



AGENDA

REGULAR MEETING OF THE BANNING CITY COUNCIL CITY OF BANNING, CALIFORNIA

October 26, 2021
5:00 p.m.

In Chamber and via Video/Teleconference

Council Chambers
99 E. Ramsey Street

The following information comprises the agenda for the regular meeting of the Banning City Council, a joint meeting of the City Council and Banning Utility Authority, and the Banning City Council sitting in its capacity as the Banning Successor Agency Board.

This meeting is being held in Chamber and via Video/Teleconference on Zoom so that members of the public may observe and participate in this meeting electronically. If you choose to participate in this meeting via Zoom, you are agreeing to abide by the City's Zoom Community Standards for Public Meetings (provided in full on the last page of the agenda).

To observe and participate in the online video portion of the meeting through your personal computer or device, follow this link:

<https://us02web.zoom.us/j/87415277765?pwd=dFVSOFBuMGpSeTBSREtPNytXYnhSQT09>

Meeting ID: 874 1527 7765

Password: 870511

Dial in: +1 669 900 9128 ♦ Meeting ID: 874 1527 7765

Per City Council Resolution 2016-44, matters taken up by the Council before 10 p.m. may be concluded, but no new matters shall be taken up except upon a unanimous vote of the council members present and voting. Such an extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.

1. CALL TO ORDER

- 1.1. Invocation – *Pastor Ryan Houssein of Calvary Chapel Sweethills*
- 1.2. Pledge of Allegiance
- 1.3. Roll Call
Council Members Hamlin, Happe, Pingree, Sanchez, and Mayor Wallace

2. AGENDA APPROVAL

- 2.1. Approve Agenda

3. PRESENTATION(S)

3.1. Introduction of New Fire Battalion Chief Tim Voigt

4. REPORT ON CLOSED SESSION

4.1. City Attorney

5. PUBLIC COMMENTS, CORRESPONDENCE, APPOINTMENTS, CITY COUNCIL COMMITTEE REPORTS, CITY MANAGER REPORT, AND CITY ATTORNEY REPORT

5.1. PUBLIC COMMENTS – *Non-Agenda Items Only*

*A three (3) 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 their time with any other member of the public. Usually, any items received under this heading are referred to staff for future study, research, completion, and/or future Council Action (see Item 10). **PLEASE STATE YOUR NAME FOR THE RECORD.***

5.2. CORRESPONDENCE

Items received under this category may be received and filed or referred to staff for future research or a future agenda.

5.3. APPOINTMENTS

5.4. CITY COUNCIL COMMITTEE REPORTS

5.5. CITY MANAGER REPORT

5.6. CITY ATTORNEY REPORT

6. CONSENT ITEMS

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

Mayor to Open Consent Items for Public Comments

Motion: Approve consent items 6.1 to 6.12.

Resolutions require a recorded majority vote of the total membership of the City Council/Banning Utility Authority.

- 6.1. Approval of Minutes from the October 12, 2021 City Council Meetings..... **8**
- 6.2. Approval and Ratification of Accounts Payable and Payroll Warrants Issued in the Month of September 2021..... **9**
- 6.3. Receive and File Cash, Investments and Reserve Report for the Month of September 2021..... **11**
- 6.4. Receive and File Police Department Statistics for the Month of September 2021..... **13**

6.5. Receive and File Fire Department Statistics for the Month of September 2021..... **14**

6.6. Public Works Capital Improvement Project Tracking List..... **15**

6.7. Parks and Recreation Report Quarterly Report for FY 2022 Quarter 1 ending September 30, 2021..... **16**

6.8. Resolution 2021-103, 2021-10 UA and 2021-05 SA, Approving Amendments to the Fiscal Year 2020-21 Budget for Encumbrance Carryovers and Continuing Appropriations of Unexpended Fiscal Year 2020-21 Appropriations **18**

6.9. Accept the Easement from Tri Pointe Homes for Electric Utility Purposes on Assessor’s Tract Map 37390-2 for the Maintenance of the City Owned Electric Distribution System..... **20**

6.10. Resolution 2021-105, Approving an Increase for Canon Financial Services PO 31170 and Future Purchase Orders to Include the Lease of an Imageprograf XT4100 Plotter for the Electric Utility Department..... **22**

6.11. Consider Approval of an Exclusive Negotiating Agreement with AMG Sign Company, Inc. for an Outdoor Advertising Lease on City Property located at APN 532-090-011..... **24**

6.12. Resolution 2021-107, Requesting the San Gorgonio Pass Maintain Unified Representation as a Community of Interest During the County of Riverside’s Redistricting Efforts.....**26**

7. PUBLIC HEARING(S)

7.1. Resolution 2021-94, Approving Fees Related to the Alarm Permit Program Approved in Ordinance 1575..... **28**
(Staff Report: Matthew Hamner, Chief of Police)

Recommendation: City Council adopt Resolution 2021-94 approving fees for alarm permits and false alarms.

7.2. Resolution 2021-102, Approving Electric Utility Rate Adjustments – Effective January 1, 2022..... **30**
(Staff Report: Tom Miller, Electric Utility Director)

Recommendation: Staff and the Budget and Finance Committee request discussion and possible action to revise the schedule of electric utility tariffs, charges, general provisions, and riders taking effect January 1, 2022.

7.3. Consideration and Introduction of Ordinance 1578 Amending Section 13.16.020, Restricting Water Use During Water Supply Emergencies, of Chapter 13.16, Water Conservation, of Title 13, Public Services, of the Banning Municipal Code, and Finding an Exemption from Review under CEQA Pursuant to CEQA Guidelines Sections 15061(b)(3) and 15308..... **33**
(Staff Report: Art Vela, Public Works Director)

Recommendation: Staff recommends Council waive full reading and introduce, as read by title only, Ordinance 1578, An Ordinance of the City of Banning, California, Amending Section 13.16.020, “Restricting Water Use During Water Supply Emergencies,” of Chapter 13.16, “Water Conservation,” of Title 13, “Public Services,” of the Banning Municipal Code, and Making a Determination of Exemption Under CEQA. If approved, a second reading will be scheduled and considered by Council on November 9, 2021. Adoption of Ordinance 1578 requires a two-thirds vote of the City Council.

- 7.4. First Reading of Ordinance 1566 amending Title 12 of the Banning Municipal Code revising regulations pertaining Rules and Regulations in Banning Parks and finding an exemption from CEQA under Section 15061(B)(3) of the CEQA guidelines..... **37**
(Staff Report: Ralph Wright, Parks and Recreation Director)

Recommendation: Staff recommends the City Council waives the first reading of the ordinance in its entirety and introduce Ordinance 1566 by title only, an Ordinance amending Title 12 of the Banning Municipal Code pertaining to the rules and regulations in Banning Parks and finding the Ordinance exempt from CEQA under Section 15061(B)(3) of the CEQA guidelines. If approved, the item will come before the City Council for a second reading at the next regularly scheduled meeting on November 9, 2021.

- 7.5. First Reading of Ordinance 1579 amending Title 2 of the Banning Municipal Code revising regulations pertaining to the Parks and Recreation Commission’s meeting attendance rules and finding an exemption from CEQA under section 15061 (B)(3) of the CEQA guidelines..... **42**
(Staff Report: Ralph Wright, Parks and Recreation Director)

Recommendation: Staff recommends the City Council waives the first reading of the ordinance in its entirety and introduce Ordinance 1579 by title only, an Ordinance amending Title 2 of the Banning Municipal Code pertaining to the Parks and Recreation Commission meeting attendance rules and finding the Ordinance exempt from CEQA under section 15061(B)(3) of the CEQA guidelines. If approved, the item will come before the City Council for a second reading at the next regularly scheduled meeting on November 9, 2021.

8. REPORT OF OFFICERS

- 8.1. Presentation from the San Gorgonio Pass Water Agency on the Backbone Pipeline..... **44**
(Staff Report: Art Vela, Public Works Director)

Recommendation: Receive and file.

- 8.2. Consider Resolution No. 2021-104, Support of Local Measure H Benefitting San Gorgonio Hospital..... **45**
(Staff Report: Doug Schulze, City Manager)

Recommendation: Staff recommends City Council adopt Resolution No. 2021-104 supporting Local Measure H benefitting San Gorgonio Memorial Hospital.

- 8.3. Resolution No. 2021-106 Approving Agreement Pursuant to Government Code Section 66462.5 Between Vintage-Stone Eagle, LLC and City of Banning for Acquisition of Certain Real Property Interests (TTM 33540) in Connection with Off-Site Improvements.....**47**
(Staff Report: Art Vela, Public Works Director)

Recommendation: Staff recommends that the City Council adopt Resolution No. 2021-106, a Resolution of the City of Banning Approving that certain Agreement Pursuant to Government Code Section 66462.5 Between Vintage-Stone Eagle, LLC and City of Banning for Acquisition of Certain Real Property Interests (TTM 33540) attached hereto as Attachment "1".

- 8.4. Expiration of Governor’s Executive Order that “Relaxed” the Brown Act’s Provisions Related to Remote Attendance by Members of the City Council and City Commissions, Resumption of In-Person Meetings with Continuation of Remote Attendance Option for Members of the Public, and Consideration of Alternatives Allowed under AB 361..... **51**
(Staff Report: Kevin Ennis, City Attorney)

Recommendation: Staff recommends the City Council return to in-person meetings for members of the City Council and City Commissions, continue to allow the public the option of attending meetings by Zoom, provide for remote attendance of Councilmembers and Commissions only under the standard procedures of the Brown Act, but not make other special findings needed to permit continued routine remote attendance by Member of the City Council and Commission Members required by AB 361.

