I. CALL TO ORDER: Chairman Ellis

- Pledge of Allegiance: Commissioner Price
- Roll Call: Chairman Ellis, Commissioner Shaw, Commissioner Krick, Commissioner Briant and Commissioner Price.

II. CONFIRMATION OF AGENDA:

III. PUBLIC COMMENTS:

At this time, the general public is invited to address the Planning Commission concerning any items that are not listed on the agenda, or items which are on the Agenda that are not public hearings or other items under the jurisdiction of the Planning Commission. Comments from the public of any non-agenda items will be limited to Five (5) minutes in accordance with City policy.

IV. CONSENT CALENDAR ITEMS:

Note: All items listed on the Consent Calendar may be enacted by a single motion without separate discussion. If a discussion or a separate vote on any item is desired by a Planning Commissioner, that item may be removed from the Consent Calendar and considered separately. All remaining items not removed from the Consent Calendar by a Planning Commissioner shall be voted on prior to discussion of the item(s) requested to be pulled.

1. Minutes of January 6, 2016 meeting

V. PUBLIC HEARINGS:

1. CONDITIONAL USE PERMIT NO. 15-8005, BOXING GYM LOCATED AT 141 N. SAN GORGONIO AVENUE (APN 540-164-011).
**APPLICANT’S REQUEST:**

A proposal to approve a 4,000 square foot boxing gym at 141 N. San Gorgonio Avenue in the Downtown Commercial district within a vacant tenant space. Filed by Lyle Nicochea, 47300 Morongo Road, Banning, CA 92220.

<table>
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<th>Order of Procedure:</th>
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<td>1. Staff report presentation</td>
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<td>2. Applicant presentation</td>
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<td>3. Planning Commission discussion and questions for staff and applicant</td>
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<td>4. Open public hearing</td>
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<td>5. Close public hearing</td>
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<td>6. Planning Commission discussion</td>
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<td>7. Motion and Second</td>
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<tr>
<td>8. Planning Commission discussion on motion</td>
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<td>9. Call the question (Roll call vote)</td>
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**RECOMMENDATION:**

That the Planning Commission adopts Resolution No. No. 2016-02, recommending that the City Council take the following actions:

1. Adopt a Categorical Exemption, pursuant to Section 15301 (Existing Facilities); and

2. Adopt Resolution No. 2016-02 Approving Conditional Use Permit No. (CUP) 15-8005 subject to the Findings and Conditions of Approval.

**2. CONDITIONAL USE PERMIT NO. 15-8002 HIGHLAND SPRINGS MOBIL SERVICE STATION 300 S. HIGHLAND SPRINGS AVENUE (APN 419-140-028).**

**APPLICANT’S REQUEST:**

A proposal to approve the offsite sale of beer and wine from the existing gas station located at 300 S. Highland Springs Avenue (APN: 419-140-028) within the Sun Lakes Village Specific Plan; along with a determination of Public Convenience or Necessity. Filed by Mr. Sobhy Yousef dba Highland Springs Mobil 300 S. Highland Springs Avenue, Banning, CA 92220.

Staff Report………………………………………………………………………………………………...Page 35
Order of Procedure:
1. Staff report presentation
2. Applicant presentation
3. Planning Commission discussion and questions for staff and applicant
4. Open public hearing
5. Close public hearing
6. Planning Commission discussion
7. Motion and Second
8. Planning Commission discussion on motion
9. Call the question (Roll call vote)

RECOMMENDATION:

That the Planning Commission adopts Resolution No. No. 2016-01, recommending that the City Council take the following actions:

1. Adopt a Categorical Exemption, pursuant to Section 15301 (Existing Facilities);
2. Adopt Resolution No. 2016-01 Approving Conditional Use Permit (CUP) 15-8002 subject to the Findings and Conditions of Approval; and
3. Approve the Public Convenience or Necessity Findings for a Type 20 License for the Sale of Beer and Wine.

VI. REPORT FROM ASSISTANT CITY ATTORNEY:

1. REPORT AND PRESENTATION ON THE BROWN ACT, CIVILITY, AND PARLIAMENTARY PROCEDURE.

THIS ITEM IS CONTINUED FROM THE MEETING OF JANUARY 6, 2016

Report..................................................................................................................................................Page 69

NO ACTION ITEM

VII. PLANNING COMMISSIONER COMMENTS:

VIII. COMMUNITY DEVELOPMENT DIRECTOR’S COMMENTS:

IX. ADJOURMENT:

The City of Banning Planning Commission is hereby adjourned to the regular Planning Commission meeting of March 2, 2016 starting at 6:30 p.m. in the City Council Chambers.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Division (951) 922-3125. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting [28 CFR 35.102-35.104 ADA title II].
City of Banning

PLANNING COMMISSION MINUTES

January 6, 2016

A regular meeting of the City of Banning Planning Commission was held on Wednesday, January 6, 2016 at 6:30 p.m., in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, CA, 92220.

Commissioners Present: 
Chairman Ellis
Commissioner Shaw
Commissioner Krick
Commissioner Briant
Commissioner Price

Staff Present:
Acting Community Development Director, Brian Guillot
Assistant City Attorney, Robert Khuu
Acting Public Works Director, Arturo Vela
Recording Secretary, Sandra Calderon

I. CALL TO ORDER

II. CONFIRMATION OF AGENDA

III. PUBLIC COMMENTS

Inge Schuler, resident of Banning mentioned that at last December’s meeting was messy with frequent interruptions, she requested that the time allotted for public comments which is five (5) minutes sometimes gets interrupted from various people and when this happens it cuts down the time of the person that wants to be heard. She asked if it could be possible to stop the timer when someone stops talking and resume the timing when the person starts speaking again.

She added that at the last meeting showed that it is possible to have people heard more than once, and it seems that the Developers, or any proponents for a project are allowed unlimited time but citizens who would like to comment on the project are restricted to five (5) minutes. She asked if it’s possible to request an extension of the time allowed.

IV. CONSENT CALENDAR ITEMS

APPROVAL OF MINUTES: December 2, 2015.

ACTION (KRICK/PRICE): (Motion Carried 5 -0)

Planning Commission Meeting Minutes
January 6, 2016
Assistant City Attorney, Robert Khuu explained the revised Order of Procedure that is being implemented for public hearings to establish a clear record.

V. PUBLIC HEARINGS

1. TENTATIVE TRACT MAP (TTM) 36939, NO. 15-1001 PROPOSAL TO SUBDIVIDE A VACANT 34.6 ACRE LOT FOR PURPOSES OF CREATING 98 NUMBERED LOTS FOR SINGLE-FAMILY RESIDENTIAL DEVELOPMENT AND THREE (3) LETTERED LOTS AND REZONING TO ELIMINATE THE RL-10,000 OVERLAY AFFECTING THE WESTERN PORTION OF THE SITE TO LOW DENSITY RESIDENTIAL (LDR, 0 TO 5 UNITS PER ACRE), APN NO’S 535-430-001 THRU 021, 535-431-001 THRU 015, 535-432-001 THRU 017, 535-070-004 AND 006.

Acting Community Development Director, Guillot presented the staff report and stated that the proposal is to subdivide 34.6 acres of vacant land for the purposes of creating 98 numbered lots for single-family residential development along the three (3) lettered lots; it includes amendment to the Zoning Map to eliminate the RL-10,000 overlay affecting the western portion of the site. Application was filed by Peter Pitassi of Diversified Pacific. Guillot showed an aerial photo of the site showing the existing maps, he explained that one of them was from 2005 and it’s still described as a Tentative Map because it’s not recorded as a final map. The State of California extended many of these maps through State Legislation and this map is still active. The map to the east was recorded in 2007, he showed older housing stock to the south of the site and the Britton Ranch across from Sunset Avenue. Guillot explained that the General Plan allows five (5) dwelling units per acre in this zoning district and would be possible to have 173 units on this site.

The Zoning Ordinance requires minimum lot sizes of 7,000 square feet in this Zoning District with a minim dimension of 70 X 90 feet. The proposal is yielding 2.8 DU/acre, lot sizes range from 7,000 square feet to 19,000 square feet.

He showed a map of the homes located to the east and said that the lot sizes that are proposed are very similar.

Guillot said there were questions at the last meeting concerning parks and he added that the General Plan recommends that we have a neighborhood park within a half mile of the service area. Sylvan Park is located about 1,000 feet to the south of the proposed development.

Regarding the Environmental, an Initial Study Checklist was prepared and the entire document, including technical studies was included in the packet. He listed the recommended mitigated measures after examining the CEQA Initial Study Checklist and based on that, a recommended Mitigated Negative Declaration be adopted along with a plan that is monitored during the project development.

The project was circulated to the City Departments and other Agencies, comments were received and conditions of approvals were prepared based on those comments.

The project was advertised to the public several times on the first meeting and for this meeting, advertisements were made on the Record Gazette and the Press Enterprise, including several posting locations throughout the City.

Planning Commission Meeting Minutes
January 6, 2016

P2
Pete Pitassi, Sr. Vice President/Diversified Pacific gave a presentation, summarized the last presentation made; He showed the existing subdivision location, General Plan he said the designation is currently Low Density Residential (LDR), and the western portion has an RL-1,000 overlay which is the subject of the zone change request. There are two existing maps on this site, both were in existence before ownership of this property, the Map on the east is recorded and the Map on the west is not, but it’s still active.

Pitassi said the reason for the application tonight is due to the Alquist-Priolo Zone that was discovered to be in existence on the northern edge of the property which required a detailed geologic study. He showed an exhibit that represents the fault setback zone established by the geotechnical investigation in which five (5) trenches were dug in a north south direction to try to identify the fault trace and as testified to at the last hearing that is not an active fault, but however it’s mapped as required by the AP statute established by the State of California.

Pitassi showed a map that indicated the areas that cannot be built upon and as a result, a re-mapping and re-planning of the site took place and this is the Tentative Tract Map (TTM) 36939 which, if approved would override the two existing maps.

Pitassi said regarding a discussion during the last meeting, there was a concern regarding lot size and statistically, the lot to the east as referred as the Snow Creek tract, actually has slightly smaller lot size than what it’s been proposed.

Pitassi said they have reviewed, and are in agreement and support of all Ninety-Nine (99) of the conditions recommended by staff.

Chairman Ellis said he had a concern. He visited the Cal Tech website and as of December 10, 2015 revisions were made. He showed a copy of a map indicating two fault lines that run parallel further south.

Pitassi said he believes there are maps that are published by the State of California and asked Gary Wallace, Geotechnical Engineer to speak because his firm prepared the Geotechnical Report, did the trenching and actual observations on the site to determine where the trace of the fault is located and based on that, established the setback line on the maps shown.

Pitassi said that his personal belief is that often times those maps cannot be considered geographically accurate at such a small scale.

Gary Wallace, Geotechnical Engineer / RMA Group said he’s not familiar with the map provided by Chairman Ellis, but by looking at it, he noticed a straight line with a bend in it, and it’s likely to be a computer generated line that’s taken the natural bends of the fault out the presentation, and it’s more of a depiction of a general fault location because in nature, the faults tend to curb around and follow hills.

Wallace said the State of California through the Alquist-Priolo Act, identifies areas of acting faulting or suspected active faulting, and those zones were the bases of the study done. The zones are identified as areas of potential surface rapture hazard, and the map provided by Chairman Ellis does not illustrate that. When preparing the study, many sources of maps were reviewed. There is a general agreement on the fault location, but there are variations between the different maps and interpretations of the different Geologists, all were considered in the study and the recommendation for setback.
Chairman Ellis asked if the survey covers the south side to look for any types of faults.

Wallace said a trench was excavated from the north boundary of the property to the south, which will be perpendicular to the fault trace, and if there was something different, they would have crossed that. They did not see any faulting other than near the mountain front.

Chairman Ellis asked if he's familiar with Cal Tech and if he's aware that as of December 10, 2015 they did complete revision of the significant fault lines.

Wallace said Cal Tech is not the same as Alquist-Priolo. Alquist -Priolo identifies faults with potential for surface rapture hazard and Cal Tech is not devising maps for surface fault rapture hazard, it is a function that goes through the State and through the California Geological Survey.

Chairman Ellis said that a liability is placed on the City if the project is approved.

Pitassi said the City's obligation is to require the testing and the Geotechnical reports to be done and those were done. The results are recorded and included in report and it documents the extensive nature of the testing, protocol that was followed, observations and opinions of the Geotechnical Engineer. Pitassi reminded the Commissioner that there are approved maps on the site, and the intent is to correct the maps that were previously approved and bring them into conformance with the Alquist-Priolo Zone requirement of the State of California.

Chairman Ellis quoted the California Public Resource Code Sec. 2621.8, he added that he has looked at many maps over the years because one of the faults runs behind his house and remains concerned. He said a copy of the geological report was not part of the staff report.

Guillot said the geological report was not included, but it is referenced and available for anyone to view at the City.

Chairman Ellis said he understands that the City Council request that all reports get included in the file, and personally would like to review it.

Pitassi said that it is unfortunate that he was not able to see it in the packet, or approached staff to provide a copy of the report to read.

Chairman Ellis said he was just alerted about it in the last few days.

Chairman Ellis had other questions about the Mitigated Negative Declaration. He said it was surprise that Habitat for Humanity was on the report last month and understands that it was just a typographical error. He asked if the new report was proofread for accuracy because there are references to citrus groves that used to be on the property and talked to a lady that is 98 years old, born and raised in Banning who said she never saw a citrus grove there. There are references to a landfill that will be used in Corona, and doesn't understand why it would pertain to this project.

Pitassi said that the Initial Study was prepared by City Staff not by the applicant. He said that he's not aware of any obvious errors such as the ones mentioned.
Chairman Ellis said he wished to list them all page by page and obtain answers.

Chairman Ellis said he didn’t see anything mapped on the location of the high pressure gas lines. He added that he has an issue with the setback zone discussed. Substantial amount of water coming through two creeks off the Banning Bench as well as Montgomery Creek which is designated as a blue line creek and it’s not mentioned in the report.

Pitassi said that Montgomery Creek is not part of the project, and it’s outside of the project boundary.

Chairman Ellis asked if there are any talks about continuing four lanes from Wilson Street to Sunset Street.

Vela said development typically happens when a Developer comes in, or the City widens the road as a Capital Project. He said it’s not reasonable to ask the applicant to obtain the right-of-way and construct those improvements.

Chairman Ellis asked how will the residents safely cross Wilson Street.

Vela said the conditions of approvals do not include crosswalks, and at this point the nearest control intersection is Sunset Street.

Chairman Ellis voiced concern about people crossing the street, and feels this is a safety issue.

Chairman Ellis said he’s concern about the water flow coming down from the Bench because the entire western part of is in a floodway.

Vela said this project was conditioned to retain the 100-year, 3-hour storm which it’s a very restrictive standard and few other cities in our region requires that. Regarding the flood zone designation, there are specific design standards that the applicant will have to meet in order to build homes in those areas.

Pitassi said Montgomery Creek has been design to 100-year flood zone standards. Major channels are design to meet that standard.

Commissioner Krick said he hears the words “Try to get approval from Flood Control,” did not hear “Are going to get approval.”

Pitassi said they don’t have control of the Riverside Flood Control District, and as an applicant, they are required to make the attempt to obtain the right-of-way that’s been required, and believes everyone is acting in good faith and willing to cooperate.

Commissioner Krick asked if the entire bridge over Montgomery Creek will be improved.
Pitassi said they are required to try to obtain the right-of-way, and if they are able to get it, then the bridge will be widened.

Pitassi said that referring back to the flood zone issue, condition number 57 addresses that.

Chairman Ellis said there was a section in the report that refers to condominiums, townhouses and heights up to thirty-five (35) feet that will be allowed in a residential area.

Guillot said the Zoning Ordinance allows multi-family in the LDR zoning district, but it's not being proposed by the applicant.

Chairman Ellis asked who pays for the Mitigating Monitoring and Reporting Program for this project.

Pitassi said the Mitigating Monitoring Plan stipulates on each mitigating measure who is responsible for the tracking, completion etc. He said they are obligated to perform all the mitigations and the City will verify for completion.

Chairman Ellis said that on P39 No. 7 Finding of Fact: No easements of record. He asked if the gas lines doesn't run through the property.

Pitassi said there is an easement that does run through the property, and showed the gas line on the exhibit.

Pitassi said this is a Southern California Gas owned line it's at least 4 to 5 feet deep and will be doing some pot holing to verify the depth.

Chairman Ellis said the mailing list was not provided in the packet.

Guillot said the listing was not provided, but it is available at the counter. He added that several publications were made also.

Chairman Ellis asked who in the City made the independent judgment that this project is worthy of a Mitigated Negative Declaration.

Guillot said staff prepared the Initial Study and recommends the City Council adopt the Mitigated Negative Declaration.

Chairman Ellis said he was told documentations from PD was going to be received about this project. He added that he receive comments from several individuals that this development will create possible problems as a development on the south side of town.

Guillot said he did not receive any correspondence from the Police Department.

Chairman Ellis asked who will be maintaining the Open Land Zone.
Pitassi said Lot A will be turned over to the City and will be responsible for the maintenance.

Commissioner Krick said the City will be responsible, but there’s going to be an Assessment District formed to collect for the maintenance paid by the property owners.

Pitassi said the property will be annexed into an existing Landscape Maintenance District (LMD).

Chairman Ellis asked about P94 and a compact disk with appendices that should have been provided.

Guillot said the appendices were published and are included in the packet.

Chairman Ellis asked about a paragraph on P123 and wonders why it’s included in the report that reads “The site is highly disturbed by activities involving the removal of the citrus grove. There is a corrugated metal shed structure that is in a dilapidated condition. The majority of the site is covered by disturbed, ruderal vegetation.”

Pitassi said the consultant does a research on the property that could go back hundreds of years, looks at old aerial photographs and he documents what he believes was existing or previous uses on the property.

Chairman Ellis asked if it’s possible to get verification that the map he produced is not accurate.

Pittasi said he suspects that if Cal Tech representatives were present, they would be the first to admit it is not an accurate depiction of a fault, and it’s not geological accurate.

