



**AGENDA
SPECIAL CITY COUNCIL MEETING
CITY OF BANNING, CALIFORNIA**

September 6, 2022

9:00 a.m.

In Chambers and via Zoom

Council Chambers
99 E. Ramsey Street
Banning, CA 92220

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 via Zoom so that members of the public may observe and participate in this meeting electronically. If you 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). Esta reunión se lleva a cabo en la Cámara y a través de Video/Teleconferencia en Zoom para que los miembros del público puedan observar y participar en esta reunión de manera electrónica. Si elige participar en esta reunión a través de Zoom, acepta cumplir con los Estándares comunitarios de Zoom para reuniones públicas de la ciudad (que se proporcionan en su totalidad en la última página de la 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/85767260708?pwd=bWREMnJIN0dCV1BMdVB3bVlFZVFldz09>

Meeting ID: 857 6726 0708

Password: 092220

Dial in: +1 669 900 9128 ♦ Meeting ID: 857 6726 0708

1. CALL TO ORDER

Roll Call

2. PUBLIC COMMENT – Agenda Items Only

This is the time for general comments related to matters on the agenda. Public comment will also be accepted for each agenda item after the staff report and initial Council questions have concluded.

3. REPORTS OF OFFICERS

- 3.1. City Council District 2 Vacancy Interviews4
(Staff Report: Doug Schulze, City Manager)

Recommendation: Staff recommend that City Council interview applicants for the City Council District 2 vacancy. City Council may choose to appoint one of these candidates following the interviews at today's meeting, at the next regular meeting on September 13, 2022, or provide staff with alternate direction.

- 3.2. Consideration of Resolution 2022-119, Appointing One Candidate to Fill the Remaining Term for the Office of City Council Member from District 2; or Provide Alternative Direction, including the Delay in the Process of Filling the Appointment, in Order to Consider Other Options for Filling the Vacancy Under Government Code Section 36512..... **6**
(Staff Report: Doug Schulze, City Manager)

Recommendation: Adopt Resolution 2022-119, appointing one applicant to fill the remaining term of City Council Member from District 2, to be effective immediately.

4. ADJOURNMENT

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.

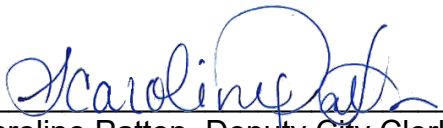
Estándares comunitarios de Zoom para Reuniones Públicas

Al participar en esta reunión en Zoom, usted acepta cumplir con los Estándares Comunitarios para Reuniones Públicas de la ciudad de Banning. Los que atienden por Zoom que no cumplan con estos estándares pueden ser retirados de la sala de reuniones.

- Su micrófono debe permanecer en silencio, y solo puede reactivar su micrófono cuando / si es reconocido por el alcalde.
- Su cámara debe estar apagada a menos que sea reconocido por el alcalde.
- Para indicar el deseo de hacer un Comentario Público, debe utilizar la función Levantar la mano. El alcalde no reconocerá a quienes no hayan utilizado la función Levantar la mano.
- Los comentarios públicos de lo que atienden por Zoom seguirán inmediatamente los comentarios en persona de los miembros del público en las Cámaras del Consejo.
- Si no cumple con estas pautas de la comunidad, es posible que lo destituyan por interrumpir la reunión que tiene lugar en las Cámaras del Consejo. Puede volver a unirse a la reunión, pero es posible que lo eliminen por cada violación de estos estándares de la comunidad.
- La función de chat estará deshabilitada para todas las Reuniones del Ayuntamiento en Zoom.

AFFIDAVIT • DECLARACIÓN JURADA

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 1st day of September 2022.


Caroline Patton, Deputy City Clerk
Secretario adjunto de la ciudad

PUBLIC NOTICE • NOTICIA PÚBLICA

Meeting Agendas and Notices

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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. *Special meetings do not have public comment periods for non-agenda items.*

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.

¿Necesita servicios de traducción para participar? Contacto Oficina del Secretario de la Ciudad.

CONTACT • CONTACTO

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: September 6, 2022

SUBJECT: City Council District 2 Vacancy Interviews

RECOMMENDATION:

Staff recommend that City Council interview applicants for the City Council District 2 vacancy. City Council may choose to appoint one of these candidates following the interviews at today's meeting, at the next regular meeting on September 13, 2022, or provide staff with alternate direction.

BACKGROUND:

On July 12, 2022, Mayor Pingree submitted his resignation letter to the City Clerk's Office. On July 14, 2022, he submitted an amended resignation letter, moving the date of its effect from August 31, 2022 to the time the City Council appoints a successor.

Following the notification of the impending vacancy at the July 12, 2022 Regular City Council Meeting, the Council directed staff to conduct a recruitment for qualified candidates to fill the position. The City Clerk's Office publicly noticed the vacancy in the Record Gazette in the July 22, 2022 edition. The Record Gazette published a web story on the vacancy on July 28, 2022 and it appeared as a front-page article in the July 29, 2022 edition. Both the City of Banning and the Record Gazette Facebook accounts promoted the vacancy and application period, with information about when and how to apply.