9. DISCUSSION ITEM(S)

None

10. ITEMS FOR FUTURE AGENDAS

10.1. New Items

10.2. Pending Items:

- 1. Permanent Homeless Solution
- 2. Shopping Cart Ordinance Update
- 3. Golf Cart/EV Ordinance (On hold)
- 4. Airport Advisory Commission
- 5. Retail Marijuana (Happe)
- 6. Business-Friendly Zoning (Wallace)

11. ADJOURNMENT

Next Regular Meeting – November 9, 2021 at 5:00 p.m.

Zoom Community Standards for Public Meetings

By participating in this meeting on Zoom, you are agreeing to abide by the City of Banning's Community Standards for Public Meetings. Zoom attendees that fail to adhere to these standards may be removed from the meeting room.

- Your microphone must remain on mute, and you may only unmute your microphone when/if you are recognized by the Mayor.
- Your camera must be turned off unless/until you are recognized by the Mayor.
- To indicate a desire to make Public Comment, you must use the Raise Hand function. The Mayor will not recognize those who have not used the Raise Hand function.
- Public Comment from Zoom attendees will immediately follow in person comment from members of the public in Council Chambers.
- If you fail to adhere to these community guidelines, **you may be removed** for disrupting the meeting occurring in Council Chambers. You may rejoin the meeting but may be removed for each violation of these community standards.
- The chat function will be disabled for all City Council meetings on Zoom.

AFFIDAVIT

IT IS HEREBY CERTIFIED under the laws of the State of California that the above Agenda was posted on the City's website (www.banningca.gov) as well as the Bulletin Board at Banning City Hall, located at 99 E Ramsey Street, Banning, CA 92220, by 5:00 P.M. on the 21st day of October 2021.


Caroline Patton, Deputy City Clerk

PUBLIC NOTICE

Meeting Agendas and Notices

Interested in receiving email and/or text notifications of upcoming City Council meetings? Sign up for meeting notifications through Notify Me (<https://banningca.gov/list.aspx>). Pursuant to amended Government Code §54957.5(b), staff reports and other public records related to open session agenda items are available on the City's website (www.banningca.gov/archive).

Public Comment

Agenda Items

Any member of the public may address this meeting of the City Council on any item appearing on the agenda. A five-minute limitation shall apply to each member of the public and no member of the public shall be permitted to share their time with any other person.

Non-Agenda Items

Any member of the public may address this meeting of the Council on any item which does not appear on the regular meeting agenda but is of interest to the general public and is an item upon which the Council may act. A three-minute limitation shall apply to each member of the public and no member shall be permitted to share their time with any other person. No action shall be taken, nor discussion held by the 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 §54954.2 of the Government Code.

Special Assistance/Accessibility Requests

In compliance with the Americans with Disabilities Act, any member of the public may request that the agenda and agenda packet be mailed to them. If you need special assistance to participate in this meeting (such as translation services), please contact the Office of the City Clerk. Advanced notification of at least 48 hours prior to the meeting will allow the City to make arrangements to ensure your accessibility.

CONTACT

Office of the City Clerk ♦ 951-922-3102 ♦ CityClerks@banningca.gov
99 East Ramsey Street, Banning, California 92220



**CITY OF BANNING
STAFF REPORT**

TO: CITY COUNCIL
FROM: Douglas Schulze, City Manager
PREPARED BY: Caroline Patton, Deputy City Clerk *CP*
MEETING DATE: October 12, 2021
SUBJECT: Minutes of the October 12, 2021 City Council Meetings

RECOMMENDATION:

Approve the minutes of the October 12, 2021 City Council meetings.

ALTERNATIVES:

1. Approve as recommended.
2. Approve with modifications.
3. Do not approve and provide alternative direction.

ATTACHMENTS:

1. Minutes of the October 12, 2021 Special City Council Meeting
https://banningca.gov/DocumentCenter/View/9574/2021-10-12_Minutes_Special-Meeting
2. Minutes of the October 12, 2021 Regular City Council Meeting
https://banningca.gov/DocumentCenter/View/9575/2021-10-12_Minutes_Regular-Meeting

Approved by:

Douglas Schulze
City Manager



**CITY OF BANNING
STAFF REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Suzanne Cook, Finance Director
A'ja Wallace, Budget and Financial Analyst

MEETING DATE: October 26, 2021

SUBJECT: Approval and Ratification of Accounts Payable and Payroll Warrants Issued in the Month of September 2021

RECOMMENDATION:

That City Council review and ratify the warrants for period ending **September 30, 2021**, per California Government Code Section 37208.

WARRANT SUMMARY:

| Description | Payment # | Amount | Total Amount |
|---|-----------------|-----------------|------------------------|
| Checks: | | | |
| Checks Issued during Month | 179609-179983 | \$ 3,557,646.78 | |
| Voided / Reissue Check | | \$ 240.00 | |
| Check Total | | | \$ 3,557,406.78 |
| Wires Total | 1063-1064 | | \$ 2,336,670.09 |
| ACH payments: | | | |
| | 9007092-9007107 | | |
| Payroll Direct Deposit 9/10/2021 | | \$ 443,989.51 | |
| Payroll Direct Deposit 9/24/2021 | | \$ 441,359.96 | |
| Other Payments | | \$ 684,180.53 | |
| ACH Total | | | \$ 1,569,530.00 |
| Payroll Checks: | | | |
| | 12437-12457 | | |
| Payroll - Regular 9/10/2021 | | \$ 2,109.22 | |
| Payroll - Regular 9/24/2021 | | \$ 2,313.30 | |
| Manual Check(s) 9/30/2021 | | \$ 3,644.50 | |
| Payroll Check Total | | | \$ 8,067.02 |
| Total Warrants Issued for September 2021 | | | \$ 7,471,673.89 |

ATTACHMENTS:

1. Fund List

<https://banningca.gov/DocumentCenter/View/9617/Attachment-1--Fund-List>

2. Warrant Report September 2021

<https://banningca.gov/DocumentCenter/View/9618/Attachment-2--Warrant-Report-September-2021>

3. Warrant Report Detail September 2021

<https://banningca.gov/DocumentCenter/View/9619/Attachment-3--Warrant-Report-Detail-September-2021>

4. Voided Check Log, Payroll Log & Registers – September 2021

<https://banningca.gov/DocumentCenter/View/9616/Attachment-4--Void-Check-Payroll-Log-and-Payroll-Register>

Approved by:



Douglas Schulze
City Manager



**CITY OF BANNING
STAFF REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Suzanne Cook, Finance Director
A'ja Wallace, Budget and Financial Analyst

MEETING DATE: October 26, 2021

SUBJECT: Receive and File Cash, Investments and Reserve Report for the Month of September 2021

RECOMMENDATION:

That City Council receive and file Cash, Investment and Reserve Report for **September 30, 2021** in accordance with California Government Code 53646.

CASH AND INVESTMENT SUMMARY:

| Description | | Prior Month | Current Month |
|---|-------------------------------------|--------------------------|-------------------------|
| Funds Under Control of the City | | | |
| Cash | | | |
| | Cash on Hand \$ | 4,155.00 | \$ 4,155.00 |
| | Checking and Savings Accounts \$ | 11,681,460.69 | \$ 10,691,446.39 |
| Investments | | | |
| | LAIF \$ | 39,745,172.25 | \$ 39,745,172.25 |
| | Brokerage \$ | 27,534,971.60 | \$ 27,535,097.93 |
| Total Funds Under Control of the City | | \$ 78,965,759.54 | \$ 77,975,871.57 |
| Funds Under Control of Fiscal Agents | | | |
| US Bank | | | |
| | Restricted Bond Project Accounts \$ | 11,671,434.32 | \$ 11,671,495.79 |
| | Restricted Bond Accounts \$ | 6,601,925.75 | \$ 4,820,097.55 |
| Union Bank & SCPPA | | | |
| | Restricted Funds \$ | 4,164,098.15 | \$ 4,648,718.64 |
| Total Funds Under Control of Fiscal Agents | | \$ 22,437,458.22 | \$ 21,140,311.98 |
| Total Funds | | \$ 101,403,217.76 | \$ 99,116,183.55 |


RESTRICTED, ASSIGNED, COMMITTED AND RESERVED SUMMARY:

| Description | Prior Month | Current Month |
|--|--------------------------|-------------------------|
| Total Funds | \$ 101,403,217.76 | \$ 99,116,183.55 |
| Restricted Funds | \$ 42,162,253.37 | \$ 43,445,123.69 |
| Assigned Funds - Specific Purpose | \$ 8,881,339.00 | \$ 8,881,339.00 |
| Committed Funds - Specific Purpose | \$ 3,525,858.25 | \$ 3,563,108.50 |
| Fund Balance Reserves | \$ 13,237,530.48 | \$ 13,828,391.68 |
| Total Restricted, Assigned, Committed and Reserve | \$ 67,806,981.10 | \$ 69,717,962.87 |
| Operating Cash - Unrestricted Reserves | \$ 33,596,236.66 | \$ 29,398,220.68 |
| Less Accounts held in Investments | \$ 27,534,971.60 | \$ 27,535,097.93 |
| Liquid Cash | \$ 6,061,265.06 | \$ 1,863,122.75 |

ATTACHMENTS:

1. Cash, Investment and Reserve Report September 2021
<https://banningca.gov/DocumentCenter/View/9622/Attachment-1--Cash-Investment-and-Reserve-Report-September-2021>
2. Investment Report September 2021
<https://banningca.gov/DocumentCenter/View/9623/Attachment-2--Investment-Report-September-2021>
3. City of Banning Broker Investment Report – September 2021
<https://banningca.gov/DocumentCenter/View/9624/Attachment-3--City-of-Banning-Broker-Report>
4. LAIF / PMIA Performance Report
<https://banningca.gov/DocumentCenter/View/9620/Attachment-4--PMIA-LAIF-Performance-Report-September-2021>
5. LAIF Market Valuation Report September 2021
<https://banningca.gov/DocumentCenter/View/9621/Attachment-5--LAIF-Market-Valuation-September-2021>

Approved by:



 Douglas Schulze
 City Manager



**CITY OF BANNING
STAFF REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Matthew Hamner, Police Chief
Angie Lam, Police Assistant II

MEETING DATE: October 26, 2021

SUBJECT: Receive and File Police Department Statistics for the Month of September 2021

RECOMMENDATION:

Receive and File Police Statistics for the month of September 2021.