He refer to Gary’s earlier testimony, that when he produces his research to prepare this report and do field work, he uses the maps that are published by US Geological Service which are the official maps that are used by Geologists, and others when determining when faults occur.

Chairman Ellis asked about the construction of a trench on the north of the property to get the seasonal creek run off.

Pittasi said there will be a drainage swale not a trench and it will be located on the north side of the street. Its intent will be to pick up natural flow lines that will be coming from property to the north and direct it into the flood control or storm drain system on site.

Commissioner Krick asked it will be piped to Lot B or Lot C, or will the streets will be used to get it there.

Pittasi said it will be intercepted, might be surface flow or in a pipe, depending on the quantity. It will be determined at the final design.

Pittasi said all homes will have fire sprinklers as required by the California Building Code. There’s a section on the Building Code that addresses properties in high fire hazard areas, and it stipulates certain building detailing that occurs. He said they have built product in fire hazard areas before and it’s not unusual.
Chairman Ellis asked about P145 “Prior to grading permit issuance, the Project Proponent shall prepare a Storm water Pollution Prevention Plan. Project contractors shall be required to ensure compliance with the Storm Water Pollution Prevention Plan and permit periodic inspection of the construction site by the City of Jurupa Valley staff or its designee to confirm compliance.”

Guillot said it is a typographical error.

Chairman Ellis said had many questions and calls from people regarding water. He has been assured that sufficient water is available for this project, and was assured the sewer treatment plant is sufficient to handle the project as well.

Chairman Ellis asked when was the Burrowing Owl survey prepared.

Pitassi said there is a protocol that The U.S. Fish and Wildlife establishes, he doesn’t remember the actual months, but the survey was done to follow the protocol, and the results are included in the staff report.

Chairman Ellis asked Pitassi if he has any idea of the pricing of the homes.

Pitassi said they are not proposing homes with this application, and market rate housing is dependent on the time that the product comes on line and other variety of factors.

Commissioner Price question the lot size of the properties that range from 7000 to 19,000 square feet, he asked what type of property will go on a 19,000 square foot lot.

Pitassi said it would be a lot that will subject to a very nice lot premium, a very generous yard and it’s located in the end of a cul-de-sac.

Pitassi said these will be market rate homes.

Commissioner Krick asked the City Engineer if funds are set aside for when future traffic signal lights are needed in the City.

Vela said yes, there is a traffic signal fee the City collects, and when the City has enough money they will install them, or will enter into an agreement with the Developer to build it. He added that the pool of money is not dedicated to certain intersections and will be spend as needed.

Pitassi said this is a fee that is part of the Development Impact Fee Schedule adopted by the City Council, and it’s collected upon issuance of a building permit. He added that there is no Mello-Roos proposed on this project.

Chairman Ellis opened the floor for public hearing.
Inge Schuler, resident of Banning said many of the questions that were prepared by her were asked by Chairman Ellis, she added that she has a problem with the Mitigated Negative Declaration; it is unchanged from the document that was available to the public for the first time at the December 2, 2015 meeting, it was not on the website and was not included in the packet. The exception to the report is that the Habitat for Humanity heading was removed from all pages. The Developments that we should have in town should satisfy the needs of the prospective residents, 59 out of the 98 will have families with children that will live there.

The reference on P85 to P87 under Operational Characteristics, the Mitigated Negative Declaration refers “on-site recreational facilities and general management of common areas.”

In the minutes on P10 Mr. Pitassi maintained that the size of the development does not require him to build parks and private yards should be sufficient as they will be large between fifteen to nineteen thousand feet in size and public parks will accessible.

Shuler said this is not the kind of quality environment that we want in the City and there was dialogue regarding items raised by Chairman Ellis.

Linda Pippenger, resident of Banning talked about the financial impact on the future property owners when they will obtain home owners insurance. She added that this is a high fire risk area and there is a possibility for flooding. She added that Banning Citizens were asked to cut back on watering and utility rates have been raised several times. Regarding Police protection, she always understood the City is short-handed.

Douglass Kiser, resident of Banning said he has lived across from this proposed development for the last thirty (30) years. He mentioned that he has a concern about the validity of the Burrowing Owl findings. He mentioned that about a week ago, he saw one fly into a nest, and one nest was destroyed when the trenches were refilled. He”s seen a negative impact on the wild life.

The traffic is another concern and said he has witnessed many dangerous situations. Crosswalks are nonexistent on the north side of Wilson Street, and speeds are regularly in excess of fifty (50) miles per hour on this road. He feels the report submitted by the Biologist is not accurate, and recommends a more intense study be done.

Jess Hernandez owns a home at the east of the proposed project, he said he suspects this development will be low income housing, has worked in the City of San Bernardino for thirty (30) years and in the early 80’s they started advertising low income housing there, and as a result, crime rate has gone sky high for many years, and suspect this will happen in Banning.

Pitassi said that there are numerous subdivisions within the City currently that are developed under the same standards, they are not required to have public parks, an example given was the subdivision to the east commonly known as “Snow Creek.”

He referred to the General Plan and Zoning Standards as how this development is proposed, they are single family lots that provide adequate size that provide recreational area for individual families as occurs in every community in Southern California.
Regarding the Burrowing Owl issue, the Biologist followed the U.S. Fish and Wildlife protocol, they are required to walk the entire site and their observations are recorded within the report. A follow-up survey is required no less than thirty (30) days prior to any disturbance of the site, and if any are observed, there is a protocol about how they can be captured and relocated.

Chairman Ellis closed public hearing.

Chairman Ellis opened Planning Commission discussion.

Commissioner Shaw said the adjacent subdivision has been there a while. Parks were not required for it because it fell within the guidelines of subdivision development. He added that there are no existing crosswalks for the existing subdivision either, and it probably has the same density of families. Placing a crosswalk in the middle of the block, or without a control intersection is probably more dangerous than not having one.

Commissioner Shaw said he doesn’t think is up to this Developer to offer or be required to put in a crosswalk. He said the City should consider placing a crosswalk at Sunset and Wilson Street in the future.

Commissioner Shaw said he can’t believe the Cal Tech map was prepared without any actual field studies to locate that fault. He added that a copy of the geotech borings were provided to the Commissioners, and the Geotech did not find any evidence with his boings and trenches.

Chairman Ellis said an opinion from Cal Tech should be received regarding the validity of the map.

Commissioner Shaw showed a copy of a map that was provided to the Commissioners at the previous Planning Commission meeting showing the borings and trenches.

Commissioner Krick said he agrees with Commissioner Saw’s remarks regarding the subdivision next to the site, when comparing both, it’s almost a continuation of what started to the east already. He agrees that putting in a crosswalk is going to be a greater harm than good.

Commissioner Krick said the Developer is in agreement with the conditions of approval, and all required reports are in the file.

Chairman Ellis said he travel Wilson Street every day, he notices kids running across it and maybe a four way stop should be propped at Sunrise Street.

Chairman Ellis asked if relocation of the Burring Owls is acceptable, because he was told is not.

Guillot said there is a set protocol from U.S. Fish and Wildlife and if it’s not followed as recommended, arrests could be made.

Commissioner Price said a traffic light is needed.
Guillot said traffic is influenced more than just subdivisions and generally traffic signal lights are installed based on warrants or standards that are set-forth by the State of California. The applicant will address this at the time during construction.

Commissioner Price asked about constructing a small park at this development.

Chairman Ellis said he understands a park is not required per the City’s General Plan, and it’s not required in this development, but something should be considered to require one there.

Chairman Ellis called for a motion to continue this item for the next Planning Commission meeting in order to obtain an opinion from Cal Tech regarding the validity of the map, and would like to see staff consider talking with the Developer regarding a small park at the site.

No second was obtained.

Chairman Krick said Cal Tech is not going to give any definitive answer because of liability reasons. A license Engineer is certifying the report.

Commissioner Shaw said the Engineer will lose his license and a lot of money if he identifies the wrong earthquake fault zone. It’s a very professional judgment on his part through his testing.

Chairman Ellis opened the floor for a motion.

**ACTION (SHAW/KRICK):** A motion was moved, seconded and carried that the Planning Commission take the following action:

That the Planning Commission adopts Resolution No. 2015-11, recommending that the City Council take the following actions:

1. In accordance with CEQA Section 21064.5, the public agency adopts the Mitigated Negative Declaration and Mitigation, Monitoring, and Reporting Program and directs the Acting Community Development Director to prepare and file with the Clerk for the County of Riverside a Notice of Determination as provided under Public Resources Code Section 21108, and CEQA Guidelines Section 15075; and

2. That the City Council adopts Ordinance No. 1495, approving Tentative Tract Map No. 15-4501 (TTM 36939) a proposal to subdivide 34.6 acres of vacant land for purposes of creating 98 numbered lots for single-family residential development and three (3) lettered lots; and, approving Zone Change No. 15-3501 amending the zoning map to eliminate the RL-10,000 overlay affecting the western portion of the site to Low Density Residential (LDR, 0 to 5 units per acre), APN’s 535-430-001 through 021, 535-431-001 through 015, 535-432-001 through 017, 535-070-004 and 006, subject to Conditions of Approval.

*(Motion Carried 3-2)*

Planning Commission Meeting Minutes
January 6, 2016
VI. REPORT FROM ASSISTANT CITY ATTORNEY:

1. REPORT AND PRESENTATION ON THE BROWN ACT, CIVILITY, AND PARLIAMENTARY PROCEDURE.

Assistant City Attorney began his presentation on the Brown Act, Civility and Parliament Procedure, but due to the late hour, this item will continue to the next meeting in February.

ACTION (ELLIS/PRICE): A motion was moved, seconded and carried that the Planning Commission take the following action:

BROWN ACT, CIVILITY, AND PARLIAMENTARY PROCEDURE PRESENTATION WILL CONTINUE TO FEBRUARY 3, 2016 AT 6:30 P.M.

(Motion Carried 5-0)

VII. PLANNING COMMISSIONER COMMENTS:
None

VIII. COMMUNITY DEVELOPMENT DIRECTOR'S COMMENTS:
None

IX. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:48 p.m.

Respectfully submitted,

Sandra Calderon
Recording Secretary

THE ACTION MINUTES SUMMARIZE ACTIONS TAKEN BY THE PLANNING COMMISSION. A COPY OF THE MEETING IN ITS ENTIRETY IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK’S OFFICE.
CITY OF BANNING  
Planning Commission Report

DATE: February 3, 2016

TO: Planning Commission

FROM: Brian Guillot, Acting Community Development Director

SUBJECT: CONDITIONAL USE PERMIT NO. 15-8005
BOXING GYM
141 N. SAN GORGONIO AVENUE (APN 540-164-011)

APPLICANT'S REQUEST:

A proposal to approve a 4,000 square foot boxing gym at 141 N. San Gorgonio Avenue in the Downtown Commercial district within a vacant tenant space.

APPLICANT INFORMATION:

Project Location: 141 N. San Gorgonio Avenue
APN Information: 540-164-011

Project Applicant: Mr. Lyle Nicochea
47300 Morongo Road
Banning, CA 92220

Property Owner: Peyton Terria Hunt & Ruddy Catherine Hunt
671 Enchanted Way
Pacific Palisades, CA 90272

RECOMMENDATION:

That the Planning Commission adopts Resolution No. 2016-02 (Attachment No. 1):

I. Adopt a Categorical Exemption, pursuant to Section 15301 (Existing Facilities); and

II. Adopt Resolution No. 2016-02 Approving Conditional Use Permit No. (CUP) 15-8005 subject to the Findings and Conditions of Approval.
BACKGROUND AND DESCRIPTION:

The Downtown Commercial District has developed with its own character, and represents a special development type in the city. Many of the buildings in this area are the oldest commercial structures in the city, and the scale of the area makes it conducive to pedestrian circulation.

The district area is bounded by 8th Street to the west, Hargrave Street to the east, the I-10 corridor to the south, and Nicolet on the north, has been designated as the Downtown Commercial area. This is the traditional “center of town,” and includes City Hall, Banning Police Department, courthouse, small scale retail shops, a movie theatre, and older residential areas.

<table>
<thead>
<tr>
<th>Subject Site</th>
<th>Existing Land Use</th>
<th>Zoning Designation</th>
<th>General Plan Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>Professional Office</td>
<td>Downtown Commercial</td>
<td>Downtown Commercial</td>
</tr>
<tr>
<td>South</td>
<td>vacant tenant space</td>
<td>Downtown Commercial</td>
<td>Downtown Commercial</td>
</tr>
<tr>
<td>East</td>
<td>Parking / commercial</td>
<td>Downtown Commercial</td>
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<tr>
<td>West</td>
<td>Alley / Multi-Family Residence</td>
<td>Downtown Commercial</td>
<td>Downtown Commercial</td>
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</tbody>
</table>

Land Use Summary Table

Proposal and Analysis

Conditional Use Permit

The applicant’s proposal of a boxing gym (Attachment No. 2) in the Downtown Commercial District requires a Conditional Use Permit per Table 17.12.010 Permitted, Conditional and Prohibited Commercial and Industrial Uses.

The proposal includes tenant improvements to convert an existing vacant space into a boxing gym to include a boxing arena for training and indoor gym equipment for workout activities. Along with the designated workout/fitness areas, there will also be areas set aside for storage, an office, a utility room, and restroom facilities. The hours of operation will be 9:00 am to 11:00 pm daily, with a maximum of one event per week and no more than 4 events per month.

Proposal

As the City’s traditional core, the Downtown Commercial District has a special significance and development is subject to special provisions in Title 17 of the Municipal Code. Parking requirements deviate from the average requirements that are applied to other commercial districts. Furthermore, all land uses permitted by right and proposed for within an existing structure, without expanding the structure, do not require Design Review approval.

Conditional Use Permit No. 15-8005
Per code section 17.24.020 *Applicability*, all new projects, redevelopment projects, and project modifications which add twenty-five percent or more to a structure’s building area are required to conform to standards and regulations related to off-street parking, setbacks, public street improvements, storage, fences, and so forth. The applicant’s proposal includes approval of a use, not an expansion of the building area. Furthermore, Section 17.12.0508 (H)(1), states that no Design Review shall be required for existing structure that are not expanding.

The following parking provisions are provided for informational purposes only for the proposed use:
- Parking for commercial land uses required one (1) space per 300 square feet of building area;
- No more than ten percent of all parking spaces in a City parking lot public parking lots to one project; pursuant to the Downtown Parking Inventory assignments maintained by the Department. At the moment, there is a total of 56 spaces.
- Two parking spaces adjacent to the building frontage.

Using the one space per 300 square feet formula, the proposed use at 4,000 square feet, requires a total of fourteen (14) spaces. With two (2) parking spaces adjacent to the building and the five (5) spaces assigned in a City parking lot, in addition to the proposed bicycle rack for three (3) spaces; the remaining balance is three (3) spaces. The table below summarizes the parking requirements and proposal.

<table>
<thead>
<tr>
<th>Required Parking</th>
<th>14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parking credit</td>
<td></td>
</tr>
<tr>
<td>Spaces adjacent to the building</td>
<td>2</td>
</tr>
<tr>
<td>10% from City-owned parking</td>
<td>6</td>
</tr>
<tr>
<td>Proposed bicycle rack credit</td>
<td>3</td>
</tr>
<tr>
<td><strong>Remaining Balance</strong></td>
<td><strong>3</strong></td>
</tr>
</tbody>
</table>

To date, there are no other uses or projects that have been approved utilizing the City’s public parking areas to meet parking requirements. The applicant’s proposal would be the first to be included in the Downtown Parking Inventory. As such, the project will be conditioned to be reviewed annually to address any conflicts that may arise.

**ENVIRONMENTAL DETERMINATION:**

*California Environmental Quality Act (CEQA)*

In accordance with §15301 (Existing Facilities) a Class 1 Categorical Exemption of the California Environmental Quality Act (CEQA), the project is being exempt from further environmental review. A Class 1 Categorical Exemption consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. The Planning Commission has analyzed proposed Conditional Use Permit 15-8005 and has determined that it is Categorically Exempt from CEQA pursuant to §15301 of the CEQA
Guidelines due to the fact that the proposal meets the required criteria to qualify as a “existing facilities” as defined by §15301 of the CEQA Guidelines.

Staff has analyzed proposed Conditional Use Permit 15-8005 and has determined that it is Categorically Exempt from CEQA pursuant to §15301 due to the fact that the proposed meets the required criteria to qualify as an “existing facilities” as defined by §15301 of the CEQA Guidelines. Therefore, Conditional Use Permit 15-8005 is Categorically Exempt from CEQA pursuant to §15301 of the CEQA Guidelines.

Multiple Species Habitat Conservation Plan (MSHCP).

The project is found to be consistent with the MSHCP. The project is located outside of any MSHCP criteria area and mitigation is provided through payment of the MSHCP Mitigation Fee.

REQUIRED FINDINGS FOR CONDITIONAL USE PERMIT 15-8005:

Section 17.52.050 of the City of Banning Zoning Ordinance requires that Conditional Use Permit applications meet certain findings prior to the approval by the Planning Commission. The following findings are provided in support of the approval of Conditional Use Permit No. 15-8005:

Finding No. 1: The proposed use is consistent with the General Plan;

Finding of Fact: Conditional Use Permit 15-8005 is consistent with the General Plan Land Use Element Policy which states: “The land-use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands.” The land-use designation of Downtown Commercial allows small scale commercial retail and office uses, services, restaurants, entertainment retail are the primary uses in this designation. Mixed use, residential land uses in combination with commercial businesses are also encouraged. Further, Conditional Use Permit 15-8005 is consistent with General Plan Economic Development Policy which states: “The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues.” Approval of the permit would allow the applicant to diversify and provide an economic benefit to the City and provide an additional recreational opportunities in the City of Banning.

Finding No. 2: The proposed use is conditionally permitted within the subject land use district and complies with all the applicable provisions of this Ordinance

Finding of Fact: Table 17.12.020 Permitted, Conditional and Prohibited Commercial and Industrial Uses, of Title 17 of the Municipal Code, lists Health/Fitness Facilities, as a conditionally permitted use in the Downtown Commercial
zoning district. Furthermore, section 17.12.050 Use Specific Standards, provides specific provisions for Downtown Commercial Development.

**Finding No. 3**
The proposed use would not impair the integrity and character of the land use district in which it is to be located.

