendment and Zone Change along with the re-zoning for the Housing Element. This was done to reduce costs in environmental posting and review by outside agencies. There were concerns from the community regarding the re-zoning of these properties and they were dropped from the lists of sites for re-zoning for the housing element.

DISCUSSION AND ANALYSIS: The proposal is to change the General Plan Land Use and Zoning designations for the properties from Industrial to Very Low Density Residential. The total acreage for the five (5) properties is 9.28 acres. The aerial map showing locations of the properties are attached as Exhibit "A". The following table provides information on Assessor's Parcel Numbers, Addresses, Parcel Size, and Existing Use. No specific development is currently proposed on any of the sites.

APN	ADDRESS	PARCEL SIZE (in acres)	PARCEL SIZE IN SQUARE FEET (sf)	EXISTING USE
543-090-003	963 Charles Street	1.13	49,222.8	Single-family homes and accessory structures
543-090-004	981 Charles Street	1.26	54,885.6	Single-family homes and accessory structures
543-090-014	941 Charles Street	0.17	7,405.2	Single-family homes and accessory structures
543-090-016	911 Charles Street	3.0	130,680.0	Single-family homes and accessory structures
543-090-017	None	3.72	162,043.2	Vacant
Total		9.28 acres		

Development Standards: The current development standards for Very Low Density Residential are as shown in the table below:

Max. Density (Units/Ac.)	0-2
Min. Lot Size (Ac. or s.f.) Single Family Lot ^{3,4}	20,000 s.f.
Min. Lot Size (Ac.) Multi-Family Units	N/A
Min. Lot Width (Feet)	100
Min. Lot Depth (Feet)	100
Min. Front Setback (Feet)	35
Min. Rear Setback (Feet)	35
Min. Side Yard Setback (Feet)	15
Min. Street Side (Feet)	20
Max. Bldg. Coverage (%) ⁹	25
Min. Private Outdoor Space (s.f.)	N/A
Min. Common Outdoor Space (s.f.) ⁶	N/A
Maximum Height (stories/feet)	2/35
Maximum Fence/Wall Height (ft)	6
Floor Area Ratio (FAR)	
One-story home	.25
Multi-story home	.40

The recommendation to change these parcels from Industrial to Very Low Density is based on the lot size, animal keeping, and compatibility with the surrounding development. Four (4) of the five (5) parcels meet the minimum lot size of 20,000 square feet for Very Low Density Residential. The development to the east of the project is designated Very Low Density Residential on the General Plan Map and is zoned Very High Density Residential. The area to the north of the project site is zoned Industrial; however, there are vacant lots and homes that are development within this

Industrial Zone. To the west of the project site is Hargrave Street and Lions Park. The area to the south of the Project site is designated Very Low Density Residential on the General Plan Map and is zoned Very Low Density Residential. The proposed new General Plan and Zoning Designations for the project site is compatible with most of the area around it.

Parcel 543-090-014 is 0.17 acre or 7,405 square feet, which does not meet the minimum lot size standard. This parcel can continue to exist and be developed in the future. Any future development on these properties must comply with the above development standards.

Animal Keeping: In addition to the request to change the zoning designation from Industrial to Very Low Density Residential, one property owner has also requested that they be allowed to keep animals. Per Chapter 17.40 of the Zoning Code, Animal Keeping Standards, attached hereto by reference, properties designated as Very Low Density Residential are permitted to keep animals such as a maximum of 3 horses on properties less than 20,000 square feet. Chapter 17.42 of the zoning code also addresses animal keeping standards attached hereto as well.

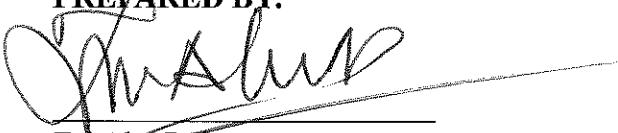
PLANNING COMMISSION REVIEW: Once the City Council adopts the resolution initiating the General Plan Amendment and Zone Change, staff will prepare the environmental document for the project and make it available for public review. Once the environmental review period is done, staff will present the analysis to the Planning Commission for review and recommendation to the City Council. The estimated time frame for completion of the project is December 2013.