BACKGROUND:

The Police Department provides statistics to the public and City Council upon request.

ALTERNATIVES:

1. Receive and File

ATTACHMENT:

1. Police Statistics for September 2021
<https://banningca.gov/DocumentCenter/View/9610/Stats-September-2021>

Approved by:

Douglas Schulze
City Manager



**CITY OF BANNING
STAFF REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Todd Hopkins, Division Chief
Laurie Sampson, Executive Assistant

MEETING DATE: October 26, 2021

SUBJECT: Receive and File Fire Department Statistics for the Month of September 2021

RECOMMENDATION:

Receive and File Fire Department statistics for the month of September 2021.

BACKGROUND:

The Fire Department provides statistics to the public and City Council upon request.

FISCAL IMPACT:

None

ATTACHMENT:

1. Fire Statistics for September 2021
<https://banningca.gov/DocumentCenter/View/9588/Banning-September-2021-Fire-Report>

Approved by:

Douglas Schulze
City Manager



**CITY OF BANNING
STAFF REPORT**

TO: CITY COUNCIL
FROM: Douglas Schulze, City Manager
PREPARED BY: Art Vela, Director of Public Works/City Engineer
MEETING DATE: October 26, 2021
SUBJECT: Public Works Capital Improvement Project Tracking List

RECOMMENDATION:

This is informational only; receive and file report.

BACKGROUND:

There are several planning, environmental, design and construction contracts that have been approved by City Council and/or the City Manager's office that are being managed by the Public Works Department. In an effort to keep the City Council and the public informed of the progress made and current status of each project, staff has prepared and will continue to update the attached Public Works CIP Tracking List. The list will be presented to City Council on a monthly basis.

ATTACHMENT:

1. CIP Status List
<https://banningca.gov/DocumentCenter/View/9578/Attch-1-CIP-Update-October-2021>

Approved by:

Douglas Schulze
City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Ralph Wright, Parks and Recreation Director

MEETING DATE: October 26, 2021

SUBJECT: Parks and Recreation Report Quarterly Report for FY 2022
Quarter 1 ending September 30, 2021

RECOMMENDATION:

That City Council receive and file this quarterly activities report.

BACKGROUND:

Staff developed a quarterly report that is used to present department data and help for year-over-year comparisons. Tracked measures include participation levels of parks and recreation program offerings and the usage of City facilities for programming.

The attached report details Parks' Staff activities, park and facility usage, sports and classes participation, senior activities, aquatics programming, special events as well as Banning Connect pass sales. The report is aligned with the fiscal year, July 1 through June 30.

Staff brings the report to the Council after each quarter. Today's report contains information through the end of the 1st quarter of FY 2022, or September 30, 2021.

The report reflects the first quarter since March of 2020 that Parks and Recreation Operations were able to take place without COVID 19 restrictions limiting our program offerings.

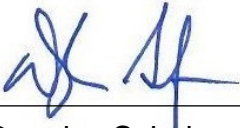
Notably, the Senior Center has been closed for the past eighteen months and remains closed. It is anticipated that the Senior Center ADA improvement project will be concluded this month and we the Senior Center will open on a reduced schedule. Beginning in January of 2022, the plan is to fully open with warm daily meal service to seniors in addition to Monday through Friday programming.

ATTACHMENT:

1. Parks and Recreation Monthly Report of Activities

https://banningca.gov/DocumentCenter/View/9579/Quarterly-Parks-and-Recreation-Report-to-Council_10-26-2021

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Suzanne Cook, Finance Director
A'ja Wallace, Budget and Financial Analyst

MEETING DATE: October 26, 2021

SUBJECT: Resolution 2021-103, 2021-10 UA and 2021-05 SA, Approving an Amendment to the Fiscal Year 2020-21 Budget for Encumbrance Carryovers and Continuing Appropriations of Unexpended Fiscal Year 2020-21 Appropriations

RECOMMENDATION:

Staff recommend City Council:

1. Approve City Council Resolution 2021-103,
2. Approve Banning Utility Authority Resolution 2021-10 UA,
3. Approve Banning Successor Agency Resolution 2021-05 SA, and
4. Authorize the Finance Director or designee, to make the necessary budget adjustments, appropriations, and transfers.

BACKGROUND:

The two-year budget for fiscal years 2020-21 and 2021-22 was adopted on June 23, 2020.

JUSTIFICATION:

At the end of fiscal year 2020-21, in many cases, funds had been encumbered (i.e. committed via purchase order toward a specific item or project) but not yet expended. These items were included in the fund balances as encumbered items and roll into the new fiscal year in order to complete the project or order. In some cases, there were approved appropriations at the end of the fiscal year not eligible for encumbrance, these items were included as budget adjustments or continuing appropriations. Continuing appropriations and encumbrances were accounted for in available fund projections and thus will not impact previously presented 2021-22 fund balances. Allowing for the carryover of unexpended funds that are earmarked for specific purposes facilitates meeting the City's budgetary goals.

FISCAL IMPACT:


Previously approved, unspent appropriations as well as known other budgetary adjustments were accounted for in the FY 2021-22 available fund balance projections that were approved during the budget process. Therefore, funding for FY 2020-21 encumbrances and continuing appropriations will not impact previously presented projections. Totals presented in the detailed listings (Exhibit A) for the Operating and Capital Budgets are summarized in the following chart:

| Authority | Type | Operating Budget | Capital Budget | Totals |
|----------------------------------|------|------------------|----------------|--------------|
| Budget Adjustments/Transfers | | | | |
| City | | \$0 | \$7,000 | \$7,000 |
| BUA | | | | \$0 |
| SA | | | | \$0 |
| Encumbrances | | | | |
| City | | \$1,505,335 | \$7,839,131 | \$9,344,466 |
| BUA | | \$583,097 | \$3,239,080 | \$3,822,177 |
| SA | | | \$1,375,945 | \$1,375,945 |
| Continuing Appropriations Totals | | | | |
| City | | \$1,505,335 | \$7,846,131 | \$9,351,466 |
| BUA | | \$583,097 | \$3,239,080 | \$3,822,177 |
| SA | | | \$1,375,945 | \$1,375,945 |
| Totals | | \$2,088,432 | \$12,461,156 | \$14,549,588 |

ATTACHMENTS:

1. Resolution 2021-103
<https://banningca.gov/DocumentCenter/View/9625/Attachment-1-2021-10-26-RESO-2021-103-Continuing-Appropriations>
2. Resolution 2021-10 UA
<https://banningca.gov/DocumentCenter/View/9626/Attachment-2-2021-10-26-RESO-2021-10-UA-Continuing-Appropriations>
3. Resolution 2021-05 SA
<https://banningca.gov/DocumentCenter/View/9627/Attachment-3-2021-10-26-RESO-2021-05-SA-Continuing-Appropriations>

Approved by:



 Douglas Schulze
 City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Thomas Miller, Electric Utility Director
Brandon Robinson, Electrical Engineering Supervisor

MEETING DATE: October 26, 2021

SUBJECT: Accept the Easement from Tri Pointe Homes for Electric Utility Purposes on Assessor's Tract Map 37390-2 for the Maintenance of the City Owned Electric Distribution System

RECOMMENDATION:

Staff recommend the Council accept the easement from Tri-Pointe Homes for electric utility purposes on Assessor's Tract Map No. 37390-2 within Planning Area 7 (PA 7) for the maintenance of the City owned electric distribution system.

BACKGROUND:

Final Tract Map No. 37390-2 (Phase I) within the Atwell Development Specific Plan were approved by City Council by Resolution No. 2019-151 on December 10, 2019. Tri Pointe Homes has constructed electrical improvements within these tracts that were required to serve the housing development. As part of the Conditions of Approval for the project, the owner is required to provide the City the necessary easements for the maintenance of the City owned electric distribution system.

JUSTIFICATION:

It is necessary to obtain the easements for the City to access and provide maintenance for the City owned electric distribution equipment which may include utility poles, conduit with conductors, transformers, switchgear, equipment pads and meters.

FISCAL IMPACT:

There is no fiscal impact associated with this easement acceptance.

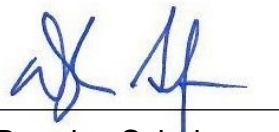
ALTERNATIVES:

1. Approve as recommended.
2. Do not approve and provide alternative direction.

ATTACHMENTS:

1. Easements – 37390-2 PA 7, APN 408-621-014
https://banningca.gov/DocumentCenter/View/9590/Att-1--Atwell_PA-7-Tract-37390-2-408-621-014
2. Certificate of Acceptance
<https://banningca.gov/DocumentCenter/View/9589/Att-2--Certificate-of-Acceptance>

Approved by:

A handwritten signature in blue ink, appearing to read 'D. Schulze', is written over a horizontal line.

Douglas Schulze
City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Laurie Sampson, Executive Assistant

MEETING DATE: October 26, 2021

SUBJECT: Resolution 2021-105, Approving an Increase for Canon Financial Services PO 31170 and Future Purchase Orders to Include the Lease of an Imageprograf XT4100 Plotter for the Electric Utility Department

RECOMMENDATION:

That the City Council adopt Resolution 2020-105, approving an increase for Canon Financial Services PO 31170 to include the lease of an Imageprograf XT4100 Plotter for the Electric Utility Department.