**Finding of Fact:**
The proposed use will not impair the integrity and character of the Downtown Commercial zoning district because it is surrounded by improved commercial land and changes such as expansion of the building are not proposed. Furthermore, the applicant will be conditioned to clean up the back of the building that is adjacent to the alley.

**Finding No. 4**
The subject site is physically suitable for the type and intensity of land use being proposed.

**Finding of Fact:**
The subject site is located within a building that includes other unoccupied tenant spaces. The applicant is not proposing any changes to the building. Furthermore, Economic Development Policy 3, states the following, "Encourage and promote infill development in orderly and logical development patterns that decrease the costs, and increase the efficiency of new utilities, infrastructure, and public services.

**Finding No. 5:**
There are adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety.

**Finding of Fact:**
The site is served by the public and private utilities, including the City’s water, wastewater, and electrical utilities. The site is accessed and served from North San Gorgonio Avenue which is a fully improved roadway with existing utilities.

**Finding No. 6:**
There will not be significant harmful effects upon environmental quality; natural resources; or neighborhood characteristics.

**Finding of Fact:**
The proposed used does not involve an expansion to accommodate the sale of alcohol related beverages; furthermore, it was reviewed pursuant to the California Environmental Quality Act (CEQA) and qualifies for a Class I Existing Facilities categorical exemption.

**Finding No. 7**
The proposed location, size, design and operating characteristics of the proposed use will not be detrimental to the public interests, health, safety, convenience, or welfare of the City.

**Finding of Fact:**
The operation of a boxing gym will not be detrimental to the public interests, health, safety, convenience, or welfare of the City. Its proximity to residential areas provides a healthy recreational opportunity within walking distance.
PUBLIC COMMUNICATION

Proposed Conditional Use Permit No. 15-8005 was advertised in the Record Gazette newspaper on January 22, 2016 (Attachment No. 3). As of the date of this report, staff has not received any verbal or written comments for or against the proposal.

Prepared By:

Yvonne Franco
Contract Planner

Reviewed and Recommended By:

Brian Guillot
Acting Community Development Director

Attachments:

1. Resolution No. 2016-02
2. Exhibits
3. Public Hearing Notice
ATTACHMENT 1
PC Resolution No. 2016-02
RESOLUTION NO. 2016-02

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA ADOPTING A CATEGORICAL EXEMPTION FOR CONDITIONAL USE PERMIT (CUP) NO. 15-8005 TO APPROVE THE OPERATION OF BOXING GYM LOCATED AT 141 N. SAN GORONIO AVENUE (APN 540-164-011) WITHIN THE DOWNTOWN COMMERCIAL ZONING DISTRICT.

WHEREAS, an application for a Conditional Use Permit including a request for a boxing gym has been duly filed by:

Project Applicant: Mr. Lyle Nicochea
47300 Morongo Rd
Banning CA 92220

Parcel Address: 141 N. San Gorgonio Avenue

APN: 540-164-011

Lot Area: 4,680 square feet

WHEREAS, the Planning Commission has the authority per Chapter 17.52 of the Banning Municipal Code to take action on Conditional Use Permit 15-8005 for a boxing gym in the Downtown Commercial Zoning District; and

WHEREAS, on January 22, 2016 the City gave public notice by advertising in the Record Gazette, a newspaper of general circulation within the City of Banning, and by mailing notices to property owners within 300 feet of the project of the holding of a public hearing at which the project would be considered; and

WHEREAS, on February 3, 2016 the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to Conditional Use Permit No. 15-8005; and

WHEREAS, in accordance with the requirements of the California Environmental Quality Act (CEQA), staff analyzed Conditional Use Permit No. 15-8005 determined that, pursuant to CEQA Section 15301 (Existing Facilities) is Categorically Exempt; and

NOW THEREFORE, the Planning Commission of the City of Banning does hereby resolve, determine, find, and order as follows:
SECTION 1. ENVIRONMENTAL DETERMINATION:

California Environmental Quality Act (CEQA)
In accordance with §15301 (Existing Facilities) a Class 1 Categorical Exemption of the California Environmental Quality Act (CEQA), the project is being exempt from further environmental review. A Class 1 Categorical Exemption consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. The Planning Commission has analyzed proposed Conditional Use Permit No. 15-8005 and has determined that it is Categorically Exempt from CEQA pursuant to §15301 of the CEQA Guidelines due to the fact that the proposal meets the required criteria to qualify as a “existing facilities” as defined by §15301 of the CEQA Guidelines.

Staff has analyzed proposed Conditional Use Permit No. 15-8005 and has determined that it is Categorically Exempt from CEQA pursuant to §15301 due to the fact that the proposed meets the required criteria to qualify as an “existing facilities” as defined by §15301 of the CEQA Guidelines. Therefore, Conditional Use Permit No. 15-8005 is Categorically Exempt from CEQA pursuant to §15301 of the CEQA Guidelines.

Multiple Species Habitat Conservation Plan (MSHCP).

The project is found to be consistent with the MSHCP. The project is located outside of any MSHCP criteria area and mitigation is provided through payment of the MSHCP Mitigation Fee.

REQUIRED FINDINGS FOR CONDITIONAL USE PERMIT 15-8005:

Section 17.52.050 of the City of Banning Zoning Ordinance requires that Conditional Use Permit applications meet certain findings prior to the approval by the Planning Commission. The following findings are provided in support of the approval of Conditional Use Permit No. 15-8005:

Finding No. 1: The proposed use is consistent with the General Plan;

Finding of Fact: Conditional Use Permit No. 15-8005 is consistent with the General Plan Land Use Element Policy which states: “The land-use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands.” The land-use designation of Downtown Commercial allows small scale commercial retail and office uses, services, restaurants, entertainment retail are the primary uses in this designation. Mixed use, residential land uses in combination with commercial businesses are also encouraged. Further, Conditional Use Permit No. 15-8005 is consistent with General Plan Economic
Development Policy which states: “The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues.” Approval of the permit would allow the applicant to diversify and provide an economic benefit to the City and provide an additional recreational opportunities in the City of Banning.

Finding No. 2: The proposed use is conditionally permitted within the subject land use district and complies with all the applicable provisions of this Ordinance.

Finding of Fact: Table 17.12.020 Permitted, Conditional and Prohibited Commercial and Industrial Uses, of Title 17 of the Municipal Code, lists Health/Fitness Facilities, as a conditionally permitted use in the Downtown Commercial zoning district. Furthermore, section 17.12.050 Use Specific Standards, provides specific provisions for Downtown Commercial Development.

Finding No. 3: The proposed use would not impair the integrity and character of the land use district in which it is to be located.

Finding of Fact: The proposed use will not impair the integrity and character of the Downtown Commercial zoning district because it is surrounded by improved commercial land and changes such as expansion of the building are not proposed. Furthermore, the applicant will be conditioned to clean up the back of the building that is adjacent to the alley.

Finding No. 4: The subject site is physically suitable for the type and intensity of land use being proposed.

Finding of Fact: The subject site is located within a building that includes other unoccupied tenant spaces. The applicant is not proposing any changes to the building. Furthermore, Economic Development Policy 3, states the following, “Encourage and promote infill development in orderly and logical development patterns that decrease the costs, and increase the efficiency of new utilities, infrastructure, and public services.

Finding No. 5: There are adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety.
Finding of Fact: The site is served by the public and private utilities, including the City’s water, wastewater, and electrical utilities. The site is accessed and served from North San Gorgonio Avenue which is a fully improved roadway with existing utilities.

Finding No. 6: There will not be significant harmful effects upon environmental quality; natural resources; or neighborhood characteristics.

Finding of Fact: The proposed use does not involve an expansion to accommodate the sale of alcohol related beverages; furthermore, it was reviewed pursuant to the California Environmental Quality Act (CEQA) and qualifies for a Class 1 Existing Facilities categorical exemption.

Finding No. 7 The proposed location, size, design and operating characteristics of the proposed use will not be detrimental to the public interests, health, safety, convenience, or welfare of the City.

Finding of Fact: The operation of a boxing gym will not be detrimental to the public interests, health, safety, convenience, or welfare of the City. Its proximity to residential areas provides a healthy recreational opportunity within walking distance.

SECTION 3. PLANNING COMMISSION ACTION:

The Planning Commission hereby takes the following action:

1. Adoption of Planning Commission Resolution No. 2016-02:

   a. In accordance with CEQA Guidelines Section 15301 the Planning Commission hereby adopts the Categorical Exemption (Class 1: Existing Facilities) and directs the Acting Community Development Director to prepare and file with the Clerk for the County of Riverside a Notice of Exemption as provided under Public Resources Code Section 21152(b) and CEQA Guidelines Section 15062; and

   b. Conditional Use Permit No. 15-8005 is approved, subject to Conditions of Approval attached hereto and incorporated herein by reference as Exhibit A.
PASSED, APPROVED AND ADOPTED this 3rd day of February 2016.

David Ellis, Chairman
Banning Planning Commission

APPROVED AS TO FORM
AND LEGAL CONTENT:

________________________
Robert Khuu
Aleshire & Wynder, LLP
Assistant City Attorney
City of Banning, California

ATTEST:

________________________
Sandra Calderon, Recording Secretary
City of Banning, California
CERTIFICATION:

I, Sandra Calderon, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2016-02, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 3rd day of February 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

_________________________________
Sandra Calderon, Recording Secretary
City of Banning, California
EXHIBIT A

PROJECT #: Conditional Use Permit No. 15-8005

SUBJECT: Conditions of Approval (Planning Commission Resolution No. 2016-02)

APPLICANT: Mr. Lyle Nicochea

LOCATION: APN: 540-164-011

* All fair share agreements, covenant agreements and agreements subject to recordation will be subject to review and approval by the City Attorney and will include appropriate enforcement provisions by the City and be properly securitized.

Community Development Department

1. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively “Actions”), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the action of, any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City’s defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.
2. The Community Development Director, may upon an application being filed 30 days prior to expiration and for good cause, grant one time extension not to exceed twelve months. Upon granting of an extension the Community Development director shall ensure that the Conditional Use Permit complies with all current Ordinance provisions.

3. If there more than three calls for service in any six-month period or any future issues that arise with the use that is the subject of this discretionary approval (e.g., complaints from neighboring residents or businesses) the Community Development Director or other appropriate City designee has the authority to require that the Conditional Use Permit be brought back before the Planning Commission for immediate remedy which may include, but not necessarily be limited to, the imposition of additional conditions of approval.

4. Approval of this entitlement shall not waive compliance with any sections of the Development Code, other applicable City Ordinances, in effect at the time of building permit issuance.

5. Prior to any use of the project site, or business activity being commenced thereon, all Conditions of Approval shall be completed to the satisfaction of the Community Development Director.

6. No alcoholic beverages shall be consumed or offered for sale on any portion of the premises.

7. Peace officers as well as the Community Development Director or his/her designee are hereby permitted to inspect the premises at any time for compliance with these conditions of approval.

8. The applicant shall be responsible for maintaining the alleyway behind the property clean and free of trash or debris.

9. The project may be administrative reviewed annually to address any parking issues that may arise.

10. The hours of operation shall be between 9:00 a.m. and 11:00 p.m. daily or as approved by the Planning Commission. Events shall be limited no more than one each week and no more than four each month.

11. A safety lighting plan for front and rear of building will be required prior to issuance of a building permit.

12. Chapter 8.44 Noise of the City of Banning Municipal Code, shall be complied with at all times. Additionally, no outside sound amplification shall be permitted unless approved through a Temporary Use Permit Application.
13. The Site shall be developed in compliance with all current model codes. All plans shall be designed in compliance with the latest editions of the California Building Codes as adopted by the City of Banning.

14. The site shall be maintained free of trash and/or debris. The applicant/occupant shall properly dispose of any refuse and bulk trash located on the property.

15. Site development and grading shall be designed to provide access to all entrances and exterior ground floor exits and access to normal paths of travel, and where necessary to provide access. Paths of travel shall incorporate (but not limited to) exterior stairs, landings, walks and sidewalks, pedestrian ramps, curb ramps, warning curbs, detectable warnings, signage, gates, lifts and walking surface material. The accessible route(s) of travel shall be the most practical direct route between accessible building entrances, site facilities, accessible parking, public sidewalks, and the accessible entrance(s) to the site. California Building Code (CBC) 11A and 11B.
   a. City of Banning enforces the State of California provisions of the California Building Code disabled access requirements. The Federal ADA standards differ in some cases from the California State requirements. It is the building owner's responsibility to be aware of those differences and comply accordingly.
   b. Disabled access parking shall be located on the shortest accessible route. Relocate parking spaces accordingly. Show location of disabled parking and path of travel from right-of-way.

16. Commercial buildings on the site shall be accessible per California Building Code (CBC) 11B.

17. Separate submittals and permits are required for all accessory structures such as but not limited to, trash enclosures, patios, block walls and storage buildings.

18. Pursuant to California Business and Professions Code Section 6737, this project is required to be designed by a California licensed architect or engineer. Based on change of use to Assembly occupancy and potential exiting and fire life safety improvements.

**Fire Department**

19. For commercial areas, the required fire flow shall be available from 1 Super hydrant(s) (6" x 4" x 2\(\frac{1}{2}\)" x 2\(\frac{1}{2}\)"") spaced not more than 350 apart and shall be capable of delivering the required fire flow for two hours duration at 20 psi residual operating pressure, which must be available before any combustible material is placed on the construction site. The required fire flow will be based on the total building sq. footage per table B105.1 of the 2013 CFC. Total bldg. sq. footage will need to be provided to determine fire flow requirements.
20. Prior to building plan approval and construction, applicant/developer shall furnish two copies of the water system fire hydrant plans to Fire Department for review and approval. Plans shall be signed by a registered civil engineer, and shall confirm hydrant type, location, spacing, and minimum fire flow. Once plans are signed and approved by the local water authority, the originals shall be presented to the Fire Department for review and approval.

21. Applicant/Developer shall mount blue dot retro-reflectors pavement markers on private streets, public streets and driveways to indicated location of the fire hydrant. It should be 8 inches from centerline to the side that the fire hydrant is on, to identify fire hydrant locations.

22. Two means of egress are required and shall meet all the requirements of the California Fire Code and California Building Code.

23. Emergency egress lighting will be installed as required by the California Fire Code and California Building Code.

24. Posted occupancy load sign will be required to be installed.

25. Two 2A 10BC fire extinguishers are required to be installed.

26. High Pile storage will not be allowed in this occupancy. All storage must be located a minimum of 2 feet below the ceiling. Storage is not allowed in the utility room.

***END***
ATTACHMENT 2
Exhibits ___
ATTACHMENT 3
Public Hearing Notice

Conditional Use Permit No. 15-8005
State of California  
County of Riverside  

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer and publisher of Record Gazette, a newspaper published in the English language in the City of Banning, County of Riverside, and adjudicated a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of Riverside, under the date October 14, 1966, Case No. 84737. That the notice, of which the annexed is a copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

January 22, 2016

Executed on: 01/22/2016
At Banning, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Signature

NOTICE OF PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A CATEGORICAL EXEMPTION FOR CONDITIONAL USE PERMIT NO. 15-4001S TO APPROVE A CONDITIONAL USE PERMIT FOR THE OPERATION OF A BOXING GYM LOCATED AT 141 N. SAN GABRIEL AVE. (APN 04-161-04-000) WITHIN THE DOWNTOWN COMMERCIAL ZONING DISTRICT. NOTICE IS HEREBY GIVEN of a public hearing before the City of Banning Planning Commission, to be held on Wednesday, February 3, 2016, at 6:00 p.m. in the Council Chambers, City Hall, 99 East Ramona Street, Banning, California, to consider the request of an Alcohol Beverage Control licensee (proposed Conditional Use Permit No. 15-4001S) pursuant to Chapter 17.12 (Conditional Use Permit) of the City of Banning Municipal Code. Information regarding the Categorical Exemption for Conditional Use Permit No. 15-4001S can be obtained by contacting the City's Community Development Department at (951) 922-3125, or by visiting the City Hall located at 99 East Ramona Street, Banning. You may also go to the City of Banning website at http://www.cityofbanning.com. All parties interested in appearing either in support of or in opposition to this item are invited to attend said hearing, or to send their written comments to the Community Development Department, City of Banning, P.O. Box 690, Banning, California, 92220. If you challenge any decision regarding the above proposed action, you may be limited to raising those issues only that were raised in written correspondence delivered to the City Clerk at, or prior to, the time the City Council makes its decision on the proposal; or, you or someone else mailed at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65506). IN ORDER OF THE ACTING COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA Enter Called Acting Community Development Director Date: January 18, 2016 Published in The Record Gazette No. 127757 1/22/2016
CITY OF BANNING
Planning Commission Report

DATE: February 3, 2016
TO: Planning Commission
FROM: Brian Guillot, Acting Community Development Director
SUBJECT: CONDTITIONAL USE PERMIT NO. 15-8002
HIGHLAND SPRINGS MOBIL SERVICE STATION
300 S. HIGHLAND SPRINGS AVENUE (APN 419-140-028)

APPLICANT’S REQUEST:

A proposal to approve the offsite sale of beer and wine from the existing service station located at
300 S. Highland Springs Avenue (APN: 419-140-028) within the Sun Lakes Village Specific Plan;
along with a determination of Public Convenience or Necessity.

APPLICANT INFORMATION:

Project Location: 300 S. Highland Springs Avenue
APN Information: 419-140-028
Project Applicant: Mr. Sobhy Yousef dba Highland Springs Mobil
300 S. Highland Springs Avenue
Banning, CA 92220
Property Owner: Sobhy Yousef
300 S. Highland Springs Avenue
Banning, CA 92220

RECOMMENDATION:

That the Planning Commission adopts Resolution No. 2016-01 (Attachment No. 1):

I. Adopt a Categorical Exemption, pursuant to Section 15301 (Existing Facilities);

II. Adopt Resolution No. 2016-01 Approving Conditional Use Permit (CUP) 15-8002 subject
to the Findings and Conditions of Approval; and

Conditional Use Permit No. 15-8002
III. Approve the Public Convenience or Necessity Findings for a Type 20 License for the Sale of Beer and Wine.