CEQA COMPLIANCE: The requested initiation of a General Plan Amendment and Zone Change is exempt from review under the California Environmental Quality Act (CEQA) per Section 15378 because it is not considered a project under the definition of CEQA. The actual project to amend the General Plan and change the Zoning designations for the above-referenced properties would be subject to review under CEQA.

STRATEGIC PLAN INTEGRATION: The proposed project is consistent with Goal #5, Quality of Life, which states, *“Build and maintain a high standard of community appearance, character and livability by effective planning”*

FISCAL DATA: There will be additional costs, in addition to staff time, in the amount of \$3,400.00 for environmental filing with the County of Riverside and review by the Riverside County airport Land Use Commission. This cost will be absorbed by the General Fund.

PREPARED BY:



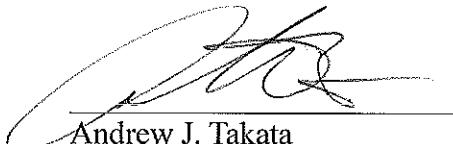
Zai Abu Bakar
Community Development Director

REVIEWED BY:



June Overholt,
Deputy City Manager /
Administrative Services Director

APPROVED BY:



Andrew J. Takata
City Manager

Attachments:

1. Draft Resolution No. 2013-86
2. Exhibit "A" Aerial Map
3. Chapter 17.40 & Chapter 17.42

ATTACHMENT 1

CITY COUNCIL RESOLUTION NO. 2013-86

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RESOLUTION NO. 2013-86

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA INITIATING GENERAL PLAN
AMENDMENT NO. 13-2505 AND ZONE CHANGE NO. 13-3503
FOR PARCELS 543-090-003, 543-090-004, 543-090-014, 543-090-
016, AND 543-090-017 FOR A TOTAL OF 9.28 ACRES**

WHEREAS, four (4) of the five property owners have requested that the City change the General Plan and Zoning designations of their properties from Industrial to Residential; and

WHEREAS, the parcels that are involved as part of the proposed General Plan Amendment and Zone Change include Assessor's Parcel Numbers 543-090-003, 543-090-004, 543-090-014, 543-090-016, and 543-090-017; and

WHEREAS, the property owners requested the General Plan Amendment and Zone Change because the current Industrial Zoning makes it difficult for the property owners to sell their homes, qualifying for home improvement loans, or purchase homeowner's insurance and any addition to the homes requires approval of a conditional use permit from the Planning Commission. The maximum addition to the home is 50% of their current home size; and

WHEREAS, Sections 17.64.010.B and 17.116.010 of the Banning Zoning Ordinance authorize the City Council to process a General Plan Amendment and Zone Change, respectively for public necessity and general welfare, and the aesthetics harmony of the City; and

WHEREAS, the proposed General Plan Amendment and Zone Change will not result in the City exceeding the limit of more than four amendments to the General Plan per calendar year per Government Code Section 65358(b).

NOW THEREFORE, the City Council of the City of Banning does hereby find, determine, and resolve as follows:

SECTION 1. The requested initiation of a General Plan Amendment and Zone Change is exempt from review under the California Environmental Quality Act (CEQA) per Section 15378 because it is not considered a project under the definition of CEQA. The actual project to amend the General Plan and change the Zoning designations for the above-referenced properties would be subject to review under CEQA.

SECTION 2. The City Council hereby initiates the General Plan Amendment and the Zone Change for the above-referenced properties and directs staff to conduct the analysis and present the staff report to the Planning Commission for a recommendation.