BACKGROUND:

On December 8, 2020, City Council adopted Resolution 2020-149 approving the 60-month lease agreement for (7) copiers and the corresponding maintenance agreement for an amount not to exceed \$14,000 for lease payments and \$20,000 for the maintenance agreement annually. All copiers leased through Cell Business Equipment are serviced by Canon Financial Services.

JUSTIFICATION:

On August 18, 2021, the Electric Utility Department entered into a 36-month lease agreement for an Imageprograf TX4100 Plotter at a cost of \$509.66 per month. The Units are also covered by an insurance policy at a cost of 102.59 per month which requires the annual cost for these units to be increased from \$14,000.00 to \$22,000.00.

FISCAL IMPACT:

The Lease Agreement is \$1,721.37 per month and \$20,656.44 annually, per Department Budget Exhibit A to Resolution 2021-105. Approval for an amount not to exceed \$22,000.00 annually to cover unexpected expenses such as late fees, document fees and electronic waste fees.

The Maintenance Agreement in an amount not to exceed \$20,000 per Department Budget Exhibit B to Resolution 2021-105.

ATTACHMENTS:

1. Resolution 2021-105
<https://banningca.gov/DocumentCenter/View/9597/Att-1-Resolution-2021-105-Canon-Financial-Services>
2. Cell Business Equipment Lease Agreement
<https://banningca.gov/DocumentCenter/View/9598/Att-2-CBE-Plotter-Agreement>

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

MEETING DATE: October 26, 2021

SUBJECT: Consider Approval of an Exclusive Negotiating Agreement with AMG Sign Company, Inc. for an Outdoor Advertising Lease on City Property located at APN 532-090-011

RECOMMENDATION:

It is recommended that the City Council approve the proposed Exclusive Negotiating Agreement with AMG Sign Company, Inc. concerning an outdoor advertising display located at: Section 12, Township 3 South, Range 1 East; APN 532-090-011.

BACKGROUND:

AMG Sign Company, Inc. owns the digital billboard located at 583 W. Livingston Street on City property pursuant to a Development Agreement with the City. The digital billboard has been operational since early 2021 and it has begun to generate a substantial amount of advertising. Due to the success of the existing sign, AMG Sign Company has approached the City with a proposal to lease of the City-owned advertising sign located on City-owned property east of the truck scales on I-10. The display on the advertising sign is outdated and faded, which does not provide a positive image for the City of Banning.

AMG submitted a proposed "Binding Term Sheet" that contains the basic provisions that will be included in an Outdoor Advertising Lease between AMG Sign Company, Inc. and the City of Banning. The proposal is for the sign to be upgraded but remain as a static advertising sign until not more than 12 months after the digital advertising sign on Livingston reaches 60 percent occupancy. Under that "Binding Term Sheet," AMG would be responsible for the costs of upgrading the sign and then the City would be paid 10% of the net revenue of the billboard. In calculating net revenue, AMG is proposing to deduct actual fees and costs paid to unaffiliated third parties, including but not limited to advertising agency commissions and utility charges.

The "Binding Term Sheet" would be structured to commit the City into the lease terms if the City did not complete and approve the Lease within 30 days of approval of the Binding Term Sheet.

As the City needs to investigate and confirm that the proposed lease would be compliant with City zoning, approved in compliance with the California Environmental Quality Act, and other state laws, it is recommended that instead of entering into the "Binding Term Sheet" that the City enter into an Exclusive Negotiating Agreement which would provide a period of time to work out these legal requirements and prepare a legally adequate Lease or other agreement for the proposed arrangement.

By approving the Exclusive Negotiating Agreement, the City would not be approving the "Binding Term Sheet" because it is premature to enter into a binding commitment on these terms before all required steps required have been satisfied.

JUSTIFICATION:

The existing outdoor advertising sign is not maintained and reflects poorly on the image of the City of Banning. An upgraded sign will improve the appearance and generate revenue for the City of Banning.

FISCAL IMPACT:

The proposed lease agreement will generate revenue for the City of Banning.

ALTERNATIVES:

1. Approve the attached ENA as recommended.
2. Do not approve and provide alternative direction.

ATTACHMENTS:

1. Exclusive Negotiating Agreement
<https://banningca.gov/DocumentCenter/View/9605/Att-1-Banning---AMG-Billboard-ENA-v-2>
2. Binding Term Sheet
<https://banningca.gov/DocumentCenter/View/9606/Att-2-Clean-Binding-Term-Sheet-Formatted>
3. Site Map
<https://banningca.gov/DocumentCenter/View/9607/Att-3-Parcel-Map-APN-532-090-011-Exhibit-A>

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

MEETING DATE: October 26, 2021

SUBJECT: Resolution 2021-107, Requesting the San Gorgonio Pass Maintain Unified Representation as a Community of Interest During the County of Riverside's Redistricting Efforts

RECOMMENDATION:

Staff recommends Council make a motion to approve Resolution No. 2021-107, requesting the San Gorgonio Pass maintain unified representation as a Community of Interest during the County of Riverside's redistricting efforts.

BACKGROUND:

The County of Riverside is currently engaged in the redistricting process, which is required following every U.S. Census. Currently, several different maps are being considered by the Board of Supervisors. While most of the proposed maps keep the Pass Communities (Banning, Beaumont, Calimesa, Cabazon and Morongo Reservation) together in the same Supervisorial District, proposed maps D, E, F and G would split the communities.

Clearly, the Pass Communities can be defined as a Community of Interest due to the geographic similarities, shared resources, and similar demographics. Keeping the San Gorgonio Pass communities together in one supervisorial district will lead to better collaboration with the County of Riverside on like-minded issues.

JUSTIFICATION:

The Cities of Banning, Beaumont, Calimesa, and the unincorporated community of Cabazon and the Morongo Indian Reservation make up the San Gorgonio Pass. The shared interests of the Pass are important to preserving and enhancing the quality of life in our region.

FISCAL IMPACT:

No fiscal impact.

ALTERNATIVES:

1. Approve as recommended.
2. Approve with modifications.
3. Do not approve and provide alternative direction.

ATTACHMENTS:

1. Resolution 2021-107
<https://banningca.gov/DocumentCenter/View/9629/Att-1-Resolution-2021-107-Riverside-Co-Redistrict-Resolution>
2. Proposed Maps A – G
<https://banningca.gov/DocumentCenter/View/9628/Att-2-Combined-Maps>

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Matthew Hamner, Chief of Police
Jeff Horn, Police Captain

MEETING DATE: October 26, 2021

SUBJECT: Resolution 2021-94, Approving Fees Related to the Alarm Permit Program Approved in Ordinance 1575

RECOMMENDATION:

City Council adopt Resolution 2021-94 approving fees for alarm permits and false alarms.

BACKGROUND:

City Council approved Ordinance 1575 at their October 12, 2021 regular meeting. This resolution establishes the fees that support implementation of this alarm permit program. If approved, Resolution 2021-94 will allow the Police Department to assess an annual fee for permits on alarm systems, as well as the fees for false alarm occurrences.

The fees necessary to implement the program include an initial alarm system permit application fee and annual permit renewal rate (each \$20.00 per system, per renewal). The fee schedule identifies the fee for a third false alarm (as defined in the code and in Ordinance 1575) at \$72 and establishes a higher fee of \$144 for a fourth false alarm. Finally, fees for non-permitted alarm systems begin at \$72 for a first false alarm, and rise to \$144 for a second and any subsequent false alarms.

JUSTIFICATION:

These fees will help recover the costs of administering the alarm program, which will reduce the number of false alarms to which officers must respond. This will free up additional time for officers already inundated with work.

FISCAL IMPACT:

The Police Department hopes to recover costs spent on administering the alarm permit program. This program is not a revenue-generating endeavor.

ALTERNATIVES:

1. Accept Resolution 2021-94.
2. Reject Resolution 2021-94 and direct staff to revise the Resolution.
3. Reject Resolution 2021-94.

ATTACHMENTS:

1. Resolution 2021-94
<https://banningca.gov/DocumentCenter/View/9571/Resolution-2021-94-Alarm-Permit-Fees>
2. Ordinance 1575
https://banningca.gov/DocumentCenter/View/9572/Ordinance-1575_Alarm-Permit-Program
3. Public Hearing Notice
<https://banningca.gov/DocumentCenter/View/9604/Att-3-Public-Notice-Affidavit>

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Tom Miller, Electric Utility Director

MEETING DATE: October 26, 2021

SUBJECT: Resolution 2021-102, Approving Electric Utility Rate Adjustments – Effective January 1, 2022

RECOMMENDATION:

Staff and the Budget and Finance Committee request discussion and possible action to revise the schedule of electric utility tariffs, charges, general provisions, and riders taking effect January 1, 2022. Actions for consideration:

- Termination of all previously adopted electric utility tariffs, charges, general provisions, and rate riders effective January 1, 2022.
- Authorization for an electric utility rate increase in residential service rates in two increments.
- Authorize revisions and changes to general provisions and riders that are universal across all electric utility rate tariffs.
- Authorize revisions and additions to the electric utility tariffs and charges.
- Authorize staff to make the changes in the utility billings system software and billing statement reproductions to implement the changes in utility charges.

These recommendations are a culmination of two cost of service analysis, detailed review with the Electric Rate Ad-hoc Committee, detailed review with Budget and Finance Committee and work by staff and the electric utility's rate consultant, Borismetrics, Los Angeles, California.

BACKGROUND:

Banning Electric Utility's last electric rate increase was May 2013. In October 2018, BEU changed the residential rate design to a flat rate design due to customer unrest with extended utility billing time frames in relation to a tiered rate structure. This rate change was revenue neutral and well received by our customers. Also, the low-income and medical rates were transitioned to rate rider discounts to better reflect the true cost of service and track the actual assistance to customers in need. There were several other

program adjustments made to maintain compliance with Proposition 26 utility charge intentions. In March 2019, BEU added a distributed self-generation rate to complement the mandated net metering solar program which is being phased out.