PROPOSED USE - BACKGROUND AND DESCRIPTION:

Located on the northeast end of the Sun Lakes Village commercial center, the Highland Springs Mobil Service Station owner is requesting approval (Attachment No. 2) to sell wine and beer from the service station. In addition to gas, the service station also includes a small convenience store (Attachment No. 3). The commercial center includes a grocery store, fast food restaurants and a variety of stores and services. The Planning Commission recently approved a Design Review for the remodel and expansion of the building on the southern end of the center, for four retail tenants.

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<th>Zoning Designation</th>
<th>General Plan Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>Southern Pacific Railroad</td>
<td>Public Facilities - Railroad Interstate</td>
<td>Public Facilities - Railroad Interstate</td>
</tr>
<tr>
<td>South</td>
<td>Commercial</td>
<td>General Commercial with Specific Plan Overlay</td>
<td>General Commercial with Specific Plan Overlay</td>
</tr>
<tr>
<td>East</td>
<td>Vacant</td>
<td>General Commercial with Specific Plan Overlay</td>
<td>General Commercial with Specific Plan Overlay</td>
</tr>
<tr>
<td>West</td>
<td>Commercial / City of Beaumont</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Conditional Use Permit

Table 17.12.020 “Permitted, Conditional and Prohibited Commercial and Industrial Uses” of Title 17 of the Zoning Code requires that a Conditional Use Permit be approved by the Planning Commission for alcoholic beverage sales, on- or off-site. Additionally, section 17.12.050(B)(2) of the Zoning Code requires the following:

1. Establishments shall not be located within 500 feet of any religious institution, school, or public park within the City.
2. The license application shall be reviewed by the Police Department prior to Planning Commission approval

A review of properties within 500 feet of the site reveals that there are no existing religious institutions, schools, or public parks. Additionally, the City of Banning Police Department provided a letter stating that this is not a high crime area (Attachment No. 4).

Conditional Use Permit No. 15-8002
A Conditional Use Permit review requires determination whether the proposed use should be permitted by weighing the public need for the benefit to be derived from the use against any negative or undesirable impact which it may cause. The limits which staff is recommending include conditions that help make the use compatible with the existing and nearby land uses.

**Alcoholic Beverage Control (ABC) Licensing:**

ABC licenses are required for any business wishing to sell alcoholic beverages and are issued by the State of California, Department of Alcoholic Beverage Control. Within census tract 0438.12, there are five active ABC licenses:

<table>
<thead>
<tr>
<th>License Type</th>
<th>Description</th>
<th>Business Name/Location</th>
<th>License Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>OFF SALE BEER &amp; WINE – (Package Store) Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.</td>
<td>G&amp;M Oil Co LLC (Chevron Gas) 290 S Highland Springs Avenue</td>
<td>455551</td>
</tr>
<tr>
<td>21</td>
<td>OFF SALE GENERAL – (Package Store) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.</td>
<td>Albertsons LLC 300 S Highland Springs Avenue, Suite 7</td>
<td>531593</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Thrifty Payless Inc. (Rite Aid) 300 S. Highland Springs Avenue, Suite 9</td>
<td>310701</td>
</tr>
<tr>
<td>41</td>
<td>ON SALE BEER &amp; WINE – EATING PLACE – (Restaurant) Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.</td>
<td>Chen, Chin Tan 300 S Highland Springs Avenue, Suite 10G</td>
<td>489639</td>
</tr>
</tbody>
</table>
57 Special On Sale General — Generally issued to certain organizations who cannot qualify for club licenses. Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. Authorizes the sale of beer and wine, to members and guests only, for consumption off the licenses premise. Food service is not required. Minor s are allowed on the premises.

Sun Lakes Country Club Homeowners Association 850 Country Club Drive 36115

Source: State of California, Department of Alcoholic Beverage Control, Website http://maps.gis.ca.gov/abc/lqsc/

Only one Type 20 ABC license is currently active within Census Tract 438.12, and it is held by a gas station located at 290 S Highland Springs Avenue, north of Interstate 10.

ABC License Concentration Levels

Both local municipalities and the ABC monitor the number of alcohol license within census tracts to avoid “overconcentration” and/or “high crime” rates. “Overconcentration” means that the ratio of existing licenses to population exceeds the ratio of licenses to population in the County. “High crime” exists if the crime rate exceeds the municipality’s average by 20% or more. Therefore, it is possible for two adjacent businesses to be in separate census tracts and subject to different requirements based upon overconcentration and crime rates. Based on the information provided in the table below Concentration Level Analysis, Census Tract 438.12 exceeds the ratio of licenses to population in the County.

<table>
<thead>
<tr>
<th>Location</th>
<th>Number of on- and off-sale ABC licenses</th>
<th>Population</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Census Tract 438.12</td>
<td>7¹</td>
<td>5,409²</td>
<td>.001</td>
</tr>
<tr>
<td>Riverside County</td>
<td>1,719³</td>
<td>2,308,441⁴</td>
<td>.0007</td>
</tr>
</tbody>
</table>

¹ Source: State of California, Department of Alcoholic Beverage Control, website: http://www.abc.ca.gov/permits/Census%20Tract%20Authorizations.pdf
² Source: State of California, Department of Alcoholic Beverage Control, website: http://www.abc.ca.gov/permits/Census%20Tract%20Authorizations.pdf
³ Source: State of California, Department of Alcoholic Beverage Control, website: http://www.abc.ca.gov/permits/Census%20Tract%20Authorizations.pdf

Determination of Public Convenience or Necessity

The Determination of Public Convenience or Necessity is a tool for local agencies to directly have a part in the ABC licensing process. A determination of public convenience or necessity is demonstrated when the applicant proves that the business operation will provide some kind of benefit to the surrounding community.

Conditional Use Permit No. 15-8002
1. The Addition of Beer and Wine Sales at Highland Springs Mobil Service Station will not be detrimental to the character or development in the immediate neighborhood and will be in harmony with the overall objectives of the General Plan.

Highland Springs Mobil is an established business in the City of Banning selling gasoline, and automobile services as well as grocery items and beverages in an existing convenience store. From its location on Highland Springs Avenue in the Albertson’s Shopping Center Highland Springs Mobil has been successfully meeting the needs of residents and visitors to the City of Banning since 1995. By adding beer and wine to the general merchandise already offered in the store, Highland Springs Mobil can even better serve the surrounding community by providing customers with the convenience of “one-stop” shopping.

The sale of beer and wine will not be harmful to the health, safety or general welfare of the public or otherwise detrimental to the environment or the character of development in the immediate area. Highland springs Mobil endeavors to sell alcoholic beverage in a highly responsible and conscientious manner.

Training will be provided to all cashiers and managers. The training program will focus on recognizing and preventing sales of alcohol that may be detrimental to the public welfare. Implementation of these guidelines will help ensure that the sale of alcohol at the store will not be detrimental to residents, shoppers, or other business in the vicinity of this store.

In addition to the various steps that Highland Springs Mobil will take to avoid detrimental impacts to the character of development in the immediate neighborhood, a determination of Public Convenience or necessity is appropriate because the Highland Springs location is not located within close proximity to any schools, churches residences or other sensitive land use. The store is surrounded by similarly scaled commercial retail uses.

With respect to the City’s General Plan, the Vision Statement promotes “well balanced commercial development, where revenue generating commercial neighborhoods provide a diversified economy and a wide range of jobs.” Similarly, the General Plan’s Land Use Element identifies a goal of creating a “balanced, well planned community including businesses which provide a functional pattern of land use” and a policy of promoting the “highest quality” of development. The existing Highland Springs Mobil operation already serves those goals and policies by providing access to gasoline sales, automotive products and services as well as general merchandise in a modern facility located in close proximity to the I-10 Freeway and a number of residential developments. The addition of beer and wine sales would facilitate even greater harmony with the General Plan by providing more convenient, “one stop” shopping for Highland Springs Mobil customers in the City of Banning and the traveler, further diversifying the area’s economic base.

2. Beer and Wine Sales at Highland Springs Mobil Service Station will generate economic benefits and they are not likely to result in negative impacts to the community as a whole.

As described above, the sale of beer and wine by Highland Springs Mobil would be conducted in
a manner that maximizes public safety and minimizes public nuisance at a location that is very well suited for alcohol sales. Therefore the project is not likely to generate negative community impacts. Given the store’s proximity to the City of Beaumont, and the fact that beer and wine sales will make the Highland Springs Mobil a more attractive “one stop” option for shoppers, it is likely that the store will generate additional sales tax revenue for the City of Banning that may have been previously lost to its neighboring city. The beer and wine sales will make it that much more likely that the Banning location will continue to succeed so that the City can continue to receive sales tax revenue from the Highland Springs Mobil service station.

3. **The Sale of Beer and Wine by Highland Springs Mobil Service Station on Highland Springs Avenue will provide service to the area that is not clearly met by other existing alcohol sales establishments.**

The Highland Springs Mobil is an attractive modern facility in a very visible location. With excellent frontage on Highland Springs and given its proximity to I-10, the store is easily accessible for the City’s residents as well as other visiting the area. Given the mixed uses of the shopping center the addition of beer and wine sales will make the location an even more attractive destination. These complimentary uses will help reduce vehicle miles traveled because customers will not be able to meet even more of their shopping needs without having to travel to multiple locations. Therefore, the addition of beer and wine sales at the existing Highland Springs Mobil location will provide additional services that shoppers require.

When Kmart closed, it eliminated one of the major off-site beer and wine sales businesses in the Sun Lakes Village shopping center. The Highland Springs Mobil would fill that void which is highly unlikely to be duplicated in the Kmart’s former location because the commercial nature of the likely future tenants.

The only other existing beer and wine licenses within the Sun Lakes Village shopping center are Albertson’s grocery store and Rite Aid drugstore.

**ENVIRONMENTAL DETERMINATION:**

California Environmental Quality Act (CEQA)
In accordance with §15301 (Existing Facilities) a Class 1 Categorical Exemption of the California Environmental Quality Act (CEQA), the project is being exempt from further environmental review. A Class 1 Categorical Exemption consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. The Planning Commission has analyzed proposed Conditional Use Permit 15-8002 and has determined that it is Categorically Exempt from CEQA pursuant to §15301 of the CEQA Guidelines due to the fact that the proposal meets the required criteria to qualify as a “existing facilities” as defined by §15301 of the CEQA Guidelines.

Staff has analyzed proposed Conditional Use Permit 15-8002 and has determined that it is Categorically Exempt from CEQA pursuant to §15301 due to the fact that the proposed meets the required criteria to qualify as an “existing facilities” as defined by §15301 of the CEQA.
Guidelines. Therefore, Conditional Use Permit 15-8002 is Categorically Exempt from CEQA pursuant to §15301 of the CEQA Guidelines.

Multiple Species Habitat Conservation Plan (MSHCP).

The project is found to be consistent with the MSHCP. The project is located outside of any MSHCP criteria area and mitigation is provided through payment of the MSHCP Mitigation Fee.

REQUIRED FINDINGS FOR CONDITIONAL USE PERMIT 15-8002:

Section 17.52.050 of the City of Banning Zoning Ordinance requires that Conditional Use Permit applications meet certain findings prior to the approval by the Planning Commission. The following findings are provided in support of the approval of Conditional Use Permit No. 15-8002:

Finding No. 1: The proposed use is consistent with the General Plan;

Finding of Fact: Conditional Use Permit 15-8002 is consistent with the General Plan Land Use Element Policy which states: "The land–use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands." The land-use designation of General Commercial (GC) allows food and drug stores; home improvement; auto sales, leasing, service and repair; department and general retail outlets; merchandise leasing; neighborhood serving retail and services; restaurants; entertainment uses; gas station; general offices (secondary to retail); mixed uses and financial institutions. Further, Conditional Use Permit 15-8002 is consistent with General Plan Economic Development Policy which states: "The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues." Approval of the permit would allow the applicant to diversify and provide an economic benefit to the City.

Finding No. 2: The proposed use is conditionally permitted within the subject land use district and complies with all the applicable provisions of this Ordinance.

Finding of Fact: Table 17.12.020 Permitted, Conditional and Prohibited Commercial and Industrial Uses, of Title 17 of the Municipal Code, lists Alcoholic Beverage Sale on-or off site, as a conditionally permitted use in the General Commercial zoning district. Furthermore, Section 17.12.050 Use Specific Standards, provides specific provisions for Alcohol Beverage Control (ABC) Licenses.

Finding No. 3 The proposed use would not impair the integrity and character of the land use district in which it is to be located.
Finding of Fact: The proposed use will not impair the integrity and character of the Sun Lakes Village Specific Plan Overlay area land use district in which it is to be located because it is surrounded by improved commercial land.

Finding No. 4 The subject site is physically suitable for the type and intensity of land use being proposed.

Finding of Fact: The subject site is currently developed as a gas station and convenience store. The applicant is not proposing any changes to the building; the interior of the shopping area will be modified to accommodate additional alcohol related merchandise.

Finding No. 5: There are adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety.

Finding of Fact: The site is served by the public and private utilities, including the City's water and electrical utilities. The site is accessed and served from Highland Springs Avenue which is a fully improved roadway with existing utilities.

Finding No. 6: There will not be significant harmful effects upon environmental quality; natural resources; or neighborhood characteristics.

Finding of Fact: The proposed use does not involve an expansion to accommodate the sale of alcohol related beverages; furthermore, it was reviewed pursuant to the California Environmental Quality Act (CEQA) and qualifies for a Class 1 Existing Facilities categorical exemption.

Finding No. 7 The proposed location, size, design and operating characteristics of the proposed use will not be detrimental to the public interests, health, safety, convenience, or welfare of the City.

Finding of Fact: The sales of alcohol are regulated by the State of California, Department of Alcoholic Sales Licensing program. It is the policy of the Department to impose administrative and non-punitive penalties to encourage and reinforcing compliance with the law. The California Constitution authorizes the Department of Alcoholic to suspend or revoke any license to sell alcoholic beverage if it determined for good cause that the continuance of such license would be contrary to the public welfare or morals. Furthermore, the City of Banning Police Department has provided in writing that this is not a high crime area.
REQUIRED FINDINGS FOR A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY:

In accordance with Section 23817.7(3) of the business and professions Code the following findings are made regarding the determination of public convenience or necessity:

Finding No. 1: The addition of Beer and Wine Sales at Highland Springs Service Station will not be detrimental to the character or development in the immediate neighborhood and will be in harmony with the overall objectives of the General Plan.

Finding of Fact: Highland Springs Mobil is an established business in the City of Banning selling gasoline, and automobile service as well as grocery items and beverages in an existing convenience store. From its location on Highland Springs in the Sun Lakes Village Shopping Center, Highland Springs Mobil has been successfully meeting the needs of residents and visitors to the City of Banning since 1995. By adding beer and wine to the general merchandise already offered in the store, Highland Springs Mobil can even better serve the surrounding community by providing customers with the convenience of “one-stop” shopping.

The sale of beer and wine will not be harmful to the health, safety or general welfare of the public or otherwise detrimental to the environment or the character of development in the immediate area. Highland Springs Mobil endeavors to sell alcoholic beverage in a highly responsible and conscientious manner.

Training will we provided to all cashiers and managers. The training program will focus on recognizing and preventing sales of alcohol that may be detrimental to the public welfare. Implementation of these guidelines will help ensure that the sale of alcohol at the store will not be detrimental to residents, shoppers, or other business in the vicinity of this store.

In addition to the various steps that Highland Springs Mobil will take to avoid detrimental impacts to the character of development in the immediate neighborhood, a determination of Public Convenience or necessity is appropriate because the Highland Springs location is not located within close proximity to any schools, churches residences or other sensitive land use. The store is surrounded by similarly scaled commercial retail uses.

With respect to the City’s General Plan, the Vision Statement promotes “well balanced commercial development, where revenue generating commercial neighborhoods provide a diversified economy and a wide
range of jobs.” Similarly, the General Plan’s Land Use Element identifies a goal of creating a “balanced, well planned community including businesses which provide a functional pattern of land use” and a policy of promoting the “highest quality” of development. The existing Highland Springs Mobil operation already serves those goals and policies by providing access to gasoline sales, automotive products and services as well as general merchandise in a modern facility located in close proximity to the I-10 Freeway and a number of residential developments. The addition of beer and wine sales would facilitate even greater harmony with the General Plan by providing more convenient, “one-stop” shopping for Highland Springs Mobil customers in the City of Banning and the traveler, further diversifying the area’s economic base. According to the General Plan the Highway Serving Commercial land use designation allows restaurants (fast food and sit down), hotels and motels, auto related retail, repair and services, including gas station, convenience stores and similar uses serving the I-10 traveler. The Highland Springs Mobil Service Station is surrounding by Highway Serving commercial uses and does not abut a residential neighborhood.

Because the two of the surrounding are compatible to the sale of beer and wine, approval of the CUP will not be harmful to the health, safety and general welfare of the public or otherwise detrimental to the environment or the character of development in the immediate area.

With respect to the City General Plan, the Vision Statement promotes “well-balanced commercial development, where revenue generating commercial neighborhoods provide a diversified economy...” Similarly, the General Plan’s Land use element identifies a goal of creating a “balanced, well planned community including businesses which provide a functional pattern of land uses” and a policy of promoting the “highest quality” of development. The addition of beer and wine sales would facilitate even greater harmony with the General Plan by providing more convenient, “one-stop” shopping for Highland Springs Mobil Service Station customers in the City of Banning and further diversifying the area’s economic base.

**Finding No. 2**

**Beer and Wine Sales at the Highland Springs Mobil Service Station will generate economic benefits and they are not likely to result in negative impacts to the community as a whole.**

**Finding of Fact:** As described above, the sale of beer and wine by Highland Springs Mobil would be conducted in a manner that maximizes public safety and minimizes public nuisance at a location that is very well suited for alcohol sales. Therefore the project is not likely to generate negative community impacts. Given the store’s proximity to the City of Beaumont, and the fact that beer and wine sales will make the Highland Springs Mobil a more attractive “one stop” option for shoppers, it is likely that the store will
generate additional sales tax revenue for the City of Banning that may have been previously lost to its neighboring city. The beer and wine sales will make it that much more likely that the Banning location will continue to succeed so that the City can continue to receive sales tax revenue from the Highland Springs Mobil service station.