PASSED, APPROVED AND ADOPTED this 24th day of September, 2013.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie Calderon, City Clerk
City of Banning, California

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

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-86 was duly adopted at a regular meeting of the City Council of the City of Banning, held on the 24th day of September, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

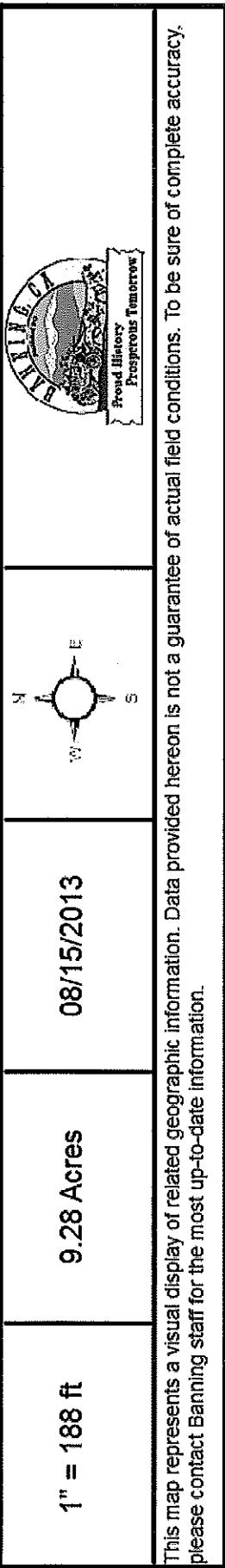
Marie Calderon, City Clerk
City of Banning, California

ATTACHMENT 2

EXHIBIT "A"

**AERIAL MAP SHOWING LOCATIONS OF THE
PROPERTIES FOR THE PROPOSED GENERAL
PLAN AMENDMENT AND ZONE CHANGE**

5 Parcels



ATTACHMENT 3

CHAPTER 17.40 & 17.42

Chapter 17.40

ANIMAL KEEPING STANDARDS

Sections:

17.40.010 Purpose.

17.40.020 Applicability.

17.40.030 General standards.

17.40.010 Purpose.

The purpose of these standards is to clearly define the numbers of animals allowed in each of the Zoning districts. The Animal Keeping Standards are intended to:

- A. Allow the keeping of animals as pets in all residential zones.
- B. Allow the keeping and raising of animals on lots of sufficient size to accommodate a larger number of animals.
- C. Preserve the enjoyment of their land by all

property owners. (Zoning Ord. dated 1/31/06, § 9110.01.)

17.40.020 Applicability.

The provisions of this chapter shall apply to all zoning districts included in Division II of this Zoning Ordinance, including both existing and new or redeveloped projects, and single family homes, regardless of when they were constructed. (Zoning Ord. dated 1/31/06, § 9110.02.)

17.40.030 General standards.

A. Animals may be kept in the residential districts only. The keeping of animals on lands designated for commercial, industrial or public facilities uses is prohibited, except for pet stores and veterinary facilities as permitted in the commercial districts.

B. The keeping of animals shall conform to the following table:

Table 17.40.030
Animal Keeping Standards¹

Animal Type	R/A & R/A/H	RR & RR/H	VLDR	LDR	MDR	HDR & MHP
Dogs & Cats ²	Max. 8/lot ³	Max. 8/lot ³	Max. 3/less than 20,000 s.f. ⁵ Max. 6/20,000 s.f. and greater ⁶	Max. 3/lot ⁷	3/unit	3/unit
Pot-Bellied Pigs	2/acre, Max. 8	2/acre, Max. 8	2 in lieu of 2 dogs	1 in lieu of 1 dog	Prohibited	Prohibited
Fowl	16/acre	16/acre	10	Prohibited	Prohibited	Prohibited
Fowl, Male	1/20,000 s.f.	1/20,000 s.f.	1/20,000 s.f.	Prohibited	Prohibited	Prohibited
Rabbits	20	20	10	5	2	2
Large Animals ³	5/acre	5/acre	3/20,000 s.f. ⁴	Prohibited	Prohibited	Prohibited

¹ Any animal not specifically listed shall be classified by the director.

² Unweaned offspring shall not be counted in determining the number of dogs or cats.

³ Large animals shall include goats, sheep, horses, cattle, llamas, swine, emus and ostriches. The total number allowed is cumulative.

⁴ On substandard lots created prior to the adoption of this zoning ordinance in the VLDR district (lots of less than twenty thousand s.f.), one large animal shall be permitted on lots of twelve thousand s.f. to sixteen thousand s.f., and two shall be permitted on lots of sixteen thousand one s.f. to nineteen thousand nine hundred ninety-nine s.f.