During fiscal year 2020, staff worked with an Ad-hoc Committee on a cost-of-service analysis based upon fiscal year-end 2019. While the analysis was indicative of nominal inter-class imbalances, staff recommended, the Ad-hoc Committee supported, and city council accepted the recommendation not to implement rate changes at that time. Fiscal 2020 proved to be a challenge but the electric utility met the minimum debt service coverage requirements.

As we come to the end of fiscal year 2021, we find ourselves similarly situated as FYE 2020. The updated cost of service analysis indicated the inter-class imbalances widened. Additionally, FYE 2021 saw the construction of major capital improvements and draw down on reserves. Marginal operating income and reduction in reserves, two of three financial targets, are currently waning. It is apparent that a rate adjustment is needed for course correction.

JUSTIFICATION:

It is apparent that the electric utility needs to simplify, consolidate, and balance our revenue classes. The goal of these electric utility rate adjustments is to make our house neat and tidy. Staff recommends electric rate adjustments to appropriately achieve debt service coverage bond covenants, meet revenue requirements, and maintain adequate reserves while providing safe, reliable, environmentally friendly retail electric services at the lowest possible cost consistent with sound business practices.

FISCAL IMPACT:

The net fiscal impact of all the revisions is an estimated decrease of \$345,000 or 1.5% in electric utility charges. (Electric Enterprise Fund 670)

ALTERNATIVES:

1. Consider different methodology for the electric utility residential service increase.
2. Consider a net fiscal impact that results in an increase in revenue.
3. Address each electric utility charge individually.
4. I do not recommend doing nothing, but it is an alternative.

ATTACHMENTS:

1. Resolution 2021-102 (with Exhibits) Revised Electric Utility Rate Schedule
<https://banningca.gov/DocumentCenter/View/9584/Att-1-Resolution-2021-102-Electric-Rate-Adjustment>
2. Notice of Public Hearing
<https://banningca.gov/DocumentCenter/View/9603/Att-2-Public-Notice-Affidavit>

3. Email to Council Member Happe 10-6-2021 Regarding Residential Customer Impact
<https://banningca.gov/DocumentCenter/View/9585/Att-3-Email---Happe>
4. Resolution 2019-139, Establishing Financial Targets and Revenue Requirements
<https://banningca.gov/DocumentCenter/View/9586/Att-4-Resolution-No-2019-139>
5. Budget and Finance Slide Deck 10-5-2021
<https://banningca.gov/DocumentCenter/View/9582/Att-5-Budget-Finance-Committee-10052021>
6. Cost of Service Analysis FYE 2020 Slide Deck 9-21-2021
<https://banningca.gov/DocumentCenter/View/9583/Att-6--Borismetrics-Cost-of-Service-Analysis-09212021>

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Art Vela, Public Works Director
Holly Stuart, Public Works Program Manager

MEETING DATE: October 26, 2021

SUBJECT: Consideration and Introduction of Ordinance 1578 Amending Section 13.16.020, Restricting Water Use During Water Supply Emergencies, of Chapter 13.16, Water Conservation, of Title 13, Public Services, of the Banning Municipal Code, and Finding an Exemption from Review under CEQA Pursuant to CEQA Guidelines Sections 15061(b)(3) and 15308

RECOMMENDATION:

Staff recommends Council waive full reading and introduce, as read by title only, Ordinance 1578, An Ordinance of the City of Banning, California, Amending Section 13.16.020, "Restricting Water Use During Water Supply Emergencies," of Chapter 13.16, "Water Conservation," of Title 13, "Public Services," of the Banning Municipal Code, and Making a Determination of Exemption Under CEQA. If approved, a second reading will be scheduled and considered by Council on November 9, 2021. Adoption of Ordinance 1578 requires a two-thirds vote of the City Council.

BACKGROUND:

In accordance with the Urban Water Management Planning Act of 1983, as amended ("UWMPA"), all "urban water agencies" that either provide over 3,000 acre-feet of water annually for municipal purposes or serve more than 3,000 customers are required to assess the reliability of their water sources over a 20-year planning horizon. The assessment must consider normal and dry years, and estimate future water demands.

The City is an Urban Water Supplier with a water service area that includes the jurisdictional limits of the City of Banning and portions of the County of Riverside just south of the City's boundaries. The City has complied with California state law as set forth in the UWMPA by preparing and submitting an Urban Water Management Plan ("UWMP") in 1998 with updates occurring in 2005, 2010, 2015, and 2020.

On June 8, 2021, in keeping with the guidelines, the City Council approved the City's latest 2020 update to the UWMP. As part of the 2020 UWMP update, the Council adopted a Water Shortage Contingency Plan, which considers extended droughts of up to five-years and incorporates six stages of responses that address water supply reliability.

As a result of the 2020 UWMP update, it is necessary to amend and restate BMC Chapter 13.16.020 entitled "Restricting Water Use During Water Supply Emergencies." Like the updated UWMP, the proposed update to BMC Section 13.16.020 will implement a phased in approach to address various levels and stages of water shortages.

In summary, the proposed ordinance imposes six stages of response actions based on the severity of the City's water supply shortage. The existing provisions within BMC Section 13.16.020 only imposes four stages of response actions. The six stages are based on the Department of Water Resources' criteria as shown below. The first four stages regulate both customer and City Water Department staff responses to shortages. Stages 5 and 6 only regulate City Water Department staff response efforts.

| Shortage Stage | Restriction Type | Water Supply Reduction Target |
|----------------|------------------|-------------------------------|
| Stage 1 | Mandatory | <10% |
| Stage 2 | Mandatory | 10-20% |
| Stage 3 | Mandatory | 20-30% |
| Stage 4 | Mandatory | 30-40% |
| Stage 5 | Mandatory | 40-50% |
| Stage 6 | Mandatory | >50% |

Each stage has a specific list of restrictions as identified in the proposed Ordinance 1578.

JUSTIFICATION:

Proposed Ordinance 1578, amending BMC Section 13.16.020 must be approved to conform to provisions recently adopted by the City Council as part of the 2020 UWMP update, and as required by the provisions of the UWMPA.

CEQA:

Staff has determined that proposed Ordinance 1578 is exempt from California Environmental Quality Act (Cal. Pub. Resources Code, § 21000 *et seq.*, "CEQA") and the regulations promulgated thereunder (14 Cal. Code of Regs., § 15000 *et seq.*, the "CEQA Guidelines") pursuant to CEQA Guidelines Sections 15061(b)(3) and 15308 on the grounds that it can be seen with certainty that the proposed amendments, as provided for in proposed Ordinance 1578, will not have a significant effect on the environment and that the amendments, which strengthen water supply and reliability, represent actions by a regulatory agency (the City) for the protection of the environment.

FISCAL IMPACT:

Penalty amounts are currently set forth in Chapter 13.16.020 as outlined below.

1. First violation, the City shall issue a written notice of violation to the water user in violation.
2. Second violation, twenty-five percent surcharge. For a second violation within a twelve-month period, a one-month surcharge is hereby imposed in an amount equal to twenty-five percent of the previous month's water bill for the meter through which the wasted water was supplied.
3. Third violation, fifty percent surcharge; installation of flow restrictor. For a third violation within a twelve-month period, a one-month penalty surcharge is hereby imposed in an amount equal to fifty percent of the previous month's water bill for the meter through which the wasted water was supplied. In addition to the surcharge, the City may at its discretion install a flow-restricting device at such meter with a one-eighth-inch orifice for services up to one and one-half inch size, and comparatively sized restrictors for larger services, on the service of the customer at the premises at which the violation occurred, for a period of not less than forty-eight hours. The charge for installing a flow-restricting device shall be based upon the size of the meter and the cost of installation but shall not be less than twenty-five dollars. The charge for removal of the flow-restricting device and restoration of normal service shall be twenty-five dollars if restoration of normal service is performed during the hours of 7:00 A.M. to 3:30 P.M. on regular working days. If the removal of the flow-restricting device and restoration of normal service is made after regular working hours, on holidays or weekends, the restoration service charge shall be forty dollars.
4. Subsequent violations; discontinuance of service. For any subsequent violation within twenty-four calendar months after a first violation, the penalty surcharge shall be imposed and the City shall discontinue water service to that customer at the premises or to the meter where the violation occurred. The charge for reconnection and restoration of normal service shall be twenty-five dollars. Such restoration of service shall not be made until the Water Operations Superintendent of the city has determined that the water user has provided reasonable assurances that future violations of this section by such user will not occur.

ALTERNATIVES:

1. Direct staff to revise proposed Ordinance 1578.
2. Reject proposed Ordinance 1578 and provide direction to staff.

ATTACHMENTS:

1. Ordinance 1578
<https://banningca.gov/DocumentCenter/View/9591/Att-1-Ordinance-No-1578-Water-Conservation>

2. Redline changes to BMC Chapter 13.16.020
<https://banningca.gov/DocumentCenter/View/9592/Att-2-Redlines-to-Existing-Code>
3. Public Notice
<https://banningca.gov/DocumentCenter/View/9602/Att-3-Public-Notice-Affidavit---Ordinance-1578>
4. 2020 Urban Water Management Plan
<https://banningca.gov/DocumentCenter/View/9593/Att-4-Banning-Final-2020-UWMP-w-Appendices---06282021>

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Ralph Wright, Parks and Recreation Director

MEETING DATE: October 26, 2021

SUBJECT: First Reading of Ordinance 1566 amending Title 12 of the Banning Municipal Code revising regulations pertaining Rules and Regulations in Banning Parks and finding an exemption from CEQA under Section 15061(B)(3) of the CEQA guidelines

RECOMMENDATION:

Staff recommends the City Council waives the first reading of the ordinance in its entirety and introduce Ordinance 1566 by title only, an Ordinance amending Title 12 of the Banning Municipal Code pertaining to the rules and regulations in Banning Parks and finding the Ordinance exempt from CEQA under Section 15061(B)(3) of the CEQA guidelines. If approved, the item will come before the City Council for a second reading at the next regularly scheduled meeting on November 9, 2021.