Finding No. 3. Sale of Beer and Wine by Highland Springs Mobil Service Station on Highland Springs Avenue will provide service to the area that is not clearly met by other existing alcohol sales establishments.

Finding of Fact: The Highland Springs Mobil is an attractive modern facility in a very visible location. With excellent frontage on Highland Springs and given its proximity to I-10, the store is easily accessible for the City’s residents as well as other visiting the area. Given the mixed uses of the shopping center the addition of beer and wine sales will make the location an even more attractive destination. These complimentary uses will help reduce vehicle miles traveled because customers will not be able to meet even more of their shopping needs without having to travel to multiple locations. Therefore, the addition of beer and wine sales at the existing Highland Springs Mobil location will provide additional services that shoppers require.

When Kmart closed it eliminated one of the major off site beer and wine sales businesses in the Sun Lakes Village shopping center. The Highland Springs Mobil would fill that void which is highly unlikely to be duplicated in the Kmart’s former location because of the commercial nature of the likely future tenants.

The only other existing beer and wine licenses within the Sun Lakes Village shopping center are Albertson’s and RiteAid drugstore.

PUBLIC COMMUNICATION

Proposed Conditional Use Permit No. 15-8002 was advertised in the Record Gazette newspaper on January 22, 2016 (Attachment 5). As of the date of this report, staff has not received any verbal or written comments for or against the proposal.
Prepared By:

Yvonne Franco
Contract Planner

Reviewed By:

Brian Guillot
Acting Community Development Director

Attachments:

1. Resolution No. 2016-01
2. Applicant’s Letter
3. Floor Plan & Site Plan
4. City of Banning Chief of Police letter
5. Public Hearing Notice
ATTACHMENT 1
PC Resolution No. 2016-01
RESOLUTION NO. 2016-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA ADOPTING A CATEGORICAL EXEMPTION FOR CONDITIONAL USE PERMIT NO. 15-8002 TO APPROVE THE OFFSITE SALE OF BEER AND WINE FROM THE EXISTING SERVICE STATION LOCATED AT 300 S. HIGHLAND SPRINGS AVENUE (APN 419-140-028) ALONG WITH A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY WITHIN THE SUN LAKES VILLAGE SPECIFIC PLAN AREA.

WHEREAS, State of California, Department of Alcoholic Beverage control licenses are required for any business wishing to sell such beverages on-site, or off-site. As indicated in Table 17.12.020 of the Zoning code, a Conditional Use Permit is required by the city in addition to the State license; and

WHEREAS, an application for a Conditional Use Permit including a request for a determination of public convenience or necessity has been duly filed by:

Project Applicant: Mr. Sobhy Yousef dba Highland Springs Mobil
300 S. Highland Springs Avenue
Banning, CA 92220

Parcel Address: 300 S. Highland Springs Avenue
APN: 419-140-028
Lot Area: 0.84 acres

WHEREAS, the Planning Commission has the authority per Chapter 17.52 of the Banning Municipal Code to take action on Conditional Use Permit No. 15-8002 for off-site alcohol sales in the Sun Lakes Village Specific Plan overlay area; and

WHEREAS, on January 22, 2016 the City gave public notice by advertising in the Record Gazette, a newspaper of general circulation within the City of Banning, and by mailing notices to property owners within 300 feet of the project of the holding of a public hearing at which the project would be considered; and

WHEREAS, on February 3, 2016 the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to Conditional Use Permit No. 15-8002 and the determination of public convenience or necessity, and at which meeting the Planning Commission considered the Conditional Use Permit and determination of public convenience or necessity; and

WHEREAS, in accordance with the requirements of the California Environmental Quality Act (CEQA), staff analyzed Conditional Use Permit No. 15-8002
determined that, pursuant to CEQA Section 15301 (Existing Facilities) is Categorically Exempt; and

**NOW THEREFORE**, the Planning Commission of the City of Banning does hereby resolve, determine, find, and order as follows:

**SECTION I. ENVIRONMENTAL DETERMINATION:**

California Environmental Quality Act (CEQA)
In accordance with §15301 (Existing Facilities) a Class 1 Categorical Exemption of the California Environmental Quality Act (CEQA), the project is being exempt from further environmental review. A Class 1 Categorical Exemption consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. The Planning Commission has analyzed proposed Conditional Use Permit No. 15-8002 and has determined that it is Categorically Exempt from CEQA pursuant to §15301 of the CEQA Guidelines due to the fact that the proposal meets the required criteria to qualify as a “existing facilities” as defined by §15301 of the CEQA Guidelines.

Staff has analyzed proposed Conditional Use Permit No.15-8002 and has determined that it is Categorically Exempt from CEQA pursuant to §15301 due to the fact that the proposed meets the required criteria to qualify as an “existing facilities” as defined by §15301 of the CEQA Guidelines. Therefore, Conditional Use Permit No. 15-8002 is Categorically Exempt from CEQA pursuant to §15301 of the CEQA Guidelines.

**Multiple Species Habitat Conservation Plan (MSHCP).**

The project is found to be consistent with the MSHCP. The project is located outside of any MSHCP criteria area and mitigation is provided through payment of the MSHCP Mitigation Fee.

**REQUIRED FINDINGS FOR CONDITIONAL USE PERMIT 15-8002:**

Section 17.52.050 of the City of Banning Zoning Ordinance requires that Conditional Use Permit applications meet certain findings prior to the approval by the Planning Commission. The following findings are provided in support of the approval of Conditional Use Permit No. 15-8002:

**Finding No. 1:** The proposed use is consistent with the General Plan;

**Finding of Fact:** Conditional Use Permit 15-8002 is consistent with the General Plan Land Use Element Policy which states: "The land-use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands." The
land-use designation of General Commercial (GC) allows food and drug stores; home improvement; auto sales, leasing, service and repair; department and general retail outlets; merchandise leasing; neighborhood serving retail and services; restaurants; entertainment uses; gas station; general offices (secondary to retail); mixed uses and financial institutions. Further, Conditional Use Permit 15-8002 is consistent with General Plan Economic Development Policy which states: "The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues." Approval of the permit would allow the applicant to diversify and provide an economic benefit to the City.

Finding No. 2: The proposed use is conditionally permitted within the subject land use district and complies with all the applicable provisions of this Ordinance.

Finding of Fact: Table 17.12.020 Permitted, Conditional and Prohibited Commercial and Industrial Uses, of Title 17 of the Municipal Code, lists Alcoholic Beverage Sale on-or off site, as a conditionally permitted use in the General Commercial Zoning District. Furthermore, Section 17.12.050 Use Specific Standards, provides specific provisions for the Alcohol Beverage Control (ABC) licenses.

Finding No. 3 The proposed use would not impair the integrity and character of the land use district in which it is to be located.

Finding of Fact: The proposed use will not impair the integrity and character of the Sun Lakes Village Specific Plan Overlay area land use district in which it is to be located because it is surrounded by improved commercial land.

Finding No. 4 The subject site is physically suitable for the type and intensity of land use being proposed.

Finding of Fact: The subject site is currently developed as a gas station and convenience store. The applicant is not proposing any changes to the building; the interior of the shopping area will be modified to accommodate additional alcohol related merchandise.

Finding No. 5: There are adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety.
Finding of Fact: The site is served by the public and private utilities, including the City’s water and electrical utilities. The site is accessed and served from Highland Springs Avenue which is a fully improved roadway with existing utilities.

Finding No. 6: There will not be significant harmful effects upon environmental quality; natural resources; or neighborhood characteristics.

Finding of Fact: The proposed use does not involve an expansion to accommodate the sale of alcohol related beverages; furthermore, it was reviewed pursuant to the California Environmental Quality Act (CEQA) and qualifies for a Class 1 Existing Facilities categorical exemption.

Finding No. 7: The proposed location, size, design and operating characteristics of the proposed use will not be detrimental to the public interests, health, safety, convenience, or welfare of the City.

Finding of Fact: The sales of alcohol are regulated by the State of California, Department of Alcoholic Sales Licensing program. It is the policy of the Department to impose administrative and non-punitive penalties to encourage and reinforcing compliance with the law. The California Constitution authorizes the Department of Alcoholic to suspend or revoke any license to sell alcoholic beverage if it determined for good cause that the continuance of such license would be contrary to the public welfare or morals. Furthermore, the City of Banning Police Department has provided in writing that this is not a high crime area.

REQUIRED FINDINGS FOR A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY:

In accordance with Section 23817.7(3) of the business and professions Code the following findings are made regarding the determination of public convenience or necessity:

Finding No. 1: The Addition of Beer and Wine Sales at Highland Springs Mobil Service Station will not be detrimental to the character or development in the immediate neighborhood and will be in harmony with the overall objectives of the General Plan.

Finding of Fact: Highland Springs Mobil is an established business in the City of Banning selling gasoline, and automobile services as well as grocery items and beverages in an existing convenience store. From its location on Highland Springs in the Sun Lakes Village Shopping Center, Highland Springs Mobil has been successfully
meeting the needs of residents and visitors to the City of Banning since 1995. By adding beer and wine to the general merchandise already offered in the store, Highland Springs Mobil can even better serve the surrounding community by providing customers with the convenience of “one-stop” shopping.

The sale of beer and wine will not be harmful to the health, safety or general welfare of the public or otherwise detrimental to the environment or the character of development in the immediate area. Highland Springs Mobil endeavors to sell alcoholic beverage in a highly responsible and conscientious manner.

Training will be provided to all cashiers and managers. The training program will focus on recognizing and preventing sales of alcohol that may be detrimental to the public welfare. Implementation of these guidelines will help ensure that the sale of alcohol at the store will not be detrimental to residents, shoppers, or other business in the vicinity of this store.

In addition to the various steps that Highland Springs Mobil will take to avoid detrimental impacts to the character of development in the immediate neighborhood, a determination of Public Convenience or necessity is appropriate because the Highland Springs location within is not located close proximity to any schools, churches residences or other sensitive land use. The store is surrounded by similarly scaled commercial retail uses.

With respect to the City’s General Plan, the Vision Statement promotes “well balanced commercial development, where revenue generating commercial neighborhoods provide a diversified economy and a wide range of jobs.” Similarly, the General Plan’s Land Use Element identifies a goal of creating a “balanced, well planned community including businesses which provide a functional pattern of land use” and a policy of promoting the “highest quality” of development. The existing Highland Springs Mobil operation already serves those goals and policies by providing access to gasoline sales, automotive products and services as well as general merchandise in a modern facility located in close proximity to the I-10 Freeway and a number of residential developments. The addition of beer and wine sales would facilitate even greater harmony with the General Plan by providing more convenient, “one-stop” shopping for Highland Springs Mobil customers in the City of Banning and the traveler, further diversifying the area’s economic base. According to the General Plan the Highway Serving Commercial land use designation allows restaurants (fast food and sit down), hotels and
motels, auto related retail, repair and services, including gas station, convenience stores and similar uses serving the I-10 traveler. The Mobil Gas Station is surrounding by Highway Serving commercial uses and does not abut a residential neighborhood.

Because the two of the surrounding are compatible to the sale of beer and wine, approval of the CUP will not be harmful to the health, safety and general welfare of the public or otherwise detrimental to the environment or the character of development in the immediate area.

With respect to the City General Plan, the Vision Statement promotes “well-balanced commercial development, where revenue generating commercial neighborhoods provide a diversified economy...” Similarly, the General Plan’s Land use element identifies a goal of creating a “balanced, well planned community including businesses which provide a functional pattern of land uses” and a policy of promoting the “highest quality” of development. The addition of beer and wine sales would facilitate even greater harmony with the General Plan by providing more convenient, “one-stop” shopping for Mobil customers in the City of Banning and further diversifying the area’s economic base.

Finding No. 2
Beer and Wine Sales at the Highland Springs Mobil Service Station will generate economic benefits and they are not likely to result in negative impacts to the community as a whole.

Finding of Fact:
As described above, the sale of beer and wine by Highland Springs Mobil would be conducted in a manner that maximizes public safety and minimizes public nuisance at a location that is very well suited for alcohol sales. Therefore the project is not likely to generate negative community impacts. Given the store’s proximity to the City of Beaumont, and the fact that beer and wine sales will make the Highland Springs Mobil a more attractive “one stop” option for shoppers, it is likely that the store will generate additional sales tax revenue for the City of Banning that may have been previously lost to its neighboring city. The beer and wine sales will make it that much more likely that the Banning location will continue to succeed so that the City can continue to receive sales tax revenue from the Highland Springs Mobil station.

Finding No. 3
The Sale of Beer and Wine by Highland Springs Mobil Service Station on Highland Springs Avenue will provide service to the area that is not clearly met by other existing alcohol sales establishments.
Finding of Fact:

The Highland Springs Mobil is an attractive modern facility in a very visible location. With excellent frontage on Highland Springs and given its proximity to I-10, the store is easily accessible for the City’s residents as well as other visiting the area. Given the mixed uses of the shopping center the addition of beer and wine sales will make the location an even more attractive destination. These complimentary uses will help reduce vehicle miles traveled because customers will not be able to meet even more of their shopping needs without having to travel to multiple locations. Therefore, the addition of beer and wine sales at the existing Highland Springs Mobil location will provide additional services that shoppers require.

When Kmart closed it eliminated one of the major off site beer and wine sales businesses in the Sun Lakes Village shopping center. The Highland Springs Mobil would fill that void which is highly unlikely to be duplicated in the Kmart’s former location because the commercial nature of the likely future tenants.

The only other existing beer and wine licenses within the Sun Lakes Village shopping center are Albertson’s and RiteAid drugstore.

SECTION 3. PLANNING COMMISSION ACTION:

The Planning Commission hereby takes the following action:

1. In accordance with CEQA Guidelines Section 15301 the Planning Commission hereby adopts the Categorical Exemption (Class 1: Existing Facilities) and directs the Acting Community Development Director to prepare and file with the Clerk for the County of Riverside a Notice of Exemption as provided under Public Resources Code Section 21152(b) and CEQA Guidelines Section 15062; and

2. Conditional Use Permit No. 15-8002, is approved subject to Conditions of Approval attached hereto and incorporated herein by reference as Exhibit A.

3. Approves the Public Convenience or Necessity Findings and directs the Community Development Director to file said finding with the California Department of Alcoholic Beverage Control.
PASSED, APPROVED AND ADOPTED this 3rd day of February 2016.

David Ellis, Chairman
Banning Planning Commission

APPROVED AS TO FORM
AND LEGAL CONTENT:

Robert Khuu
Aleshire & Wynder, LLP
Assistant City Attorney
City of Banning, California

ATTEST:

Sandra Calderon, Recording Secretary
City of Banning, California
CERTIFICATION:

I, Sandra Calderon, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2016-01, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 3rd day of February 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Sandra Calderon, Recording Secretary
City of Banning, California
EXHIBIT A

PROJECT #: Conditional Use Permit No. 15-8002
SUBJECT: Conditions of Approval (Planning Commission Resolution No. 2016-02)
APPLICANT: Mr. Sobhy Yousef dba Highland Springs Mobil
LOCATION: APN: 419-140-028

* All fair share agreements, covenant agreements and agreements subject to recordation will be subject to review and approval by the City Attorney and will include appropriate enforcement provisions by the City and be properly securitized.

Community Development Department

1. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively “Actions”), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City’s defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.
2. The Community Development Director, may upon an application being filed 30 days prior to expiration and for good cause, grant one time extension not to exceed twelve months. Upon granting of an extension the Community Development director shall ensure that the Conditional Use Permit complies with all current Ordinance provisions.

3. The issuance of these Conditions of Approval does not negate the requirements of the State of California, Department of Alcoholic Beverage Control requirements or regulations.

4. A copy of the signed Resolution of approval and/or community Development Director’s letter of approval, and all Standard Conditions, shall be maintained for review at the location 300 S. Highland Springs Avenue.

5. If there more than three calls for service in any six-month period or any future issues that arise with the use that is the subject of this discretionary approval (e.g., complaints from neighboring residents or businesses) the Community Development Director or other appropriate City designee has the authority to require that the Conditional Use Permit be brought back before the Planning Commission for immediate remedy which may include, but not necessarily be limited to, the imposition of additional conditions of approval.

6. Approval of this entitlement shall not waive compliance with any sections of the Development Code, other applicable City Ordinances, in effect at the time of building permit issuance.

7. Prior to any use of the project site, or business activity being commenced thereon, all Conditions of Approval shall be completed to the satisfaction of the Community Development Director.

8. No alcoholic beverages shall be consumed on any portion of the licensed premises or any portion adjacent thereto which is under the control of the licensee.

9. The applicant shall obtain a Type 20 (beer and wine off-site) license from the Department of Alcoholic Beverage Control (ABC) and keep said license in full force and effect; otherwise, this Conditional Use Permit in null and void.

10. Sales and service of alcoholic beverages shall not be permitted between the hours of 1:00 a.m. and 7:00 a.m. each day of the week.

11. The sale of distilled spirits is prohibited.

12. The amount of floor area dedicated to alcohol sales and storage shall not exceed 250 square feet.
13. A video surveillance system shall be used to monitor/record all alcohol sales. The video data shall be maintained for at least 30 days and shall be provided to law enforcement upon request.

14. Sales and service of alcoholic beverages shall be restricted to, and within, the confines of the building portion of the premises. The sales and service of alcoholic beverages through any pass-out or drive-up window is prohibited.

15. There shall be no amusement machines or video game devices in the premises.

16. Said alcoholic beverage license shall not be transferred to another location within the City of Banning without approval of the City.

17. The parking lot area shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking area. Additionally, the position of such lighting shall not spill onto nor disturb the normal privacy and use of neighboring residences. The lighting system shall be fully operational at all times the store is open for business.

18. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.

19. No person under 21 years of age shall sell or deliver alcoholic beverages.

20. Employees shall undergo training prior to selling, or offering the sale of beer and wine.

21. No pay phone shall be maintained on the interior or exterior of the premises.

22. Peace officers as well as the Community Development Director or his/her designee and other persons employed by the Department of Alcoholic Beverage Control are hereby permitted to inspect the premises at any time for compliance with these conditions of approval.