⁵ For any lot less than twenty thousand s.f. a maximum of three dogs and cats, or any combination thereof, not to exceed three, shall be permitted.

⁶ For lot(s) twenty thousand s.f. and larger a maximum of six dogs and cats, or any combination thereof, not to exceed six, shall be permitted.

⁷ A maximum of three dogs or cats, or any combination thereof, not to exceed three, shall be permitted in the LDR zone district.

⁸ A maximum combined total of eight dogs and/or cats per lot shall be permitted in the R/A, R/A/H, RR and RR/H zone district.

17.36.150 Reserved.

Editor's note—Sec. 3 of Ord. No. 1447, adopted Feb. 14, 2012, repealed zoning section 9109.15 from which this section 17.36.150 derived. Former § 17.36.150 pertained to establishing compliance and was amended by Ord. 1377.

17.36.160 Inventory and abatement—Variances—Penalties.

A. Inventory And Abatement. Within 6 months from the date of adoption of this Zoning Ordinance, the City shall commence a program to inventory and identify illegal or abandoned signs within its jurisdiction. Within 60 days after this 6 month period, the City may commence abatement of identified illegal or abandoned signs. If a previously legal sign is merely nonconforming, however, the terms of Section 17.36.150 of this Zoning Ordinance titled "Establishing Compliance," shall apply.

B. Variances. Variances from these sign ordinances are strongly discouraged. However, where results inconsistent with the general purposes of this ordinance would occur from its strict literal interpretation and enforcement, the Planning Commission may grant a variance therefrom upon such terms and conditions as it deems necessary.

C. Penalties. Each violation of this ordinance or any regulation, order or ruling promulgated or made hereunder, shall be punishable by a fine of not more than \$200 per day, with each calendar day in violation, constituting a separate offense. (Zoning Ord. dated 1/31/06, § 9109.16.)

17.36.170 Murals.

Murals shall be allowed by permit reviewed by the beautification and mural council of the Banning Chamber of Commerce and permitted by the city's community development department. Applications shall be on a form devised by the community development department. A permit for a mural will be granted when the following conditions have been satisfied:

- A. Completed application;
- B. Sign permit fee paid;
- C. Approved by the beautification and mural council of the Banning Chamber of Commerce;

- D. The mural shall not cause a pedestrian or vehicular safety hazard;
- E. The mural shall be applied to the wall of a building; and
- F. The mural shall be maintained. (Ord. No. 1382, § 3 (part).)

Chapter 17.42

REASONABLE ACCOMMODATIONS IN CITY HOUSING REGULATIONS AND DEVELOPMENT FOR DISABLED OR HANDICAPPED INDIVIDUALS

Sections:

- 17.42.010 Purpose.**
- 17.42.020 Applicability.**
- 17.42.030 Definitions.**
- 17.42.040 Requesting reasonable accommodation.**
- 17.42.050 Decision on application.**
- 17.42.060 Required findings.**
- 17.42.070 Conditions of approval.**
- 17.42.080 Appeals.**
- 17.42.090 Expiration, revocation, termination.**
- 17.42.100 Waiver of time periods.**

17.42.010 Purpose.

It is the purpose of this chapter, pursuant to Fair Housing Laws, to provide individuals with disabilities reasonable accommodation in the application of the city's land use, zoning, and building standards, regulations, policies, and procedures and to establish relevant criteria to be used to ensure equal access to housing. The purpose of this chapter is to provide a process for individuals with disabilities to make requests for, and be provided, reasonable accommodation, when reasonable accommodation is warranted based upon sufficient evidence, from the various city laws, rules, policies, practices and/or procedures of the city, including land use and zoning regulations.

(Ord. No. 1462, § 2, 3-12-13)

17.42.020 Applicability.

A. Any individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities may seek relief from any land use, zoning or building standard, regulation, policy or procedure found in titles 15

or Title 17 of this code to ensure equal access to housing and to facilitate the development of housing for individuals with disabilities by requesting a reasonable accommodation in the manner prescribed in following section 17.42.40.