BACKGROUND:

Over the last year and a half, the Parks and Recreation Commission and staff have been tasked with reviewing the established rules and regulations that govern Banning Parks. As part of the review process, staff consulted with the City's Insurance Authority as well as submitted inquiries through association list serves to aid in the full review of the park rules and regulations. After this thorough review, the Parks and Recreation Commission unanimously recommended the presented modifications and additions to Sections 12.36.120 (Hours of Park Operation) and Chapter 12.36.130 (Regulations for Park Use).

Modification to Chapter 12.36.120 – Hours of Park Operation.

The City has adopted by Ordinance the following rules and regulations for park use:

12.36.120 - Hours of Operation:

No person shall gather, loiter, wander or remain within any public park or park facility after sunset or before sunrise without a written permit from the City issued in accordance set forth, except as follows:

- A. Sports activities on lighted tennis courts, basketball courts or baseball diamonds;
- B. Events authorized by the City to occur during specified hours.

After review of this section, the recommended change to Chapter 12.36.120 – Hours of Operation, is to modify subsection A to remove baseball diamond and include any properly lit ballfield so that soccer fields, multi-use fields and subsequent future facilities will be exempt when in use and add an additional exception as subsection C that allows for park patrons to walk on lit walking paths as follows:

- C. Park patrons while walking on properly lit walking paths in parks.

Modification to Chapter 12.36.130 – Regulations for Park Use.

The City has adopted by Ordinance the following rules and regulations for park use:

12.36.130 - Regulations for Park Use:

The following regulations shall apply to all parks and park facilities in the City:

- A. No person shall cut, deface, remove or damage any tree, shrub, plant, turf, structure or building.
- B. No person shall indulge in any loud, boisterous or riotous conduct or activity.
- C. No person shall throw or deposit any bottle, can, broken glass, paper, rubbish, or waste material of any kind at any place except in containers placed for such purposes.
- D. No person shall drive or operate any vehicle, cycle or automobile on any area not designated for such purposes.
- E. No person shall sell any goods, merchandise or articles unless a special permit is granted pursuant to the provisions in this chapter.
- F. No person shall bring or permit in any park any horses, dogs (except "seeing eye" dogs) cats, or any other animal except such animals which are brought for purposes of exhibition pursuant to a special permit in a designated area.

After review of the adopted rules and regulations in parks, the Parks and Recreation Commission recommended modifying subsection E and F to more accurately reflect existing park uses and adding sections G through O to prohibit or monitor activities that could negatively affect the City's parks or our park patrons.

Amend subsection E to add "services" as follows:

E. No person, shall sell or offer for sale any goods, merchandise, services or articles unless a special event permit is granted pursuant to the provisions of this chapter or a specific concession or contract granted by the City.

This change prohibits commercial services from being offered in public parks without the City's knowledge and insurance and indemnification when necessary.

Since the existing code does not allow for patrons to bring domestic animals under owner controls into our parks the recommendation is to replace section F in its entirety as follows:

F. Prohibition of Animals in Parks. No person shall cause, permit, or allow any animal owned or possessed by him or her, or any animal in the custody or control of such person, to be present in any park except:

1. Equine animals being led or ridden under reasonable control upon a bridle path, trail or park area authorized and provided for such purpose;
2. Equine or other animals which are hitched or fastened at a place expressly authorized and designated for such purpose;
3. Dogs or cats when caged, or when led by a cord, leash or chain not more than six feet long, or when confined within the interior of a vehicle;
4. Service animals which have been specially trained to do work or perform tasks for an individual with a disability.

Additionally, the parks and Recreation Commission recommended the additions of – subsections G – O to control, monitor or prohibit activities that could negatively affect our parks or park patrons:

G. Permit to Gather - No person, company, society, organization, gathering or group of more than twenty-five persons shall hold or conduct any picnic, celebration, parade, event, gathering, assembly or meeting in any park within the City without first obtaining a written permit to do so by the Parks and Recreation Department, and no person shall attend, take part in or be a participant in any such picnic, celebration, parade, exercise, gathering, assembly or meeting in a park unless the permission has first been obtained.

H. Amplified Sound in City Parks

1. The intent of this section is to reasonably regulate the use of parks within the City in such a manner that various groups may enjoy such parks without unduly interfering with or creating conflicts with other groups, and to insure that if public address systems, amplified instruments or percussion instruments are used within the parks, that they shall be used in such place and manner that they will not unduly interfere with or be an annoyance to

other groups or individual people who may be using the parks at the same time or to the surrounding neighborhood.

2. Public address systems, acoustical instruments, and/or electrically amplified instruments are prohibited unless the City Manager or his designee finds the amplification meets the criteria stated in paragraph (a) above, and the amplification use is approved in writing by and in the sole discretion of the City Manager or his designee.
- I. No person shall interfere with the use of any scheduled group or activity that has received a permit from the City for use of said park.
 - J. Except as authorized in writing by the director, or except in performance of an official duty, no person shall post, place, or erect any bill, notice, paper, or advertising device or matter of any kind within a park.
 - K. Use or Sale of Narcotics and Illegal Drugs in Parks.
 1. No person shall enter, be in or remain in any park owned, operated or controlled by the city, while in possession of, transporting, purchasing, selling, giving away or consuming any narcotics or illegal drugs, except possession of or consumption of prescription medication by the person for whom it was prescribed.
 - L. No person shall make fires in any places other than barbeques or fire pits either provided within City parks or within personal barbeques adhering to the following:
 1. Barbeques must be a minimum of 6” off the ground;
 2. Barbeques cannot be within 25 feet of a playground;
 3. Barbeques cannot be left unattended;
 4. All grease, coals and debris must be properly disposed of in the proper receptacle or removed from the park upon exit.
 - M. No person shall wound, kill or catch or attempt to catch any bird or animal.
 - N. No person shall loiter at or about any bathroom facility open to the public.
 - O. No person shall bring into a city park an inflatable bounce house, without first completing a facility use application and providing the proper insurance and indemnification information.

JUSTIFICATION:

The change of the Banning Municipal Code will better ensure that Banning Parks allow for safe and enjoyable use of Banning’s parks by our patrons.

FISCAL IMPACT:

There is minimal Fiscal Impact associated with this change of the Banning Municipal Code to effect these changes. New signage will be needed throughout the parks system reflecting the changes. However, these signs are in need of replacement and the cost of replacement is included in the FY 2021-22 adopted budget.

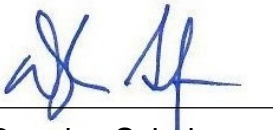
ALTERNATIVES:

1. Waive further reading of Ordinance 1566 and Introduce for a first reading.
2. Reject the proposed ordinance and provide alternate direction.

ATTACHMENT:

1. Ordinance 1566
<https://banningca.gov/DocumentCenter/View/9580/Ordinance-1566---Park-Rules>
2. Public Notice
<https://banningca.gov/DocumentCenter/View/9601/Att-2-Public-Notice-Affidavit---Ordinance-1566>

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Ralph Wright, Parks and Recreation Director

MEETING DATE: October 26, 2021

SUBJECT: First Reading of Ordinance 1579 amending Title 2 of the Banning Municipal Code revising regulations pertaining to the Parks and Recreation Commission's meeting attendance rules and finding an exemption from CEQA under section 15061 (B)(3) of the CEQA guidelines

RECOMMENDATION:

Staff recommends the City Council waives the first reading of the ordinance in its entirety and introduce Ordinance 1579 by title only, an Ordinance amending Title 2 of the Banning Municipal Code pertaining to the Parks and Recreation Commission meeting attendance rules and finding the Ordinance exempt from CEQA under section 15061(B)(3) of the CEQA guidelines. If approved, the item will come before the City Council for a second reading at the next regularly scheduled meeting on November 9, 2021.

BACKGROUND:

The Parks and Recreation Commission has had to cancel 40% of its regularly scheduled meetings over the last year due to a lack of quorum and of the 15 regularly scheduled meetings since January of 2020, only two have had all five appointed Commissioners in attendance. Chapter 2.40.030 of the Banning Municipal Code allows for a commissioner to miss up to 66% of the nine annual regularly scheduled meetings before they are deemed to have resigned their office. This leaves little recourse to remove Commissioners that are unable to fulfil their obligations as a Parks and Recreation Commissioner and inhibits completion of Parks and Recreation Commission work in a timely manner.

At the special meeting of the City Council held on July 17, 2021, it was the consensus of the Council to amend Chapter 2.40 – Parks and Recreation Commission, of the Banning Municipal Code to better reflect the time requirements of Parks and Recreation Commissioners and ensure they are able to participate in regularly scheduled meetings.

The proposed Ordinance amends section 2.40.030 – Appointment of Members, Sub-Section D to adjust the maximum number of meetings the Parks and Recreation Commissioners may miss in a calendar year from its current allowance for six excused or unexcused meetings in a calendar year to a maximum of 2 meetings whether excused or unexcused. With this change, if a Parks and Recreation Commissioner misses two meetings in a calendar year, they will be deemed to have resigned their office and the City Council may appoint a new member to serve in the resigned commissioner’s place.

The change to Sub-Section D, results in the removal of Sub-Section E from the existing Ordinance as two absences whether excused or unexcused results in the resignation of office.