**Police Department**

23. At the request of the Police Department, the applicant shall post and maintain a professional quality signs(s) facing the premises parking lot that read as follows:

   **NO LOITERING, NO LITTERING, NO DRINKING OF ALCOHOLIC BEVERAGES, VIOLATORS ARE SUBJECT TO ARREST**

***END***
ATTACHMENT 2
Applicant's Letter

Conditional Use Permit No. 15-8002
November 24, 2015

City of Banning
99 East Ramsey
Banning, CA 92220

Dear Sir or Madam

I am writing to emphasize the need of establishing a license to sell alcohol at our location.

It’s both convenient and necessary for the public to be able to stop at one location to get most of their items in one trip. We are the only location in the area that sells gasoline as well as groceries and alcohol. For those in the local neighborhood that frequent the store and are walking, they do not need to cross a very busy street to shop at the competition. Our extended hours allow more availability that the other competitor in our area.

Many current customers have asked to purchase alcohol, and it’s a disappointment when we cannot sell to them, and they are forced to go elsewhere to make their purchase. This puts us at a disadvantage in competing with other local stores.

We respectfully request that this application be approved.

Sincerely,

Sobhy Yousef
Owner
ATTACHMENT 4
City of Banning Chief of Police Letter
December 18, 2015

Community Development Department
City of Banning, City Hall
99 E. Ramsey Street
Banning, CA 92220

To Whom It May Concern:

In response to the ABC License request for beer and wine at the Highland Springs Mobil Gas Station located at 300 S. Highland Springs Avenue in the City of Banning, the Banning Police Department has reviewed crime statistics for the affected area and has determined the area is not a “high crime” area.

If you have any questions, or wish to discuss, please contact me.

Sincerely,

Chief Alex Diaz
ATTACHMENT 5
Public Hearing Notice

Conditional Use Permit No. 15-8002
NOTICE OF PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A CATEGORICAL EXEMPTION FOR CONDITIONAL USE PERMIT No. 15-8002 TO APPROVE THE OFFSITE SALE OF BEER AND WINE FROM THE EXISTING UAS STATION LOCATED AT 200 S. HIGHLAND SPRINGS AVENUE (APN: 416-160-026) ALONG WITH A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY WITHIN THE SUN LAKES VILLAGE SPECIFIC PLAN AREA. NOTICE IS HEREBY GIVEN OF A public hearing before the City of Banning Planning Commission, to be held on Wednesday, February 3, 2016, at 6:30 p.m. in the Council Chambers, City Hall, 59 East Ramsey Street, Banning, California, to consider the request of an Alcohol Beverage Control licensee (the proposed Conditional Use Permit No. 15-8002) pursuant to Chapter 17.52 (Conditional Use Permit) of the City of Banning Municipal Code. Information regarding the Categorical Exemption for Conditional Use Permit No. 15-8002 can be obtained by contacting the City’s Community Development Department at (909) 822-3125, or by visiting the City Hall located at 59 East Ramsey Street, Banning. You may also go to the City of Banning website at http://www.banning.ca.us. All persons interested in speaking either in support of or in opposition of this issue are invited to attend said hearing, or to send their written comments to the Community Development Department, City of Banning, P.O. Box 909, Banning, California 92220. If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the City Council makes its decision on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 66008). BY ORDER OF THE ACTING COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA Brian Oliff Acting Community Development Director Dated: January 19, 2016 Published in The Record Gazette No. 127564 January 22, 2016

Executed on: 01/22/2016
At Banning, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Signature
The Brown Act, Civility & Parliamentary Procedure
Session Objectives

1. To familiarize you with the Brown Act
2. To help you run a meeting
3. To help you all get along!
NEW PROCEDURES MANUAL

Now Incorporates Most of the City’s Old Civility Rules and Meeting Procedures All Under One Cover.
Part I

THE BROWN ACT
THE BROWN ACT

AKA: The Open Meeting Laws

“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency."

(Gov. Code § 54953)
APPLIES TO “LEGISLATIVE BODIES” AND ADVISORY BODIES

- Commission and committee bodies.
- Does not apply to bodies of less than a quorum.
- Body which is created by formal action to provide an advisory role.
- Nonprofits--including an appointed councilmember and which receives City funding.
"WHAT IS A MEETING?"

Definition: "Meeting" includes any gathering of a majority of the members of a legislative body to hear, discuss, or deliberate upon any item which is within its subject matter jurisdiction.
"WHAT IS A MEETING?"

Means of Communication: A meeting includes any use of direct communication, personal intermediaries, or technological devices which are employed by a majority of the members of the legislative body to develop a collective concurrence on action to be taken by members of the legislative body.

(§ 54952.2)
WHAT IS A MEETING, CONT...

➤ Meetings take place if quorum receives information on, discusses, or deliberates on any item on which the body may legally act.

➤ Serial and rotating meetings or polling prohibited.

➤ Beware Email & Texting!!!!
MORE on Email & Texting

✓ Remember, your emails and text messages are also subject to public disclosure under the Public Records Act.
✓ Does NOT matter if you’re messaging from a personal device!
**WHAT IS A MEETING, CONT...**

*Social gatherings are permitted:*

- **Conferences:** Quorum may attend conference or similar publicly-open gathering on issues of general public interest. Quorum cannot discuss amongst themselves any City business.

- **Community Meetings:** Like conferences, quorum can attend open and publicized meeting held by another organization on a topic of local community concern. Again, quorum cannot discuss City business amongst themselves.
WHAT IS A MEETING, CONT...

- Other Legislative Bodies: Quorum can attend an open and **noticed** meeting of: (1) another body of the local agency and (2) a legislative body of another local agency. Again, no talk of City business amongst yourselves!
WHAT IS A MEETING, CONT.

"Are Collective Briefings OK? Not collective, but individual briefings probably OK."
TYPES OF MEETINGS

Meetings generally must be in City boundaries:

- Regular—Formally established time/place.
- Special—Called by presiding officer/majority.
- Adjourned/Continued Meetings
- Emergency Meetings
  - Actual public threat.
AGENDA REQUIREMENTS

- *Regular Meetings:* Written agenda must be prepared and posted 72 hours prior to each regular or adjourned regular meeting of each legislative body.
- *Special meetings:* Must give 24 hour notice that serves just like an agenda.
AGENDA REQUIREMENTS, CONT.

- **Adjourned/Continued Meetings**: Can adjourn to specified time or to next regular meeting.
- No new agenda needed if adjourned meeting is less than 5 days away.
- Clerk must post notice of adjournment within 24 hours of the adjournment.
- Minority or Clerk can adjourn for lack of quorum.
AGENDA REQUIREMENTS, CONT.

Brief description sufficient to inform public of the nature of each item. Which of these is not enough:

- "Consideration of A Report Regarding Traffic on Eighth Street".
- "Consideration of contract with ABC Consulting".
Stay on Point!

Generally cannot discuss items not on the agenda. **Exceptions:**

Can add a new item, but body must find: (1) matter arose after agenda was posted, and (2) there must be a 2/3 vote of membership—unanimous vote if less than 2/3 present, and (3) the action needs immediate action!
Agendas... More Exceptions

No discussion of any item not on agenda... Except:
- Brief responses.
- Statements or questions.
- Questions for clarification.
- Reference to staff or other resources for factual information.
- Request staff to report at a subsequent meeting.
- Request Future Agenda items (but no deliberations).
Public Comment...

Public has the right to talk about anything they want that's not on the agenda. We do that at the start of the meeting.

- Don’t debate with public! You still have to stick to the agenda.

Members of the public get to speak on each and every item as it comes up before deliberations have been made.

Optional: Can also give public a chance to speak on non-agenda items at end of meeting.
Brown Act Mandates Public Participation In Meetings.

- Anyone can attend open meetings.
- Cannot require names, questionnaires, or conditions to attendance.
- Public may record proceedings by video, film or audiotape.
- If meeting willfully interrupted or order cannot be restored by removing only the disrupting individuals, body may order room cleared.
CLOSED SESSIONS

FOUR GROUNDS FOR CLOSED SESSION:

- Real Property Negotiations
- Pending/Anticipated Litigation
- Labor Negotiations
- Personnel Matters
  ✓ Must give employee 24 hr written notice of right to have charges heard in open session if specific charges.
The Brown Act

PENALTIES: Failing to Comply

- Injunction, Mandamus & Declaratory Relief—and a violation may cause City to pay attorney fees of the plaintiff.
- Voidability of Decision.
- Challenger must demand corrective action within 90 days of action -- or 30 days if agenda issue.
- City has 30 days to correct action before suit.
When to ask for help

➢ Whenever you have doubts!
➢ Do NOT wait for the meeting!
Part II

PARLIAMENTARY PROCEDURE
(How To Run A Meeting)
Parliamentary Procedures

FOR A PUBLIC HEARING ITEM

- Recusals? Conflict Statements.
- Adequate Notice?
- Staff Presentation
- Ask All Factual Questions
- Open Public Hearing
- Receive Testimony
- Close Hearing
- Ask Any Additional Questions
- Make Decision
- Recused Officers Return for Next Item
Recusals Come First!

• Most often occurs where there's a conflict under the State Political Reform Act.

• If you have a conflict, you cannot participate in the decision at all—in fact, you cannot even attempt to influence the matter through City staff or official colleagues.

• This is true for all matters on the agenda—not just public hearings.

• Leave the room!
When Do I Have A Conflict?

- Beyond the Scope of this Presentation, but main pointers:
- You must have a FINANCIAL interest in the matter before your legislative body.
  - Most common example: you own property within 500 feet of an area that is the subject of your body’s decision.
  - And this satisfies your AB 1234 training requirement—a state mandated requirement for you officials.

**The FPPC will also help you, for free, with specific conflicts questions at: 1-866-ASK-FPPC (1-866-275-3772).**
Final Tips on Conflicts

- Staff cannot predict every possible conflict—the laws put the burden on the official to identify possible conflicts.

- Raise any possible conflict EARLY & WELL BEFORE THE MEETING. A conflict usually entails extremely complex laws that apply differently to every situation.
  
  -- If you don’t raise a possible conflict issue well in advance of a meeting, expect to be told to abstain.
Parliamentary Procedure
ISSUES INVOLVING HEARING & COMMENTS

- Remember: Non-hearing items subject to comment, too.
- Balance: Everyone gets their say vs. length of meeting.
- Established rules at beginning of comment time.

- Commission has rules but can adjust for special circumstances
  - Time limit for speaking
  - Alternate sides vs. one side
  - Time limit for hearing
Parliamentary Procedure

- Address Questions Raised by Speakers: Chair note questions, wait until close of hearing, and ask for response by staff to each question
  - Continuation:
    ✓ time certain
    ✓ matter vs. hearing
    ✓ reopen
Parliamentary Procedure

Major Mistakes Made At Hearings & With Public Comment!!

- Commissioner expresses opinion prior to commencement of hearings.
- Debating with speakers.
- After the close of hearing, members raise issues or facts not presented at hearing; citizens readdress Commission.
- Not letting public comment before deliberations on each item (including Closed Session).
Other Issues of Due Process

Extra Meeting Contacts with Developers and Citizens:

• Avoid initiation of contact.
• If you are contacted, be polite, avoid stating viewpoint.
• At hearing, enter into record any information which will be relevant to hearing.
Other Issues of Due Process

Extra Meeting Contacts with Developers and Applicants:

- Quasi-judicial proceedings: extra-meeting contacts can give appearance of impropriety.
- Site inspections okay.
  - But, should disclose before hearing.
MOTIONS:

When a motion is made and seconded, it shall be stated by the Presiding Officer before debate.

A motion so stated shall not be withdrawn by the mover without the consent of the person seconding it.
MOTIONS:
When a motion is made—that’s the “main motion”. Other motions may be made on “top” of the main motion and they will precede in the following order:
✓ Adjourn
✓ Fix hour of adjournment
✓ Table (No longer in Robert’s Rules)
✓ Close Debate (needs 2/3 vote)
✓ Amend/Substitute
✓ Postpone
MOTIONS... Amending Motions

✓ A motion to amend shall be discussed only as to the amendment.
✓ Amendments shall be voted first, then the main motion as amended—Vote backwards: last motion is voted first.
✓ Alternatively, the original maker of the main motion may agree to revise the original motion and if the second agrees to second the revised motion, the body may vote on the main motion as revised.
MOTIONS... Substitute Motions

- A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to **throw out** the basic motion on the floor, and **substitute a new and different motion for it**.
- The decision as to whether a motion is really a 'motion to amend' or a 'substitute motion' is left to the chair.
- Substitute motions are voted first and, if passed, terminate the original motion.
Robert’s Rules of Order...

- They are the “standard” rules and are even incorporated into our Procedures Manual.
- But, they can be problematic—confusingly written; not really tailored to local government bodies.
- There are other good summaries out there: The Institute for Local Government endorses Rosenberg’s summary of parliamentary rules, which can be found in a short video training course here: http://vimeo.com/25152753
Above All Else—Vote Clearly!

- Remember the prime directive of Robert’s Rules is to ensure the clarity of the vote and what was voted upon.
- There are no real legal ramifications for failing to follow the technical aspects of parliamentary rules—so long as every member had an opportunity to speak and the will of the majority is clear.
VOTING:

- There may be a simple consensus, or a vote either electronically or by roll call.
- A member who abstains due to reasons of conflict shall, for purpose of the item under consideration, be considered as if absent.
- One abstaining for reasons other than conflict shall be counted as present for purposes of a quorum and such abstentions are counted with the majority.
VOTING... Tie Votes

Tie Votes shall be lost motions unless an additional motion is made that obtains a majority vote to break the tie.
VOTING... What Majority?

✓ Usually, majority of body present can act.
  ✓ E.g., 3 officers present, need only 2 votes.

✓ But—Resolutions, orders for the payment of money, and all ordinances require a recorded majority vote of the total membership—Council ONLY! (§36936.)
  ✓ E.g., if 3 Councilmembers present, need all 3 votes to pass a resolution.

✓ Some actions require a super-majority vote.
  ✓ E.g., urgency ordinances, resolutions of necessity, calling of election on general tax.
Part III

RULES OF CIVILITY
Rules of Civility

✓ Public Meeting: Be civil; honor chair; do not get personal.

✓ Commission/Staff: Do not criticize; disrupt; demand:
  ✓ Check with staff on correspondence.
  ✓ Do not get involved with administrative function.
  ✓ Do not attend staff meetings unless requested.
  ✓ Do not solicit political support.
  ✓ Do not participate in code enforcement or other similar investigations.
Rules of Civility

- Make no promises on behalf of Council, Board or Commission.
- No personal comments re your colleague officials.
- Distinguish City from personal interests.
- No lobbying City folks for personal or business interest.
- Be respectful of fellow officials and their opinions.
- All planning commissioners are equal.
Public Censure:

- Violation of Rules or any law may result in public censure.
- It's a motion by fellow officers sending a “strong message” of disapproval.
- Officer to be censured has right of notice and opportunity to cure misconduct.
Best Practices

- Think fairness and merit-based decision-making in your decisions.
- Planning Commissioners as team; respect each other and the public.
- Keep politics separate from relationships with agency staff.
- Avoid committing/commenting before the public hearing.
MANUAL OF PROCEDURAL GUIDELINES
FOR THE CONDUCT OF
CITY COUNCIL AND CONSTITUENT
BODY/COMMISSION MEETINGS FOR

THE CITY OF BANNING

ADOPTED ON OCTOBER 23, 2012
(Amended April 23, 2013, City Council Resolution No. 2013-48)
(Last Amended Nov. 12, 2013, City Council Resolution No. 2013-103)

Marie Calderon
City Clerk

David J. Aleshire
City Attorney
OUTLINE OF PROCEDURAL MANUAL PROVISIONS

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

A. Agendas (3.1-3.4; 5.1-5.10)
   1. City Manager generally has the authority to set the agenda. (5.1)
   2. Any Councilmember may request a matter be put on an agenda. If significant
      staff work involved, CM can bring it to an agenda under pending items and
      Council can decide whether they want it agendized for discussion. (5.1)
   3. Permits consent calendars and defines what isn’t permitted on consent calendar:
      ordinances; matters involving split votes or public controversy.
   4. List order of agenda.
   5. Permits an agenda item for "Council Agenda — New Business" and where
      announcements permitted with no discussion.

B. Ordinances and Resolutions and Contracts (5.3 - 5.6)
   1. Defines matter appropriate for ordinance vs. resolution.
   2. Defines vote requirements—resolutions require 3 votes.
   3. Urgency circumstances defined where resolution can be prepared at a meeting.
   4. Contracts may be put in final form by legal counsel.

C. Boards and Commissions (6.4)
   1. Defines legislative bodies and advisory bodies subject to the Brown Act. (1.2(a))
   2. Permits creation of ad hoc council subcommittees not subject to the Brown Act.
   3. Permits formation boards and commissions subject to the Brown Act.
   4. Provides that appointments are by Mayor with the consent of Council.
   5. Commissions not permitted to create subcommittees.

D. Closed Sessions (4.1 - 4.4)
   1. Those persons not relevant to the closed session matter are excluded.
   2. A minute book may be kept of the proceedings.
   3. Revealing any matter from closed session can subject the person to censure.