Additionally, the information was posted on the City's website on July 13, 2022. An image with details about the vacancy and a link to the application appeared on the City's homepage beginning on July 13, 2022.

At the City Council's Special Meeting on August 18, 2022, a motion to fill the vacancy by appointment was made and approved by a majority vote (3-2).

Thereafter, the recruitment process started over and a new recruitment period was opened to run from August 19, 2022 through August 31, 2022 at 5:00 p.m. on August 31, 2022.

During the 44-day application period (July 13 to August 12 and August 19 to August 31), the City Clerk's Office received seven applications. Two applicants were not residents of City Council District 2. One applicant, Juanita Maestaz, withdrew her application on August 31, 2022. The remaining four applicants are registered voters in the City of Banning's District 2 and are qualified to serve:

- Cynthia Barrington
- Alberto Chavez
- Juan "Rick" Minjares
- Bonnie Morse

ALTERNATIVES:

1. Following these interviews, City Council may move to appoint an applicant to fill the vacancy immediately.
2. Delay the appointment decision until the next regular meeting on September 13, 2022.
3. Direct staff to reopen the recruitment.

ATTACHMENTS:

1. Applicant Packet and Written Answers
https://banningca.gov/DocumentCenter/View/11259/Att-1-2022-09-01_Packet-of-District-2-Applicants
2. Written Questions
https://banningca.gov/DocumentCenter/View/11260/Att-2-2022_City-Council-Vacancy_Written-Questions
3. Sample Interview Questions
https://banningca.gov/DocumentCenter/View/11261/Att-3-2022_Sample-Questions-for-City-Council-Candidates
4. Public Notice of Vacancy – Proof of Publication
https://banningca.gov/DocumentCenter/View/11257/Att-4-2022-07-22_Proof-of-Publication
5. Record of Public Noticing of the District 2 Vacancy
<https://banningca.gov/DocumentCenter/View/11258/Att-5-Record-of-Noticing-for-District-2-Vacancy---Update>

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Caroline Patton, Deputy City Clerk

MEETING DATE: September 6, 2022

SUBJECT: Consideration of Resolution 2022-119, Appointing One Candidate to Fill the Remaining Term for the Office of City Council Member from District 2; or

Provide Alternative Direction, including the Delay in the Process of Filling the Appointment, in Order to Consider Other Options for Filling the Vacancy Under Government Code Section 36512

RECOMMENDATION:

Adopt Resolution 2022-119, appointing one applicant to fill the remaining term of City Council Member from District 2, to be effective immediately.

BACKGROUND:

On July 12, 2022, Mayor Pingree submitted his resignation letter to the City Clerk's Office. On July 14, 2022, he submitted an amended resignation letter, moving the date of its effect from August 31, 2022 to the time the City Council appoints a successor.

Government Code Section 36512(b) provides that, within 60 days of an office becoming vacant, the City Council shall either (1) fill the vacancy by appointment or (2) call a special election to fill the vacancy. At the City Council's Special Meeting on August 18, 2022, a motion to fill the vacancy by appointment was made and approved by a majority vote (3-2). Pursuant to Subsections (b) and (e)(1) of Section 36512, Mr. Pingree's resignation and the appointment to fill his vacancy will occur simultaneously.

JUSTIFICATION:

Following the initial notification of the impending vacancy, City Council directed staff to conduct a recruitment for potential candidates. The City Clerks' Office publicly noticed the vacancy in the Record Gazette in the July 22, 2022 edition. The Record Gazette published a web story on the vacancy on July 28, 2022 and it appeared as a front-page article in the July 29, 2022 edition.

Both the City of Banning and the Record Gazette Facebook accounts promoted the vacancy and application period, with information about when and how to apply.

Additionally, the information was posted on the City's website on July 13, 2022. An image with details about the vacancy and a link to the application appeared on the City's homepage beginning on July 13, 2022.

Thereafter, at the August 18, 2022 Meeting the process started over and a new recruitment period was opened to run from August 19, 2022 through August 31, 2022 at 5:00 p.m. on August 31, 2022.

The City Clerk's Office has received seven applications. Two applicants were not residents of City Council District 2. One applicant, Juanita Maestaz, withdrew her application on August 31, 2022. The remaining four applicants are registered voters in the City of Banning's District 2 and are qualified to serve:

- Cynthia Barrington
- Alberto Chavez
- Juan "Rick" Minjares
- Bonnie Morse

Interviews of the four qualified applicants are scheduled to immediately precede this agenda item on the September 6, 2022 Special Meeting Agenda.