JUSTIFICATION:

The change of the Banning Municipal Code will better ensure that the Parks and Recreation Commission can meet on a regular basis and complete the policy and planning work required of the Commission.

FISCAL IMPACT:

There is no fiscal impact associated with this change of the Banning Municipal Code.

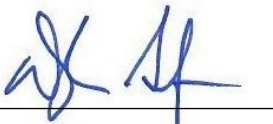
ALTERNATIVES:

1. Waive further reading of Ordinance 1579 and Introduce for a first reading.
2. Reject the proposed ordinance and provide alternate direction.

ATTACHMENT:

1. Ordinance 1579
<https://banningca.gov/DocumentCenter/View/9581/Att-1-Ordinance-1579---Parks-and-Rec-Commission>
2. Public Notice Affidavit
<https://banningca.gov/DocumentCenter/View/9599/Att-2-Public-Notice-Affidavit---Ordinance-1579>

Approved by:



Douglas Schulze
City Manager



**CITY OF BANNING
STAFF REPORT**

TO: CITY COUNCIL
FROM: Douglas Schulze, City Manager
PREPARED BY: Art Vela, Public Works Director
MEETING DATE: October 26, 2021
SUBJECT: Presentation from the San Gorgonio Pass Water Agency on the Backbone Pipeline

RECOMMENDATION:

Receive and file.

BACKGROUND:

Several years ago, the San Gorgonio Pass Water Agency (SGPWA) began looking at the option of extending a backbone pipeline from the end of the East Branch Extension at Noble Creek to Cabazon ("Project"). The goal of the project was to provide for and extend conveyance capacity of the SGPWA's allocated State Water Project water rights, and other water sources as they presented themselves, to the eastern part of the SGPWA's service area. The project stalled after much effort.

Recently, discussion and interest have begun to concentrate around the Project. City staff have met with SGPWA staff to discuss the City's interest and potential level of involvement should the project move forward.

Lance Eckhart, General Manager for the San Gorgonio Pass Water Agency (SGPWA) will provide an update to the City Council and public on the Project.

ATTACHMENTS:

None

Approved by:

Douglas Schulze
City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Staff Member Submitting Staff Report

MEETING DATE: October 26, 2021

SUBJECT: Consider Resolution No. 2021-104, Support of Local Measure H Benefitting San Gorgonio Hospital

RECOMMENDATION:

Staff recommends City Council adopt Resolution No. 2021-104 supporting Local Measure H benefitting San Gorgonio Memorial Hospital.

BACKGROUND:

In December, voters within the San Gorgonio Health District will be asked to approve Measure H, which provides funding for the emergency department at San Gorgonio Memorial Hospital. Measure H will replace funding that has been provided by Measure D for the past 20 years. As such, Measure H is a renewal of taxing authority that has been in effect for the past 20 years. Measure H does not propose an increase in the tax rate nor a change in how the funds will be used.

Measure H is not a tax increase but will allow the Health District to continue to levy a flat rate of \$60 per tax parcel to property within the District boundary (Banning, Beaumont, Cabazon, Cherry Valley, part of Calimesa and part of west Palm Springs). The funds raised by Measure H will remain flat at \$60 per parcel for the life of the Measure and will always be dedicated to the SGMH Emergency Department.

JUSTIFICATION:

Measure H provides critical funding for the emergency department at San Gorgonio Memorial Hospital. The emergency department provides life saving trauma services to the community and, without the services, the closest emergency department would be approximately 30 minutes away.

FISCAL IMPACT:

No fiscal impact to the City of Banning.

ALTERNATIVES:

1. Approve as recommended.
2. Do not approve and provide alternative direction.

ATTACHMENTS:

1. Resolution 2021-104
<https://banningca.gov/DocumentCenter/View/9609/Att-1-Resolution-2021-104-Support-for-Measure-H>
2. Campaign Launch Packet
https://banningca.gov/DocumentCenter/View/9608/Att-2-CampaignLaunchPacket_SGMH_100721F3

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Art Vela, Director of Public Works

MEETING DATE: October 26, 2021

SUBJECT: Resolution No. 2021-106 Approving Agreement Pursuant to Government Code Section 66462.5 Between Vintage-Stone Eagle, LLC and City of Banning for Acquisition of Certain Real Property Interests (TTM 33540) in Connection with Off-Site Improvements

RECOMMENDATION:

Staff recommends that the City Council adopt Resolution No. 2021-106, a Resolution of the City of Banning Approving that certain Agreement Pursuant to Government Code Section 66462.5 Between Vintage-Stone Eagle, LLC and City of Banning for Acquisition of Certain Real Property Interests (TTM 33540) attached hereto as Attachment "1".

BACKGROUND:

Vintage-Stone Eagle, LLC is the owner and developer of certain real property consisting of approximately 65 acres generally located north of Gilman Street and west of Wyte Way in the City of Banning, and identified as Assessor's Parcel Numbers 535-070-014, 535-110-002, -006, -011, -012; 535-311-006 through -023, and -029; 535-312-001 through -024; 543-150-007 through -019 (collectively "Subject Property").

On September 26, 2006, the City of Banning ("City") adopted Resolution No. 2006-58 adopting a Mitigated Negative Declaration and Mitigation Monitoring Program for Tentative Tract Map 33540 ("MND for TTM 33540") to allow the subdivision of 65 acres in connection with the development of 172 residential lots, three open space lots, a flood control basin and street and related improvements connection with Tentative Tract Map No. 33540 ("TTM 33540") on the Subject Property.

On November 7, 2018, the City of Banning Planning Commission adopted Resolution No. 2018-14 recommending that the City Council approve the modification and phasing of previously approved TTM 33540 and Design Review No. 18-7003 to reduce the number of residential lots to 143 single-family residential lots and to include two detention basins,

three open space lots, and one Homeowner's Association lot subject to certain conditions of approval.

On December 11, 2018, the City Council adopted Resolution No. 2018-149 finding that in accordance with California Environmental Quality Act (CEQA) Guidelines Section 15162, a subsequent environmental document is not required under CEQA. Resolution No. 2018-149 also approved Design Review No. 18-7003 to reduce the number of residential lots to 143 single-family residential lots and to include two detention basins, three open space lots, and one Homeowner's Association lot subject to certain conditions of approval ("Project").

Pursuant to the Agreement, the City and Developer acknowledge that to facilitate the orderly development of public street and related improvements on the Subject Property, the Project was approved subject to certain conditions of approval, including certain conditions relating to rights of way set forth in Section J of the Recommended Final Conditions of Approval, which are incorporated herein by this reference. Pursuant to Section J.6. Developer is required to "obtain right-of-way or offer to dedicate for public purposes the necessary right-of-way to construct the knuckle at the westerly end of Gilman Street" ("Subject Street Knuckle Improvements"). The Subject Street Knuckle Improvements include the construction of public street, slope, drainage, utility improvements, and all uses necessary or convenient thereto. The form of the grant of permanent easement for the public street, public utility, and related purposes needed for the Subject Street Knuckle Improvements and the description of the area needed is attached as Exhibit "1" to the Agreement. The form of the grant of permanent easement for the public street, slope, and related purposes needed for the Subject Street Knuckle Improvements and the description of the area needed is attached as Exhibit "2" to the Agreement. The form of the temporary construction easement agreement for the use of the temporary construction easement area needed to facilitate the construction of the Project is attached as Exhibit "3" to the Agreement.

The City and Developer acknowledge that a portion of the property needed to construct the Subject Street Knuckle Improvements, as described in the conditions of approval for TTM 33540 is on private property not owned or controlled by Developer.

The Street Knuckle Improvements are required to provide regular secondary access for traffic circulation, a looped water distribution system and sewer collection system amongst other utilities (e.g., cable, telephone, etc.).

The Developer has provided credible evidence that Developer has made a good faith effort to acquire the right-of-way and easements but has been unable to do so by negotiated purchase. To facilitate the acquisition of the right of way needed for the Project, the Developer has requested that the City acquire the right of way needed for the Subject Street Knuckle Improvements pursuant to Government Code Section 66462.5.

Pursuant to Government Code Section 66462.5, when a condition of a subdivision map approval or a development agreement requires the installation or construction of off-site improvements on property not owned or controlled by a developer, and title cannot be obtained by negotiated purchase, a city is required to commence proceedings to acquire the necessary property interests or right of way by eminent domain or such off-site improvement conditions will be waived. In the case of the Project, compliance with the conditions of approval are necessary and should not be waived.

Pursuant to Government Code Section 66462.5, a city and a developer may enter into an agreement to allocate the costs and responsibilities for acquisition of the right-of-way and/or easements necessary for the orderly development of a project. To facilitate the satisfaction of the conditions of approval, City and Developer have mutually agreed to enter into the Agreement, which sets forth the obligations for the costs and responsibilities in connection with the acquisition of the necessary right of way for the Subject Street Knuckle Improvements.

JUSTIFICATION:

The approval of the Project contained conditions of approval that require the Developer to obtain right-of-way or offer to dedicate for public purposes the necessary right-of-way to construct the Subject Street Knuckle Improvements, which include the construction of public street, slope, drainage, utility improvements, and all uses necessary or convenient thereto. The Agreement will facilitate the development of the Project and compliance with the conditions of approval, which require the construction of said Subject Street Knuckle Improvements.

FISCAL IMPACT:

The Developer is responsible for all costs associated with the cost of acquisition of the property interests needed for the Subject Street Knuckle Improvements. Upon execution of the Agreement, the Developer is required to deposit \$35,000, as a deposit, to the City and agrees to deposit additional deposits to keep no less than \$35,000 in the deposit account. The deposit will be used to reimburse the City for costs incurred in the acquisition process. Additionally, Developer will provide the City with the entire amount to acquire the real property interests by either negotiated purchase or pursuant to the Eminent Domain Law.