E. Public Comments (7.0 – 7.4)
   1. City Council meeting presentations are to be no more than five minutes in length;
      this is to include all speakers for the group being recognized. Exhibit “B” has full
      policy.
   2. Time limits are 3 minutes and 5 minutes for public hearing but applicant not
      limited.
   3. Public comment periods include initial comment period on non-agenda items;
      comment on agenda items.
F. **Hearings (8.1 – 8.4)**

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

G. **Conduct of Members**

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

H. **Procedures**

1. Abstentions discouraged but permitted where appearance improbity even if no financial conflict.
2. Motions to rescind clarified so that matter can be rescinded if later legislative session. (11.4)
3. Defines process to correct an earlier action in violation of Brown Act. (12.1 – 12.3)
4. Includes Table of Motions and Procedural Actions.
MANUAL OF PROCEDURAL GUIDELINES FOR THE CONDUCT OF CITY COUNCIL AND CONSTITUENT BODY/COMMISSION MEETINGS

ARTICLE I – SCOPE

1.1 Application of Rules

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

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

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

1.2 Definitions

The following definitions shall apply to these rules and procedures:

a) "Legislative Body" means any quorum of any council, board, commission or standing committee (as defined in Government Code § 54952), or other governing body of the City of Banning that is subject to the Brown Act (Government Code § 54950 et seq.). This includes the Banning City Council, Banning Successor Agency to the former Redevelopment Agency, Banning Housing Authority Board, Banning Utility Authority, Banning Financing Authority, Planning Commission, Parks and Recreation Commission, Civil Service Commission and any standing committee subject to the Brown Act. The term "Legislative Body" does not include Non-Governing Bodies, as defined below.

b) "Presiding Officer" means the chairperson of the Legislative Body. For example, this refers to the Mayor when read in the context of the City Council, the Board Chair in the cases of the Successor Agency to the Redevelopment Agency and/or the Housing Authority, and the Chair of any Commission.

c) "Vice Chair" means the vice chairperson to the Presiding Officer. For example, the Vice Chair means the Mayor Pro Tempore in the case of the City Council, the Vice Chairperson in the cases of the Successor Agency to the former
Redevelopment Agency and/or Housing Authority, and the Vice Chairperson of any Commission.

d) "Clerk/Secretary" means the person responsible for taking and maintaining the record of proceedings for all meetings, preparation of agendas, calendar clerk and custodian of rules, resolutions, ordinances and Legislative Body records. For example, the Clerk/Secretary refers to the City Clerk in the case of the City and the Agency Secretary in the cases of the Successor Agency to the former Redevelopment Agency and/or the Housing Authority.

e) "General Counsel" means the legal advisor to the Legislative Body, such as the City Attorney in the case of a City Council meeting, or Agency Counsel in the cases of the Successor Agency to the former Redevelopment Agency and/or Housing Authority.

f) "City Manager" means the Chief Executive Officer of the City, the Successor Agency to the former Redevelopment Agency, Housing Authority, Financing Authority and Banning Utility Authority. The City Manager may serve as the Secretary to the Successor Agency or Housing Authority, and the City Manager can designate appropriate staff to serve as the clerk/secretary to any Commission of the City.

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

h) "Sub-Legislative Bodies" means such advisory committees which are subject to the Brown Act but are not "governing" Legislative Bodies.

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

ARTICLE II - MEETINGS

2.1 Regular Meetings

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

2.2 Special Meetings

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

2.3 Special Emergency Meetings

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

(a) A work stoppage, terrorist act or threat, crippling disaster or other activity
which severely impairs public health or safety as determined by the majority of the Legislative
Body; or

(b) Such other circumstance specified by State law as authorizing the conduct
of an emergency meeting. Any special emergency meeting shall be called, noticed, and
conducted only in accordance with the procedures set forth in State law.

2.4 Attendance

A majority of members of the Legislative Body shall constitute a quorum. Less than a
majority may adjourn from time to time, and may compel the attendance of absent members.
Any member who fails to attend any of the meetings of the Legislative Body for 60 days, unless
such absences are excused, shall surrender the office and be deemed to have surrendered the
office.

2.5 Study Sessions

The Legislative Body may meet informally in conference or “study” sessions regarding
concerns of the Legislative Body to interchange information, provided that all discussions and
conclusions shall be informal. Such meeting shall be called in the same manner as for special
meetings or adjourned meetings, as applicable, and be subject to the Brown Act. Each notice
shall indicate that an opportunity for public comment shall be provided before any matter shall
be determined. When a meeting has been designated a Study Session, the Legislative Body shall
not take any action with respect to the matter under study except with prior public notice,
appearing on a properly posted agenda, of such intent to take action.
ARTICLE III—NOTICE AND AGENDA

3.1 Notice and Agenda for Regular Meetings

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

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

CITY HALL LOBBY
CITY OF BANNING WEBSITE

3.2 Notice and Agenda for Special Meetings

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

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

CITY HALL LOBBY
CITY OF BANNING WEBSITE

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3.3 Notice and Agenda for Adjourned Meetings

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

3.4 Affidavit of Posting

Immediately following the posting of the notice and agenda, the Clerk/Secretary or his or her designee shall complete an Affidavit of Posting, in a form to be developed by the Clerk/Secretary. The Affidavit of Posting shall indicate the time of the posting, the location(s) of the posting, and shall be signed under penalty of perjury. The Clerk/Secretary shall retain all such affidavits, together with a copy of each notice and agenda so posted. The affidavit, notice, and agenda shall be retained at least two (2) years subsequent to the date of posting, and pursuant to Government Code § 34090, shall not be destroyed by the Clerk/Secretary thereafter except in accordance with the City’s record retention policies.

ARTICLE IV– CLOSED SESSIONS

4.1 Generally

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

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4.2 **Persons Authorized**

Persons present in the closed session shall be only those persons necessary to the discussion of the matter under consideration. All other persons shall be excused. The Clerk/Secretary shall attend each closed session of the Legislative Body and keep and enter into a minute book a record of any reportable decisions made at the meeting, unless attendance is excused.

4.3 **Confidentiality**

The minute book for any closed session is not a public record and shall be kept confidential and shall be available only to members of the Legislative Body or as otherwise provided by law. (Government Code § 54957.2(a).) No person attending a closed session shall publicly discuss or otherwise reveal the proceedings in the closed session unless such publication has been approved by the vote of the Legislative Body taken during the closed session or as otherwise required by law. Violation of this rule shall subject the violator to censure by the Legislative Body as provided in Section 10.5 herein.

4.4 **Public Reports**

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

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

**ARTICLE V - AGENDA CONTENTS**

5.1 **Preparation of Agendas**

Barring insurmountable difficulties, the agenda shall ordinarily be delivered to the members of the Legislative Body on Friday (as an informal deadline) preceding the meeting to which it pertains. The agenda shall also be available to the general public at the time it is delivered to the members of the Legislative Body, or in any case as required by the Brown Act.

Any Legislative Body member may have placed on the agenda any business that should be deliberated upon in the future by the Legislative Body. Any Legislative Body member desiring to present a subject for the Legislative Body’s consideration shall advise the City Manager’s office of that fact not later than **12:00 noon on the Tuesday** of the week preceding the meeting at which the member wishes the subject to be considered. The matter shall then be listed on the next agenda for discussion of whether it should be a future agenda item. The City Manager shall advise the Legislative Body member of constraints affecting staff’s ability to produce an agenda report, and when the matter should be scheduled.
Notwithstanding the foregoing, the City Manager generally has responsibility for setting the agenda for the Legislative Body (except for any Commission where the responsibility may be assigned to the City Manager’s designee), and may place matters on the agenda in accordance with the Manager’s evaluation of administrative priorities and resource capacities of City.

5.2 Description of Matters

All items of business to be transacted or discussed at a meeting of the Legislative Body, shall be briefly described on the agenda. The description may, but need not, set out the specific action or alternatives which will be considered by the Legislative Body, but should contain sufficient detail so that a person otherwise unaware could determine the general nature or subject matter of the item by reading the agenda. The description of closed session matters shall meet the requirements of Government Code Sections §54954.2 and, where applicable, §54954.5. Matters may be designated as “pending” and listed for the sole purpose of determining if they will be on a future agenda.

5.3 Action Items

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

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

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

5.4 Resolutions

(a) A “resolution” is a formal action with findings taken by the Legislative Body, generally pre-prepared in writing, designated by sequential number, and reference to which shall be inscribed in the minutes and an approved copy of each resolution filed in the official book of resolutions of the Legislative Body. Resolutions are used when specifically required by law, when needed as a separate evidentiary document to demonstrate findings or to
be transmitted to another governmental agency, or where the frequency of future reference back to its contents warrants a separate document (with the additional "whereas" explanatory material it often recites) to facilitate such future reference and research.

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

(c) Where a resolution cannot reasonably be prepared in advance of a meeting, the Legislative Body may instruct the City Manager or the General Counsel to prepare a resolution for presentation at the next Legislative Body meeting. Where urgent, a resolution may be presented verbally in motion form together with instructions for written preparation for later execution. After the resolution has been verbally stated, the voting procedure in Article XI, shall be followed.

5.5 Ordinances (City Council Only)

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

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

(c) A waiver of further readings requires a majority vote of the Council members present and voting. The waiver of further reading may be accomplished by one vote for all ordinances presented on the agenda of the present meeting. Government Code Section 36934.

(d) The Clerk/Secretary shall prepare copies of all proposed ordinances for distribution to all members of the City Council at the meeting at which the ordinance is introduced, or at such earlier time as is expedient. Ordinances shall be numbered and kept by the clerk/secretary with the same formality as resolutions as described above in Section 5.4.

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

5.6 Contracts and Agreements

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

5.7 Limitation of Actions by Agenda

No action or discussion shall be taken by the Legislative Body, on any item not appearing on a posted agenda, subject only to the exceptions listed in Section 5.9 below. "Action taken" as used herein shall mean a collective decision made by a majority of the Legislative Body, a collective commitment or promise by a majority of the Legislative Body to make a positive or a negative decision, or an actual vote by a majority of the Legislative Body upon a motion, proposal, resolution, order, or ordinance.

5.8 Public Comment Period

Pursuant to Government Code § 54954.3, every agenda posted for any meeting shall contain an item entitled “Public Comment” in order to provide for an opportunity for the public to address the Legislative Body on items of interest to the public within the Legislative Body’s subject matter jurisdiction. The public comment period should be conducted in accordance with Article VII.

5.9 Exceptions to Agenda Requirement for Action Taken

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

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

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

(a) An account of all proceedings of Legislative Body in open meetings shall be kept by the Clerk/Secretary. The Clerk/Secretary shall prepare an abbreviated record of the meetings proceedings for approval by the Legislative Body which when adopted by the Legislative Body shall be the official Minutes of the meeting. Amendment of the minutes may be made only as to factual accuracy and not as to a change of intent. The Minutes of the meeting need not be verbatim. Only the best and most complete available recording of the meeting shall constitute the official record of the Legislative Body, but the Minutes shall constitute the official record of the Legislative Body meeting where a verbatim record of the meeting is not available.

(b) Any recording of a meeting made by or at the direction of the Legislative Body is a public record that must be retained and made available to the public for at least 30 days. The Legislative Body must provide to the public, without charge, equipment to review the record.

**ARTICLE VI – ORDER OF BUSINESS**

6.1 **Order of Business**

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

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

6.2 **Call to Order**

The meeting of the Legislative Body shall be called to order by the Presiding Officer, or the Vice-Chair in the Presiding Officer’s absence. In the absence of both the Presiding Officer and Vice Chair, the meeting shall be called to order by the Clerk/Secretary and the three Legislative Body members present shall elect by majority vote a Presiding Officer for that meeting.

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6.3 Consent Items

Matters of a routine or generally uncontested nature and non-controversial, shall be placed on the agenda as Consent Items and may be approved by the Legislative Body in a single motion by adoption of the Consent Calendar. The approval of the Consent Calendar shall signify the approval of each matter or recommendation included therein. All matters on the Consent Calendar shall be the subject to public comment procedures in Article VII. Upon the request of any member of the Legislative Body or upon the request of a member of the public made through the Presiding Officer, a matter may be removed from the Consent Calendar for separate discussion and/or action. Any such item shall be considered as part of the Excluded Consent Calendar. Each matter proposed for consideration as part of the Consent Items, including any recommended action, shall be described on the notice and agenda posted for the meeting. The following matters are not appropriate for the Consent Calendar:

(a) Ordinances shall not be placed on the Consent Calendar for approval unless the ordinance has first been read or the reading of the ordinance has been waived as required by law.

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

6.4 City Representatives and Advisory Bodies (City Council Only)

(a) From time to time the Council may be required to assign a representative of the City to non-City boards, commissions or organizations (e.g., boards or commissions of another agency or joint powers authority). Except as otherwise required by law or by the policies of the non-City organization, the Mayor shall make all such appointments of City representatives on non-City organizations after consultation with the City Council. Council appointments to non-City organizations shall be considered and made with the goal of keeping the appointee in the organization for a long enough period of time that the appointee may gain seniority and/or a position of leadership within the organization. This goal shall be construed to mean that the same appointee should remain within a non-City organization for at least two years where reasonably possible and convenient for said appointee. Nothing herein, however, shall be construed to limit or waive the City Council’s power to remove appointees pursuant to subsection (c) below.

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

Advisory bodies and committees may take the following form:
i) The Council may, as the need arises, authorize the appointment of "ad hoc" Council committees composed of two members. Except where otherwise specifically provided by law, the Presiding Officer shall appoint the members of the Council committees, subject to the approval of the Council. Any committee so created shall cease to exist upon the accomplishment of the special purpose for which it was created or when abolished by a majority vote of the Council.

ii) The Council may, subject to the Brown Act, create other committees, boards, and commissions, whether Legislative Bodies or Non-Governing Bodies, to assist in the conduct and operation of the City government with such jurisdiction and duties as the Council may specify. Except as otherwise required by law, the Mayor shall make appointments of members to such committees, boards or commissions subject to the approval of the Council. The procedure of filling vacancies and provision of notice thereof shall be subject to the provisions of the Maddy Act (Government Code §§ 54970-54974).

iii) Sub-Legislative Bodies, including Non-Governing Bodies, shall be responsible for reporting the Body's activities to the City Council. The members of a Sub-Legislative Body or Non-Governing Body shall operate within the jurisdiction established by the Council and shall not have authority to make subcommittees unless specifically granted such authority by action of the full City Council. Staff members may be assigned to assist any Council-created committee by the City Manager; staff members so assigned shall not be members of the committee unless specifically appointed as such by action of the full Council.

(c) Absent any other provision to the contrary, members of any non-City organization, or City committees, boards or commissions may be removed by the Council without cause by a majority vote of the whole Council body. Any member of the City Council may place the question of such removal on the agenda. Any committees, boards, or commissions so created may be abolished by a majority vote of the whole Council body by repeal of the enacting ordinance or resolution.

6.5 Budgets

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

6.6 Items from Members

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

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

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

ARTICLE VII—PUBLIC COMMENT AND PRESENTATIONS

7.0 City Council Meeting Presentations

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

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

7.1 Public Comment

At the beginning of any Legislative Body meeting the public shall be afforded the right to comment on any and all issues (not on the agenda) within the subject matter jurisdiction of the Legislative Body. Such general public comment on non-agendized issues shall be taken at the beginning of the meeting under a “General Public Comment” heading. With regard to matters not on the agenda, the Legislative Body may ask questions of persons who raise new matters during the General Public Comment period or otherwise, and the Presiding Officer should handle such matters as provided in Section 7.3, below. However, all Legislative Body questions must be limited to facts-only informational inquiries, and the Legislative Body may not discuss the merits, express any opinions or ask questions that convey opinions or thought processes with respect to any non-agendized issue. The public shall also be afforded the right to comment on every item appearing on the agenda prior to the Legislative Body’s consideration of that item, as provided in Section 7.4 below.
7.2 **Time Limitations**

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

7.3 **Reserved**

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

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

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

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

**ARTICLE VIII—NOTICED PUBLIC HEARINGS**

8.1 **Public Hearings; Notice; Fairness**

(a) Matters noticed to be heard by the Legislative Body shall commence at the time specified in the notice of hearing, or as soon thereafter as is reasonably possible, and shall continue until the same has been completed or until other disposition of the matter has been made.

(b) Legislative Body members shall not overtly or implicitly promise a particular action by City staff or by any Legislative Body. Where a Legislative Body member is contacted about an issue that will be presented to any Legislative Body of the City, it is appropriate to give a brief overview of City policy, to refer to City staff for further information, or to suggest that the concern be brought to the whole Council at the hearing or Council meeting, as appropriate.
(c) All public hearing notices shall be issued and published in compliance with any statutory notice requirements applicable to the particular hearing at issue and such notice shall inform interested persons of the Statute of Limitations to challenge the validity of any action taken by the Legislative Body on such matter.

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

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

8.2 Continuance of Hearings

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

(b) When it is the decision of the Legislative Body to continue an item which appears on the agenda, prior to hearing any report, testimony or taking evidence on the item, the Legislative Body may make such intent known at the beginning of the meeting. At that time the public shall be offered the opportunity to speak regarding the intent to continue the item. At the time regularly scheduled for the hearing of the item, the Legislative Body shall then take action to continue the item after again informing the public of the intent to continue the matter. No testimony or evidence shall be taken at that time unless the speaker will not be available at the continued hearing date.

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

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

8.3 Conduct of Hearings

(a) When a matter for public hearing comes before the Legislative Body, the Presiding Officer shall request that staff present the staff report and any other relevant evidence, but the presentation of the staff report prior to the formal opening of the public hearing shall not
prevent its consideration as evidence. Any such evidence shall be made a part of the record of the public hearing. The Presiding Officer shall permit members of the Legislative Body to ask questions of staff, but should prevent expressions of opinion by members of the Legislative Body before the conduct of the hearing.

(b) The Presiding Officer shall thereafter open the public hearing and inquire if there are any persons present who desire to address the Legislative Body on the matter. Any person desiring to speak or present evidence upon being recognized, may speak or present evidence relevant to the matter being heard. Any testimony shall be truthful.

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

(d) All persons interested in the matter being heard by the Legislative Body shall be entitled to submit written evidence or remarks, as well as other graphic evidence. All such evidence presented shall be retained by the Clerk/Secretary as part of the record. Each speaker may only speak once during the public hearing unless the Legislative Body requests additional clarification later in the process.

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

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

8.4 Extra-Meeting Contacts on Matters Set for Public Hearing

(a) Legislative Body members should minimize their contacts with developers, applicants, or other persons who will be the subject of a quasi-adjudicative public hearing matter to be heard before the Legislative Body. Legislative Body members should avoid extra-meeting contacts with persons who will be the subject of a public hearing before the Body or with advocacy groups or special interests.
(b) If a Legislative Body member is contacted directly by such person outside the meeting setting, the member shall refrain from expressing any viewpoints or thought processes to the person until after the public hearing. The Legislative Body member may explain that they are unable to express any viewpoint on the matter until all evidence has been heard in the course of a public hearing and should encourage any such person to present their position in writing or orally at the public hearing.