ADDITIONAL ISSUES:

At the August 23, 2022 Regular City Council meeting, a member of the public suggested that the City needed to be advised of, and should consider, that it has the authority to adopt an ordinance pursuant to subsection (c) of Government Code Section 36512 by which the City could decide to fill the vacant position by special election under certain circumstances. Pursuant to that subsection (c) of Section 36512, a city council may adopt an ordinance that would require any of the following: (i) the filling of every city council vacancy by special election and not by appointment; (ii) the calling of special elections to fill every vacancy if petitions bearing a specified number of verified signatures are filed; and (iii) provide that a person appointed to fill a vacancy only holds office until the date of special election which is immediately called to fill the remaining term of any vacancy on the City Council. (See attached copy of Government Code Section 36512 as **Attachment 4**).

As explained by the Assistant City Attorney at the August 23, 2022 meeting, if the City Council wanted to undertake such an ordinance, the City would need to agendaize that type of ordinance for a subsequent meeting (subsequent to the August 18, 2022 meeting) for introduction and first reading and then adopt that ordinance at a following meeting. (When the Assistant City Attorney explained this process, she mistakenly used the word "recall" at certain points in her explanation rather than "vacancy." That was unintentional, which the Assistant City Attorney explained to the member of the public. However, we also correct that inadvertence now for clarity with all.)

Upon adoption of such an ordinance, the City Council could then act to call a special election under option (i), wait for petitions to be filed under option (ii), or call a special election and make an appointment under option (iii). Each of the options would have involved, or potentially involved in the case of option (ii), the calling of a special election to fill a vacancy. It is important to note the adoption of this type of ordinance would be a decision that would apply to the filling of all vacancies on the City Council, not just one, unless and until subsequently repealed.

In the case of the vacancy caused by the resignation of Councilmember Pingree, if such an ordinance is adopted, a special election would then be called for the “next regularly established election date” not less than 114 days from the call of the election. That next regularly established election date would be March, 2023. This ordinance option would therefore lead to the filling of Mr. Pingree’s vacancy by special election which is the same ultimate outcome as if the City Council had just simply called a special election to fill the vacancy but without the adoption of the ordinance. The ordinance approach would add several steps to that ultimate outcome (drafting, introduction and adoption of the ordinance), possible time for the circulation and consideration of a petition of voters (if that option were chosen) followed by the call the election. In addition, if option (iii) was chosen for the content of the ordinance, the City Council could also appoint a person to fill the position until the special election. In this way, it is an alternative that would have added several steps and time to the process and would ultimately place the City in nearly the same position as if a special election were called to fill the vacancy, but could allow a person to be appointed to fill the vacancy until that special election were held, if that option were chosen. It would, however, as stated earlier, have the effect of applying not just to the impending vacancy in District 2 but to all future vacancies, unless and until the ordinance is repealed.

If the City Council wants to consider such an ordinance and any of the options for its contents and undertake the steps to put it in place, City staff can be directed to delay action on the appointment until that ordinance is drafted and considered at an upcoming City Council meeting. Alternatively, the City Council may direct that such an ordinance be agendized and considered at an upcoming meeting to address other potential future vacancies but not with respect to the process of filling the current impending vacancy in Councilmember Pingree’s office. It is important to note that the City Council must make a decision no later than 60 days from the commencement of the vacancy to make an appointment or call a special election. If the City Council chooses to consider the ordinance alternative prior to making a decision on filling Mr. Pingree’s vacancy, the time within which to do so would be uncertain. Mr. Pingree office could become vacant by operation of law by his impending move out of state (rather than by his resignation letter). Mr. Pingree could also further amend his resignation letter to make it effective immediately. Depending on those factors, there is some uncertainty as to when the added steps required to prepare, consider, and adopt such an ordinance could be completed and a special election called to fill the vacancy under that new ordinance within the time required by law.

FISCAL IMPACT:

None

ALTERNATIVES:

1. Adopt Resolution 2022-119, appointing one of the applicants to the City Council vacancy for District 2.
2. Do not adopt Resolution 2022-119 and direct staff to reopen the recruitment.
3. Delay the appointment of a successor.
4. Consider other alternatives, including the adoption of an ordinance discussed under "Additional Issues" noted above.

ATTACHMENTS:

1. Resolution 2022-119, Appointing One Candidate to District 2 City Council Vacancy
<https://banningca.gov/DocumentCenter/View/11266/Att-1-Resolution-2022-119-City-Council-District-2-Appointment>
2. Proof of Publication for Public Notice
https://banningca.gov/DocumentCenter/View/11263/Att-2-2022-07-22_Proof-of-Publication
3. Promotion of Vacancy
<https://banningca.gov/DocumentCenter/View/11264/Att-3-Record-of-Noticing-for-District-2-Vacancy---Update>
4. Government Code Section 36512
<https://banningca.gov/DocumentCenter/View/11265/Att-4-Government-Code-Section-36512>

Approved by:



Douglas Schulze
City Manager