B. The city shall waive land use, zoning, and building standards, regulations, policies, and procedural requirements when such waiver is necessary to eliminate barriers to housing opportunities. Such waivers for reasonable accommodation may include, without limitation, a household's reasonable waiver of residential fence or structural height restrictions to accommodate specific disabilities, reasonable waivers of building size or set-back restrictions to accommodate necessary disability accommodations such as wheelchair ramps or expanded parking spaces.

C. The reasonable accommodation rules set forth in this chapter apply to proposals to modify existing structures as well as new development, as when a household applies to the city in order to modify their existing residence as necessary to reasonably accommodate a specific disability, subject to the findings and requirements of this chapter. Proposals to modify structures, especially single-family homes, should respect existing development patterns if reasonably possible.

(Ord. No. 1462, § 2, 3-12-13)

17.42.030 Definitions.

A. "Applicant" means a person, business, or organization making a written request to the city for reasonable accommodation.

B. "City" means the City of Banning.

C. "Code" means the Banning Municipal Code.

D. "Department" means the community development department.

E. "Director" means the director of community development.

F. "Disabled or handicapped person" means an individual with a qualifying disability under the Fair Housing Laws. Generally, any person with any mental or physical impairment, disorder or condition, which substantially limits one or

C. All animal keeping shall comply with all laws regarding the proper care and number of animals.

D. All animal keeping structures shall comply with the development standards of the zone in which they are located, including setbacks.

E. All animals shall be kept in fenced enclosures at all times. Dogs and cats may be kept in fenced yards without additional enclosures, if proper shelter is provided. Pot-bellied pigs, fowl, rabbits and large animals shall be kept in appropriate enclosures within a fenced yard (pig runs, chicken coops, rabbit warrens, corrals and/or stables).

F. Each pot-bellied pig shall be provided a minimum of seventy-five square feet in an enclosure.

G. Each large animal shall be provided a minimum of four hundred square feet of fenced area.

H. All facilities shall be kept in a clean and sanitary manner at all times.

I. The offspring of large animals shall not be counted in determining the number of animals on a lot, if the offspring is within the following age range:

1. Horses: six months;
2. Cattle: six months;
3. Swine: ninety days;
4. Sheep: ninety days;
5. Goats: ninety days;
6. Llamas: twelve months;
7. Emus and ostriches: four months.

J. No person shall allow to remain on a property, an animal which habitually disturbs the peace and quiet of the inhabitants of a neighborhood by howling, barking, crying, braying, or making other similar noises.

K. Exotic animals not listed above are prohibited. (Zoning Ord. dated 1/31/06, § 9110.03; Ord. No. 1393, § 2.)

CITY COUNCIL AGENDA

Date: September 24, 2013

TO: City Council

FROM: David J. Aleshire, Aleshire & Wynder, City Attorney

SUBJECT: Appointment of Mayor Ordinance

RECOMMENDATION: Consider whether to change the rotational system of appointment Mayor pursuant to the attached proposed Ordinance:

ORDINANCE NO. 1471, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, SETTING FORTH A PROCEDURE FOR THE ANNUAL APPOINTMENT OF THE OFFICE OF MAYOR AND MAYOR PRO TEM BY COUNCILMEMBERS

ALTERNATIVE ACTIONS: Either (i) Make no change to current rotational Mayor/Mayor Pro-Tem system, or (ii) Suggest further revisions/consideration of the proposed ordinance.

JUSTIFICATION: Prior to 2011, appointments were made to the seats of Mayor and Mayor Pro-Tem by a vote of the Council. On October 11, 2011, the City changed to a “rotational” Mayor/Mayor Pro-Tem system. Some City Council members have expressed the opinion that the system of mandatorily rotating a new Councilmember into the seats of Mayor and Mayor Pro-Tem each year can result in organizational instability and prevents Councilmembers who are otherwise qualified and supported by the Council from getting more than one year of mayoral experience. Thus, it has been proposed that the City may wish to return to its pre-2011 system of appointing the Mayor and Mayor Pro-Tem. A Councilmember may be elected to a maximum of two (2) consecutive one-year terms in the same office.