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

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

ARTICLE IX - OFFICERS

9.1 Presiding Officer

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

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

(c) Any determination made by the Presiding Officer may be appealed by the making of a Motion to Appeal the Ruling by any other member of the Legislative Body. The Presiding Officer's determination will stand unless a majority of the Legislative Body members vote in favor of the Motion to Appeal the Ruling, in which case the ruling of the Presiding Officer will be overridden. The Motion to Appeal the Ruling is governed by the Chart of Motions attached as Exhibit A.
9.2 **Representation of Legislative Body**

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

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

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

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

9.4 Clerk/Secretary

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

9.5 City Manager

The City Manager, or designee, shall attend all meetings of the Legislative Body unless excused. The City Manager may make recommendations to the Legislative Body and shall have the right to take part in all discussions of the Legislative Body, but shall have no vote. The City Manager, shall provide the Legislative Body with a staff report providing sufficient information to be the basis for any action by the Legislative Body at its meeting. Any officer or employee of the City, when directed by the City Manager, shall attend any meeting of the Legislative Body and may present information relating to matters before the Legislative Body.

9.6 General Counsel

(a) The General Counsel, or deputy, shall attend all meetings of the City Council unless excused and shall upon request of any member give an opinion, either written or oral, on questions of law. The General Counsel, or deputy, shall attend all meetings of such other Legislative Bodies as directed by the City Council or City Manager. The General Counsel serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. Final rulings on parliamentary procedure are made by the Presiding Officer, subject to the appeal of the full Legislative Body pursuant to Section 3 of Article XI, below. All ordinances and resolutions, all contracts, deeds, and easements or other legal instruments shall be approved as to form and legality by the General Counsel. Contracts may be approved as to form and/or legality by the General Counsel when exceeding purchasing ordinance and policy guidelines. In any case of ambiguity or uncertainty in the interpretation or application of this Manual to any procedure, the Presiding Officer may direct such question to the General Counsel for a ruling.
(b) Any member of the Legislative Body may request from the General Counsel a legal opinion regarding any matter related to the interests of the City. Where a legal opinion involves substantial cost, the request for the opinion must first be approved by the City Manager or by a majority of the Legislative Body. The General Counsel is the legal representative of the City acting through its Legislative Body. There is a continuing legal question as to whether the General Counsel may have an attorney-client relationship with any individual member of the Legislative Body or the City staff. As a consequence any discussion with the General Counsel which leads to the conclusion that the interests of the City are at risk must be revealed to all relevant members of the Legislative Body and the City staff by the General Counsel. The General Counsel shall not have an attorney-client relationship with individual councilmembers. The General Counsel is required to maintain the confidentiality of such communications from persons outside the City to the extent required or permitted by law and the code of ethics.

(c) The General Counsel has no statutory duty or authority under the Political Reform Act to provide Political Reform Act advice to any Legislative Body member but should provide advice to members when requested. However, a Legislative Body member may not rely on advice from the General Counsel to provide him or her with immunity from FPPC enforcement or prosecution. Such immunity may be obtained only through a written advice letter obtained from the FPPC, on the question in issue, by the Legislative Body member. A Legislative Body member enjoys no privilege of attorney/client confidentiality in reviewing these matters with the General Counsel. Any advice given to an individual member of a Legislative Body cannot be withheld from the rest of the City or Legislative Body. If, after receipt of an opinion of the General Counsel, the Legislative Body member wishes to participate in the decision making process with immunity from prosecution or enforcement, the General Counsel shall assist the Legislative Body member in making direct contact with the FPPC for informal or formal advice upon which the Legislative Body member can rely.

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

i) Upon receipt of the request, the General Counsel shall make the request available through the City Manager to the Council. Upon a determination by any Council member that there is an interest in participating in the action in the manner proposed, the Council member shall inform the City Manager or General Counsel who shall place the matter as an item for discussion in closed session on the agenda of the next Legislative Body meeting. The General Counsel may otherwise place an amicus request on the agenda on his or her initiative.
ii) In lieu of the foregoing process, where there is urgency to the
matter, General Counsel is authorized to undertake the filing of the letter or brief where (i) in the
opinion of General Counsel the legal matter significantly affects the interests of the City, (ii) the
General Counsel has consulted with and received the approval of the City Manager, (iii) the cost
to the City will not exceed $5000, and (iv) the General Counsel makes a written report of the
action to the Legislative Body.

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

9.7 Conflicts of Interest

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

9.8 Reserved

9.9 No Financial Interest in Contracts

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

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

ARTICLE X – DECORUM AND ORDER

10.1 Decorum and Order – Legislative Body Members

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

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

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

(d) A Legislative Body member, once recognized, shall not be interrupted while speaking unless called to order by the Presiding Officer, unless a Point of Order is raised by another Legislative Body member, or unless the speaker chooses to yield to questions from another Legislative Body member.

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

(f) Legislative Body members shall accord the utmost courtesy to each other, to City or Legislative Body employees, and to the public appearing before the Legislative Body and shall refrain at all times from rude and derogatory remarks, reflections as to integrity, abusive comments and statements as to motives and personalities, which disrupt, disturb or otherwise impede the orderly conduct of the Legislative Body meeting.

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

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

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

(j) No Legislative Body member attending a meeting of another City
commission or committee shall make any statement or, give the appearance or indicate in any
way that they are representing the Legislative Body unless they have been authorized to do so by
the Legislative Body. When making a comment at such a meeting, the Legislative Body member
should make it clear that they are speaking solely as an individual. Unless officially appointed to
participate on a committee, Legislative Body members should make an effort not to insert
themselves into or take positions on matters which will ultimately be decided upon by the
Legislative Body.

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

10.2 Decorum and Order – Employees

(a) Members of administrative staff and employees of the Legislative Body
shall observe the same rules of procedure and decorum applicable to Legislative Body members.
The City Manager shall ensure that all staff and employees observe such decorum. Any staff
members, including the City Manager, desiring to address the Legislative Body or members of
the public shall first be recognized by the Presiding Officer. All remarks shall be addressed to the
Presiding Officer and not to any individual Legislative Body member or member of the public.

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

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

(a) Members of the public attending Legislative Body meetings shall observe the same rules of order and decorum applicable to the Legislative Body. All remarks and questions should be addressed to the Presiding Officer and not to any individual Legislative Body member, staff member or other person.

(b) Any person conducting their public remarks or behavior before the Legislative Body in such a way as to actually cause disruption to the conduct of the meeting may be removed from the room by the sergeant-at-arms as directed by the Presiding Officer. Unauthorized remarks from the audience, stamping of feet, whistles, yells and similar disruptive demonstrations shall not be permitted by the Presiding Officer, who may direct the sergeant-at-arms to remove such offenders from the room or call a recess of the meeting. Aggravated cases may be prosecuted on appropriate complaint signed by the Presiding Officer.

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

10.4 **Enforcement of Decorum**

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

(b) Examples of remarks or behavior that cause actual disruption of the Legislative Body proceedings include:

- Unauthorized remarks from the audience, stamping of feet, whistles, yells, outbursts, catcalls, cursing, applause, offensive or obscene gestures or similar demonstrations which disrupt, disturb or otherwise impede the Legislative Body proceedings
- Interrupting speakers
- Calling members of the audience names
- Extended discussion of irrelevancies
- Physical threats
- Shouting into the microphone
- Dumping items or garbage on the floor of the chamber where the proceeding is held
- Speaking too long
- Being unduly repetitious
- Constant interruptions
- Interruption of meeting to make “objections”
(c) Examples of non-disruptive conduct include:

- Silent gestures by members of the audience, such as a thumbs up or thumbs down or Nazi salute that are not otherwise disruptive of the meeting
- Catcalls or booing during a time allowed for applause that does not otherwise disrupt the meeting
- Criticisms of public officials or staff during a time reserved for public comment that does not otherwise violate Council procedures and does not disrupt the meeting

(d) As set forth in Government Code § 54957.9, in the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the Legislative Body members may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Duly accredited representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this Section. Nothing in this Section shall prohibit the Legislative Body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

10.5 Censure of Legislative Body Members

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

(b) Any violation of the foregoing paragraph by a Legislative Body member may be punished through the administration of a public censure of the member by the member’s Legislative Body. Such censure may be in addition to any other punishment applicable to the violation. For purposes of this section, "censure" shall mean the adoption of a motion setting forth a statement of disapproval of a Legislative Body member’s conduct.

(c) When evaluating a request for defense made by the censured member in litigation arising from the censured conduct, the record of the censure shall be considered by the Legislative Body. Such record shall not be determinative. Failure of the Legislative Body to censure the conduct of a member does not constitute waiver of the Body’s right to refuse to defend the member in an action.

(d) A Legislative Body member may not be made the subject of a motion for censure without first being given notice of the violation and an opportunity to correct the violation, if it can reasonably be corrected. Upon a continued violation or failure to correct, the charged member shall be given notice and an opportunity to be heard as follows:
(i) Only a sitting member of the Legislative Body whose member commits the violation may initiate proceedings for the censure of one of its members.

(ii) Proceedings shall be commenced by the presentation of a written statement of charges to the subject Legislative Body member with a copy delivered concurrently to the Clerk/Secretary by the member initiating the charge. Initiation shall not require the prior approval of the Legislative Body. The statement of charges shall be given at least ten days prior to the meeting at which the censure motion is proposed to be brought. The notice shall contain, at a minimum, the designation of the specific rule, law, regulation, etc. which the member is claimed to have violated and a statement of the date, place and time at which the violation occurred. The statement shall further contain a description of the conduct of the member which is alleged to constitute the violation. The statement of charges shall be delivered to all other Legislative Body persons.

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

(e) The motion for censure shall be agendized and considered at the first regular meeting occurring 10 days following the delivery of the statement of changes to the member and Clerk/Secretary. The hearing may not be continued except upon the absence from the meeting of a member of the Legislative Body other than the member bringing the charge or the member who is the subject of the charge.

(i) The hearing shall be conducted in an open session by the Presiding Officer unless the Presiding Officer is a party to the action, in which case the Vice Chair or some other member shall conduct the proceedings.

(ii) The hearing shall generally proceed by a reading of the charges by the charging member. The charging member may present witnesses; the charged member may answer in rebuttal; members of the public may speak in favor or opposed to the charge; and the remaining members may speak to the charges in that order.

(iii) Passage of the motion for censure shall require a majority vote of the members of the Legislative Body. The voting members shall not go into closed session for deliberation.

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

(g) If the motion for censure does pass, such motion shall become a part of the
public record a copy of which shall be made available upon demand to any member of the public
and notice of same shall be placed in the administrative file of the Legislative Body member.

10.6 Persons Authorized To Be Within Platform/Dais

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

10.7 Personal Privilege

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

ARTICLE XI – PARLIAMENTARY PROCEDURES

11.1 Procedures In Absence Of Rules

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

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

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

11.2 Voting

(a) After a full opportunity for debate if it appears that there is a consensus of
opinion among the members of the Legislative Body on the matter to be voted upon, the
Presiding Officer may state the consensus of the Legislative Body and ask if there is any
objection. If there is no objection, the consensus as so stated shall become the order of the
Legislative Body. The Presiding Officer may also determine that a consensus exists following a
call for a vote by any member of the Legislative Body by a Motion to Call the Question.
(b) Except as in Subsection (a) above, otherwise, all votes of the Legislative Body shall be taken by electronic vote. In the event the electronic voting machine is not functioning or otherwise unavailable, vote shall be by roll call vote. The order voting shall be alphabetical with the Presiding Officer voting last. The Clerk/Secretary shall call the names of all members seated when a roll call vote is ordered or required. Members shall respond 'aye', 'no' or 'abstain.' After every vote the Legislative Body shall declare the result and, on all but consensus votes, shall note for the record the number of votes for or against the question. The ayes and noes shall be taken upon the passage of all ordinances and resolutions and entered upon the official record of the Legislative Body.

11.3 Votes Needed

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

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

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

(ii) Assessment - Assessments require a two-thirds vote of the whole Council.

(iii) Bonds and Certificates of Participation - Authorizing these financial instruments the issuing requires a two-thirds vote of the total Council.

(iv) Eminent Domain - The exercise of Eminent Domain requires a two-thirds vote of the total Council.

(v) Certain Parliamentary Motions - Motions requiring a supermajority vote are noted in the Motions Chart attached hereto.

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

Any Legislative Body member who voted with the majority may move to reconsider any action at the same meeting or, within sixty (60) calendar days, request in writing to the Clerk/Secretary that it be agendized for consideration at the following meeting, provided that reconsideration shall not be permitted where a party other than the City has acted in reliance on the Legislative Body’s action and would be substantially prejudiced by such reconsideration. The Clerk shall apprise the City Attorney of any facts constituting substantial prejudice and may rely upon the determination of the City Attorney. In the event that the subject of the reconsideration is a motion that failed as the result of a tie vote, any Legislative Body member who voted against the earlier motion may move for reconsideration at the following meeting. The member seeking reconsideration must have the matter agendized unless the motion will be made at the same meeting where the original action was taken. If the motion to reconsider passes, then the original item may be reconsidered at that time or agendized for the next meeting which meets any applicable noticing requirements. After a motion for reconsideration has once been acted upon, no other motion for reconsideration thereof shall be made without unanimous consent of the Legislative Body.

11.5 Tie Votes

Tie Votes shall be lost motions unless an additional Motion is made which obtains a majority vote to break the tie. When all Legislative Body members are present, a tie vote on whether to grant an appeal from official action shall be considered a denial of such appeal. In such case the findings in support of the decision shall be those of the lower body. If a tie vote results at a time when less than all members of the Legislative Body are present, the matter shall automatically be continued to the agenda of the next regular meeting of the Legislative Body, unless otherwise ordered by the Legislative Body.

11.6 Abstentions

Members of the Legislative Body are discouraged from abstaining from a vote for reasons other than a legally-disqualifying, financial conflicts of interest. However, if a member chooses to abstain from voting as a result of what he/she perceives as a personal or non-financial conflict of interest, the member may do so after stating for the record the nature of the perceived conflict. In the event of such a perceived conflict (as opposed to a legally-disqualifying conflict), the member is not required to leave the dais.

(a) A Legislative Body member shall generally express their positions on all matters except those where they are required to abstain due to legally recognized conflict of interest.

(b) A Legislative Body member who has appeared the action of any person or body of the City on a matter which does not constitute a conflict of interest for the member under any law, may participate in the hearing on the appeal, unless there is clear and convincing evidence that such member is not objective or the member feels that they are unable to remain neutral, or as may be otherwise advised by the General Counsel. Notwithstanding any contrary
provisions herein, in bringing an appeal, the Legislative Body member need not give reasons for making the appeal.

(c) A Legislative Body member may abstain from action on a matter where in the member’s opinion, there might be a public perception that participation in the discussion or decision would be inappropriate even though the member has no disqualifying financial interest within the meaning of FPPC rules and regulations.

11.7 Votes Of Members Previously Absent

(a) A Legislative Body member who was not present at a meeting should generally not vote on the approval of minutes for that meeting, but the voting on such minutes shall have no effect on the validity of the minutes.

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

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

11.8 Appeals by Members of Legislative Body

Except where otherwise provided, a member of the Legislative Body shall be deemed an interested person in any matter by a subordinate body and shall have standing to appeal to the Legislative Body any decision by a Sub-Legislative Body, or any determination made by any official of City by filing a written appeal. The appeal shall not state any grounds for the appeal and the resulting hearing shall be de novo. The appeal must be filed within 10 days of the making of the decision being appealed and shall be filed with the Clerk/Secretary who shall give written notice to the applicant, and provide written notice to other persons as required for the original action. The hearing shall be held at the first regular meeting of the Council for which notice can be legally given. No appeal fee shall be required to be paid for such appeals.

11.9 Findings and Decisions

Decisions of a Legislative Body, when acting as a quasi adjudicative body (public hearings) should be framed in terms of “findings” of fact, potentially relevant conclusions of law, and ultimate decisions showing the basis for the decision and the nexus between the findings, the conclusions and the decision. The Legislative Body members must consider any legally-mandated findings applicable to a matter and consider the evidence presented to them in light of such findings in making their decisions.
ARTICLE XII- PROCEDURES FOR CONSIDERATION OF DEMANDS FOR CORRECTIVE ACTION

12.1 Requirement of Written Demand

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

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

12.2 Consideration of Corrective Action

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

In considering such demands, the Legislative Body shall first determine by motion whether to reconsider the prior action. The motion to reconsider shall be in order as long as made by a party on the prevailing side. If no motion to reconsider is carried the Clerk/Secretary shall inform the demanding party in writing of the Legislative Body's decision not to cure or correct the challenged action. (See, § 11.4 hereof.)

12.3 Implementing Corrective Action

If a motion to reconsider passes, the Presiding Officer may entertain a motion to take corrective action. Any motion taking corrective action shall address the concerns raised in the consideration of corrective action. The motion taking corrective action may include a motion to rescind prior action taken, as appropriate. Passage of a motion to rescind invalidates prior action only as of the time of the passage of the motion, and not from the date of the initial action. A motion implementing corrective action resulting from a written demand is out of order if the action complained of: (i) was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness, or any contract, agreement, or incident thereto; (ii) gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied; or (iii) was taken in connection with the collection of any tax.
In any event, the Legislative Body shall notify the party making the demand in writing of its decision to take corrective action, and shall describe any corrective action taken. This notice shall be given to the demanding party as soon as possible after the meeting, but in no event more than 30 days after receipt of the demand.

ARTICLE XIII – MISCELLANOUS

13.1 Interpretation

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

13.2 Amendments

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

13.3 Power to Issue Subpoenas

The Legislative Body may issue subpoenas requiring attendance of witnesses or production of books or other document for evidence or testimony any action or proceeding pending before it. (Gov’t Code Section 37104.) Subpoenas shall be signed by the Presiding Officer and attested by the Clerk. They may be served as subpoenas are in civil actions.
EXHIBIT "B"

BANNING CITY COUNCIL
MEETING PRESENTATION POLICY
Presentation Purpose

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

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

Presentation Length

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

Presentation Schedule

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

Presentation Location

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

Presentation Technical Support

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

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