CEQA DETERMINATION:

City Staff has reviewed the terms of the Agreement and finds that the Agreement does not make any physical changes to the Project previously reviewed and approved by the City pursuant to Resolution No. 2006-58, which adopted a MND for TTM 33540 that would cause any new or more severe impacts than what were previously reviewed in the MND. The terms of the Agreement are administrative in nature, and the City therefore finds that the Agreement does not require, and is not subject to, additional environmental review under CEQA.

ATTACHMENTS:

1. Resolution 2021-106
<https://banningca.gov/DocumentCenter/View/9642/Att-1-Resolution-2021-106-Vintage-Stone-Eagle-LLC>
2. Map depicting location of TTM 33540
<https://banningca.gov/DocumentCenter/View/9640/Att-2-TR-33540-Combined-Site-Maps>
3. Agreement Pursuant to Government Code Section 66462.5 Between Vintage-Stone Eagle, LLC and City of Banning for Acquisition of Certain Real Property Interests (TTM 33540)
<https://banningca.gov/DocumentCenter/View/9641/Att-3-Agreement-Pursuant-to-Gov-Code-66462-TTM33540-Street-Knuckle-Offsite-Improvements-92121>

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager
Kevin G. Ennis, City Attorney

MEETING DATE: October 26, 2021

SUBJECT: Expiration of Governor’s Executive Order that “Relaxed” the Brown Act’s Provisions Related to Remote Attendance by Members of the City Council and City Commissions, Resumption of In-Person Meetings with Continuation of Remote Attendance Option for Members of the Public, and Consideration of Alternatives Allowed under AB 361

RECOMMENDATION:

Staff recommends the City Council return to in-person meetings for members of the City Council and City Commissions, continue to allow the public the option of attending meetings by Zoom, provide for remote attendance of Councilmembers and Commissions only under the standard procedures of the Brown Act, but not make other special findings needed to permit continued routine remote attendance by Member of the City Council and Commission Members required by AB 361.

BACKGROUND:

A. Governor Newsom’s Executive Order that “Relaxed” the Brown Act and its Expiration

On March 17, 2020, near the beginning of the COVID-19 pandemic, Governor Newsom issued Executive Order (“EO”) N-29-20 that “relaxed” the teleconferencing requirements of the Brown Act to facilitate virtual meetings during the COVID-19 declared emergency. Under those so-called “relaxed” standards, Member of the City Council and Members of the City’s Planning and Parks and Recreation Commissions could attend meetings of those bodies by remote teleconference connections (by telephone or Zoom) without having to follow standard procedures for remote attendance of members. The standard procedures, in the absence of the EO, require each remote location where the member is physically located to be listed on the agenda and posted at that location. The public must also be allowed to participate in the meeting from those listed remote locations.

That EO allowed the City Council and City Commissions during the beginning of the pandemic to meet only on a remote teleconference platform. After several months, the

City Council then met in-person in the City Council Chambers with one or more Members on Zoom, and then thereafter, a Member would occasionally attend all or a portion of a meeting by Zoom. This was done initially because in-person gatherings were considered a health risk due to the potential for transmission of COVID-19. Over the last few months, and as the pandemic has abated, attendance by Members of the City Council has been predominantly in person with an option for the public to attend either in person or by Zoom.

These relaxed standards expired on September 30, 2021 when Governor Newsom's Executive Order that allowed for the practice expired. In its place, Assembly Bill 361 ("AB 361") took effect on October 1, 2021. AB 361 has made it more difficult for cities and other public agencies to continue to permit member of legislative bodies (City Councils and Commissions) to attend remotely.

B. AB 361's New Rules that Permit Remote Attendance but only with Special Findings and Requirements

Under AB 361, the Brown Act now provides that a Brown Act body, such as the City Council or a City Commission, that wants to continue to allow remote teleconference attendance by one or more its members may do so only if the Brown Act body makes one of three potential findings: (1) that it is meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measure to promote social distancing; (2) the Brown Act body determines by majority vote that, whether as a result of the emergency, meeting in person would present an imminent risk to the health or safety of attendees; or (3) that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

If the body cannot make, or does not want to make, one of these findings within 30 days of a meeting where a member attended remotely and then every 30 days thereafter, then the Brown Act body cannot allow a member to attend remotely. The only exception to that preclusion of remote participation by a member of the body is if the City follows the previous and still continuing standard Brown Act provision that requires the agenda for the meeting to list the remote teleconference location and members of the public are allowed to attend and speak from that remote location.

So, if the City Council wants to allow its members to attend remotely without having to post the location of the remote location and allow members of the public to attend from that remote location, the City Council would need to make one of the required findings under AB 361 that are summarized above. Given that the City Council has already been meeting in person, it would be difficult for the City Council to make findings No. 2 and 3 that meeting in person poses a risk to them and others. That leaves only finding No. 1 which is that the City Council is meeting during a proclaimed state of emergency and either the City, County or State has imposed or recommended measures to promote social distancing. At this point in time, neither the City Council nor the Governor has repealed the overall proclamation of the state of emergency. In addition, there are some state rules issued by Cal OSHA that do recommend social distancing in the workplace.

However, even if the City Council were to rely on that finding No. 1 to allow the City to take advantage of the relaxed standards for remote attendance of its members, AB 361 requires that those findings must be renewed and made every 30 days. This means that the City Council would have to repeatedly, and every month, make a finding that justifies the remote attendance by one or more of its members.

In addition, if the City Council wanted to use AB 361's provisions and allow remote attendance without noting the location on the agenda and posting a notice at the remote location, the City would need to follow certain procedures for its meetings. Those certain procedures required by AB 361 include the following:

- The City cannot require public comments to be submitted in advance of the meeting.
- Agencies may not close a public comment period until members of the public are given the opportunity to register and the time for that comment period has elapsed, whether it is for a specific agenda item or a general comment period. If an agency does not provide a timed public comment period, but takes public comment separately on each agenda item, it must allow a reasonable amount of time per agenda item to allow members of the public the opportunity to provide public comment, including time to register or "otherwise be recognized for the purpose of providing public comment."
- In the event of a disruption that prevents the City from broadcasting the remote meeting, or in the event of a disruption within the City's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, AB 361 prohibits the legislative body from taking any further action on items appearing on the meeting agenda until public access to the meeting via the call-in or internet-based options is restored.

Importantly, to continue meeting remotely pursuant to AB 361, an agency must make periodic findings that: (1) the body has reconsidered the circumstances of the declared emergency; and (2) the emergency impacts the ability of the body's members to meet safely in person, or state or local officials continue to impose or recommend measures to promote social distancing. These findings need to be made not later than 30 days after teleconferencing for the first time pursuant to AB 361, and every 30 days thereafter. See **Attachment No. 1** for the relevant text of AB 361 on this subject (Government Code Section 54953 (e)).

ANALYSIS:

The City Council's current practice over the last several months is for Councilmembers to attend Council meetings in-person. Given this practice, it would be challenging for the City Council to find that the City needs the remote attendance option to practice social distancing and reconcile that finding with its current practice of in-person attendance. If the City Council decides that it does not want to follow AB 361's special procedures, the City can still choose to make its meetings available to members of the public through

Zoom as it currently does now. Staff notes that many members of the public like the convenience of attending only by remote teleconference (currently by Zoom.) In addition, applicants, consultants, and other representatives who live or work outside of Banning and may otherwise wait a long time before their item comes up on the agenda, appear to appreciate the opportunity to appear by Zoom from their offices or homes rather than to attend in person.

Also, if the City knows in advance that a member is going to be out of town, the City can still follow the prior, standard and alternative provisions in the Brown Act that allow remote attendance by listing that location on the agenda, posting the location where the member is located, and permitting attendance of that member under that traditional procedure. Those procedures were not eliminated by AB 361. See **Attachment 2** for the text of that current and continuing remote teleconference provision (Government Code Section 54953 (a) and (b)).

In further evaluating this issue, City staff believes that the City Council should give policy direction on how the City's Planning Commission and Parks and Recreation Commission should operate with respect to remote attendance by members. City Staff suggests that whatever approach is taken by the City Council, that City staff for the Planning Commission and Parks and Recreation Commission should follow the same approach when staffing and advising those Commissions in their operations.

FISCAL IMPACT:

There is no significant financial effect to the City whether the City chooses to invoke the procedures under AB 361 or not. If the City chooses to follow AB 361's provisions to allow remote attendance of City Council or Commission members, some staff time and cost will be incurred in preparing agenda items to make monthly findings as to the need for the continued remote attendance by members. The City will continue to incur some cost by using Zoom at meetings for public attendance.

ALTERNATIVES:

1. Return to in-person attendance at City Council Meetings by Members of the City Council, while allowing remote attendance by Members under the traditional Brown Act rules, but allowing members of the public to attend by remote teleconference (currently Zoom);
2. Follow AB 361's procedures and make the required findings to permit remote attendance by Members of the City Council, along with continuing to permit members of the public to attend by remote teleconference (currently Zoom); or

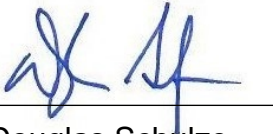
Require in-person attendance by Members of the City Council, Members of the City Commissions and by the public and discontinue remote attendance by the public by remote teleconference (currently Zoom).

Whichever option is selected, it is recommended that the City Council direct staff to implement similar procedures for the City's Planning Commission and Parks and Recreation Commission.

ATTACHMENTS:

1. Relevant Provisions of AB 361 (Government Code Section 54953 (e))
<https://banningca.gov/DocumentCenter/View/9612/Attachment-1>
2. Traditional Remote Teleconference Provisions (Government Code Section 54953 (a) and (b))
<https://banningca.gov/DocumentCenter/View/9611/Attachment-2>

Approved by:



Douglas Schulze
City Manager