If the Council wishes to go back to a system of the Council majority appointing the Mayor either annually, or for a specific term, the current rotational system can be altered by Ordinance. This could be back on your next agenda.

Attached is the memo we prepared on this topic on April 2010.

BACKGROUND: Before 2011, the City Council appointed one of its members as Mayor and another as Mayor Pro Tem, as provided in Resolution 2003-06, with each serving a maximum of two consecutive one (1) year terms in office. On October 11, 2011, the City Council adopted the City’s current method of designating the Mayor and Mayor Pro-Tem via an automatic “rotational” system. Under the current system there is a set rotation of a Councilmember into the seats of Mayor, Mayor Pro-Tem, and chair/vice-chair of the Successor Agency and Housing Authority. The rotation is implanted each year at an annual organization meeting in December.

Each system (rotational vs. appointment) has its “pros and cons”:

	<i>Rotational</i>	<i>Appointment</i>
<u>Pros</u>	<ul style="list-style-type: none"> (1) Sends message that each member is equally qualified and deserving to hold the offices of Mayor, Mayor Pro-Tem and chair/vice chair of other City bodies. (2) Predictable and gives all Councilmembers ample opportunity to serve in these offices. (3) Can encourage a spirit of cooperation in that each councilmember will eventually need their colleague’s votes. 	<ul style="list-style-type: none"> (1) Person in mayoral/pro-tem seat is more likely to have fuller Council support because voted to seat by majority. (2) Possible appointments for up to two consecutive terms allows Mayor/Mayor Pro-Tem to become more trained and experienced. (3) Allows more political flexibility as Council composition changes.
<u>Cons</u>	<ul style="list-style-type: none"> (1) Limits the Mayor or Mayor Pro-Tem’s ability to become experienced because the Councilmember is vacated from the seat after only one year of experience. (2) Limits flexibility and can result in seat being held by an officer who is either disinterested in the position or lacks the support of fellow Councilmembers. 	<ul style="list-style-type: none"> (1) Tends to be an irregular process for determining which Councilmember should be appointed (unpredictable). (2) Can occasionally result in disputes and controversy adversely affecting working relationships among Councilmembers.

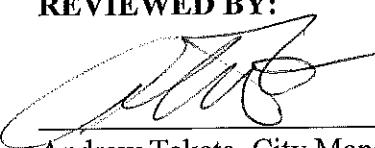
Finally, in the course of reviewing older City policies in re Council meeting and appointment protocols, we identified some older policies that contradict the new Manual. The “clean-up” changes proposed in the draft ordinance retract these outdated policies.

FISCAL DATA: No fiscal impacts are expected.

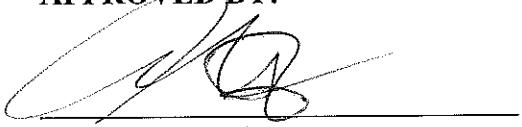
RECOMMENDED BY:

David J. Aleshire, City Attorney

REVIEWED BY:


Andrew Takata, City Manager

APPROVED BY:


Andy Takata, City Manager

ORDINANCE NO. 1471

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, SETTING FORTH A PROCEDURE FOR THE ANNUAL APPOINTMENT OF THE OFFICE OF MAYOR AND MAYOR PRO TEM BY COUNCILMEMBERS

WHEREAS, Councilmembers of the City Council of the City of Banning serve as Mayor and Mayor Pro Tem, and also as officers of the Successor Agency to the Banning Community Redevelopment Agency and the Banning Housing Authority. The office of the Mayor while generally under state law has no greater legal authority than other Councilmembers, yet the office is the visible representative and spokesperson for the City, and is a point of coordination between the City Manager and City Council; and

WHEREAS, on or about October 11, 2011, the City Council adopted an ordinance changing the City's method of appointing the Mayor and Mayor Pro-Tem to an automatic "rotational" system whereby each member on the City Council was given the opportunity to rotate through one or both of the Mayor/Mayor Pro-Tem offices; and

WHEREAS, on or about October 23, 2012, the City Council also adopted a comprehensive "Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning" to serve as an "all-in-one" source of rules for the conduct of meetings, officer appointments, council/board/commissioner civility and other such matter; and

WHEREAS, the Council has proposed a return to an appointment system for designating the Mayor and Mayor Pro-Tem, allowing the Council majority to decide appointments to the seats.

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

SECTION 1. The "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, as may be amended, is hereby declared to supersede, and by such secession repeal, the following resolutions: (i) Resolution No. 2001-75, (ii) Resolution No. 2002-15, and (iii) Resolution No. 2003-06.

SECTION 2. Section 2.04.070 of the Banning Municipal Code is hereby repealed and replaced to read, in its entirety, as follows:

“2.04.070 - Appointment of Mayor and Mayor Pro Tem.

A. General/Annual Appointments.

1. The City of Banning has a council/manager form of municipal government. All five (5) members of the city council are elected at large to four (4) year terms. The mayor serves as the nominal head of the council and the mayor pro tem serves as the locum tenens in the absence of the mayor. Additionally, the city has related agencies, including the successor agency to the former community redevelopment agency and the Banning housing authority. These related entities have various officers, including a chair person and vice chair person.
2. The city council shall choose one of its members as mayor and one of its members as mayor pro tem at the meeting at which the declaration of the municipal election results and the installation of the newly elected officers is made pursuant to Sections 10262 and 10264 of the California Elections Code, following the declaration of the election results. The term of service for both mayor and mayor pro tem shall be for a period of one (1) year from the date of appointment or until their successor is appointed. No person may become mayor or mayor pro tem unless a majority of the council votes to approve the action.
3. A councilmember may be elected to a maximum of two (2) consecutive one-year terms in the same office.
4. The mayor shall serve as the chair of the successor agency to the former community redevelopment agency and as chair to the housing authority. The mayor pro tem shall serve as the vice chair of the successor agency to the former community redevelopment agency and as vice chair to the housing authority.

B. Removal

With a majority vote of the body, any officer holding any office governed by this Section may be replaced; but in general, such changes should not be made in midterm, and if made, a replacement officer shall be appointed as stated above in 2.04.070(A).

C. Office of the Mayor Pro Tem

The mayor pro tem will serve as mayor in the event of the absence of the mayor and will be appointed as the mayor when there is a vacancy in the office of mayor.

D. Manual of Procedures to Govern

All other terms and procedures associated with the seats of mayor/chair, mayor pro tem/vice chair shall be governed by that '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 and as may be amended from time to time."

SECTION 3. Section 2.04.080 is hereby added to the Banning Municipal Code to read, in its entirety, as follows:

"2.04.080 - Manual of Meeting Procedures

That certain '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, as may be amended from time to time (the "Manual"), shall govern the conduct and procedures applicable to meetings of the city council and related city bodies, boards and commissions. The Manual may be amended from time to time by resolution of the city council. In the event of any conflict between the Manual and a more specific ordinance existing in this Code, the terms of the Code shall govern."

SECTION 4. The provisions of this ordinance supersede any conflicting resolutions or ordinances, and any such resolutions or ordinances shall be construed in such a manner as to carry out the intent of this ordinance.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2013.

Debbie Franklin, Mayor
City of Banning California

ATTEST:

Marie Calderon, City Clerk
City of Banning, California

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

David Aleshire, City Attorney
City of Banning, California

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing Ordinance No. 1471 was duly introduced at a regular meeting of the City Council of the City of Banning, California, held on the 24th day of September, 2013, and was duly adopted at a regular meeting of said City Council held on the _____ day of October, 2013, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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



ALESHIRE &
WYNDER, LLP
ATTORNEYS AT LAW
www.awattorneys.com

OK

MEMORANDUM

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

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

DATE: APRIL 2, 2010

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

I. INTRODUCTION & SUMMARY OF CONCLUSIONS

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

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

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

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

² *Id.* at Subsection 2.3(a)(2).

³ *Id.* at Subsection 2.3(a)(3).

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

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

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

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

II. ANALYSIS

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

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

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

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

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

⁴ Rules of the City Council, Section II, Paragraph B, Subsection 2.3.

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

⁶ Cal. Gov. Code § 40602.

⁷ *Id.* at § 40603.

⁸ *Id.* at § 40604.

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

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

A. Indian Wells

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

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

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

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become mayor and mayor pro-tem and not necessarily the actual rotation of the other councilmembers.

B. Palm Desert

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

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

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

C. Huntington Beach

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

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

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

¹⁰ Los Angeles Times, Huntington Beach Green Picked Mayor in Rotation System, January 24, 1990, http://articles.latimes.com/1990-01-24/local/me-702_1_mayor-pro, last visited March 3,

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

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

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

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

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

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

2010.

¹¹ Action Minutes, Charter Review Commission (October 6, 2009), http://search.surfcity-hb.org/search?q=cache:1LuH1TOIEHoJ:www.huntingtonbeachca.gov/government/boards_commissions/files/charter_review_commission_minutes_100609.pdf+mayor&access=p&output=xml_no_dtd&site=default_collection&ie=UTF-8&client=default_frontend&proxstylesheet=default_frontend&oe=UTF-8, last visited March 3, 2009.

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

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

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

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

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

¹² SFGate.com, Pittsburgh/Council Breaks Tradition of a Rotating Mayor, December 6, 2006, http://articles.sfgate.com/2000-12-06/bay-area/17672964_1_mayoral-vote-vice-mayor-bob-lewis-chairing-meetings, last visited March 3, 2010.

¹³ Palo Alto Online, Menlo Park Squabbles Over Mayor Policy, January 26, 2006, http://www.paloaltonline.com/news/story.print.php?story_id=2311, last visited March 3, 2010.

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

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

The statute providing for direct election provides as follows:

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

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

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

¹⁴ Cal. Gov. Code § 34900.

¹⁵ League of California Cities.

¹⁶ Cal. Gov. Code § 34903.

¹⁷ Cal. Gov. Code § 34900.

¹⁸ *Id.*

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

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

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

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

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

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

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

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

¹⁹ *Id.* at § 34904.

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

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

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

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

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

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

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

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

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

²⁰ Cal. Gov. Code § 40605.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESOLUTION NO. 2004-16

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

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

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

3.05.010 ELECTION AND TERM OF OFFICE FOR MAYOR.

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

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

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

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

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

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

EXHIBIT "A"

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3.06.010 ELECTION AND TERM OF OFFICE FOR MAYOR PRO TEM.

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

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

Mary T. Roche
MARY T. ROCHE
MAYOR

CERTIFICATION FOR RESOLUTION NO. 2004-16

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

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

ATTEST:

Linda Furbee
LINDA FURBEE
CITY CLERK

APPROVED AS TO FORM:

Stephen P. Deitsch
STEPHEN P. DEITSCH
CITY ATTORNEY

RE 133

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

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

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

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

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

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

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

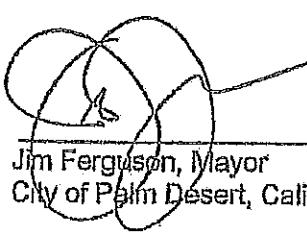
PASSED, APPROVED AND ADOPTED by the City Council of the City of Palm Desert, California, at its regular meeting held on the 11th day of October, 2001, by the following vote, to wit:

AYES: BENSON, CRETES, KELLY, SPIEGEL, FERGUSON

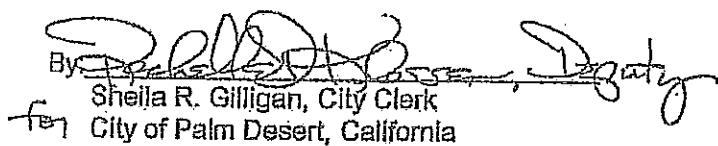
NOES: NONE

ABSENT: NONE

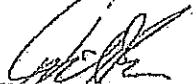
ABSTAIN: NONE


Jim Ferguson, Mayor
City of Palm Desert, California

ATTEST:


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

APPROVED AS TO FORM:

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