I. CALL TO ORDER: Chairman Arterberry

➤ Pledge of Allegiance: Commissioner Hawkins

➤ Roll Call: Chairman Barsh; Commissioner Arterberry; Commissioner Briant, Commissioner Hawkins; Commissioner Siva

II. 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, which are not public hearings or other items under the jurisdiction of the Planning Commission. Comments from the public on any non-agenda items will be limited to three (3) minutes in accordance with City policy.

III. PRESENTATION

Water Recycling Center presentation to be provided by the Director of Public Works, Duane Burk (Verbal Presentation).

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 March 7, 2012 meeting.................................Page 1
V. PUBLIC HEARING

1. CONDITIONAL USE PERMIT (CUP) #12-802
   VERIZON WIRELESS TELECOMMUNICATIONS ANTENNAE
   2010 E. WESTWARD AVENUE (APN 532-180-044)

Staff Report………………………………………………………………..Page 61

Order of Procedure:
1. Request staff report / Questions of staff
2. Open public hearing
3. Close public hearing
4. Planning Commission discussion / Questions of staff
5. Motion and Second
6. Discussion on motion
7. Call the question (Roll call vote)

Recommendations:

That the Planning Commission take the following actions:

1. Adopt a Class 32 Categorical Exemption in compliance with CEQA Guidelines Section 15332 (In-Fill Development Projects); and,

2. Adopt PC Resolution No. 2012-11 (Attachment 1) approving Conditional Use Permit #12-802 subject to conditions of approval.

2. CONDITIONAL USE PERMIT (CUP) #12-803
   COUNTY OF RIVERSIDE DEPARTMENT OF MENTAL HEALTH
   1330 W. RAMSEY STREET (APN 540-180-004)

Staff Report………………………………………………………………..Page 101

Order of Procedure:
1. Request staff report / Questions of staff
2. Open public hearing
3. Close public hearing
4. Planning Commission discussion / Questions of staff
5. Motion and Second
6. Discussion on motion
7. Call the question (Roll call vote)

Recommendations:

That the Planning Commission take the following actions:

1. Adopt a Class I Categorical Exemption in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15301 (Existing Facilities); and,

2. Adopt PC Resolution No. 2012-12 approving Conditional Use Permit #12-803 and Variance #12-301 subject to conditions of approval.

VI. STAFF REPORT / INFORMATION ITEM

1. MANUAL OF PROCEDURAL GUIDELINES FOR THE CONDUCT OF CITY COUNCIL AND CONSTITUENT BODY/COMMISSION MEETINGS FOR THE CITY OF BANNING ADOPTED OCTOBER 23, 2012 (Receive and File)……………………………………………………Page 144

VII. PLANNING COMMISSIONER COMMENTS

VIII. COMMUNITY DEVELOPMENT DIRECTOR’S REPORT

1. City Council Actions from previous meetings on Planning-Related Items

IX. ADJOURNMENT

The City of Banning Planning Commission is hereby adjourned to the regular Planning Commission meeting of December 5, 2012 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 Department (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

March 7, 2012

A regular meeting of the City of Banning Planning Commission was held on Wednesday, March 7, 2012 at 6:30 p.m., in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, CA, 92220.

Commissioners Present: Vice-Chairman Barsh
Commissioner Briant
Commissioner Hawkins

Commissioners Excused: Chairman Arterberry
Commissioner Siva

Staff Present: Community Development Director Abu Bakar
Assistant City Attorney Laymon
Assistant Planner Guillot
Public Works Director Burk
Recording Secretary Sorenson

I. CALL TO ORDER

II. PUBLIC COMMENT

George Eldridge, 10921 Bel Air, Cherry Valley – Inquired about the congestion on Joshua Palmer Way. The Public Works Director Duane Burk responded by providing his business card to follow up with Mr. Eldridge directly at a later date.

III. CONSENT CALENDAR

No items at this time.
IV. PUBLIC HEARINGS

1. PARDEE HOMES - FINAL ENVIRONMENTAL IMPACT REPORT, GENERAL PLAN AMENDMENT NO. 11-2501, ZONE CHANGE NO. 11-3501, BUTTERFIELD SPECIFIC PLAN, AND DEVELOPMENT AGREEMENT, (AMENDMENT TO DEUTSCH SPECIFIC PLAN)

Community Development Director Abu Bakar introduced the Butterfield Specific Plan as a master plan community proposed by Pardee Homes. The project location is the northeast corner of Wilson Street and Highland Springs Avenue. The current general plan and zoning designation for the project site is Deutsch Specific Plan. Attached hereto by reference is the PowerPoint presentation provided by Director Abu Bakar which details specific project information including items such as site location, proposed land use, requested approvals, and infrastructure.

The specific plan size is 1,543 acres and includes 20 parcels. The land use plan for the Butterfield Master Plan Community includes 5,387 homes, two commercial sites, potential 18 hole golf course and clubhouse, community and neighborhood parks throughout, natural open space trails, two proposed elementary school sites, proposed fire station site which has some flexibility as to where it is located within the plan, and backbone infrastructure including street, sewer and water. This project will be developed over the 35-40 years with approximately 180 homes built per year. The current general plan and zoning designation is the Deutsch Specific Plan and the proposed zoning is Butterfield Specific Plan.

Director Abu Bakar discussed the approvals requested by the developer including the General Plan Amendment, Zone Change, Amendment to the Deutsch Specific Plan, Amendment to the previous development agreement, water supply analysis and certification of the final EIR, findings of fact, statement of overriding consideration, and mitigation monitoring program which is the responsibility of the City Council per the Municipal Code. The Planning Commission action is to be the reviewer and recommending body of the project to the City Council. The director then walked the Commission through the items and highlighted key points including the amenities of the projects.

Director of Public Works Duane Burk came forward to discuss the infrastructure plan portion of the presentation. He mentioned that the infrastructure plans for the project have been overlaid with future recycled water, water lines, and sewer. The Director also stated that the items that he will be reviewing are interfaced with the City's current and existing infrastructure. The Director then continued to present the Domestic Water Plan including the current and future infrastructure such as fire flow, domestic storage, recycled and domestic water. Next Director Burk presented the Recycled Water Plan and the goals for the project as it relates to the golf course, open space area and the recycled water system. The Water Supply Assessment and Sanitary Sewer Plan including onsite satellite plant and offsite sewer plans were also reviewed.
Lastly, Director Burk presented the Circulation Element on Highland Springs Avenue, Highland Home Road and Wilson Street. Director Burk continued to discuss the circulation plan including street network, pedestrian access, on-street electrical vehicles and offsite open space access trails.

Director Abu Bakar then transitioned into presenting the Amendment to the previus development agreement including the project benefits that are outlined in the PowerPoint and proceeded to discuss that the developer is seeking the certification of the Final Environmental Impact Report, Findings of Fact, Mitigation Monitoring and Reporting Program and Statement of Overriding Considerations & Water Supply Assessment which are required by the California Environmental Quality Act (CEQA).

Next Director Abu Bakar discussed project alternatives as it relates to CEQA as well the fiscal impact analysis which was prepared by Willdan Financial Services, Inc. Director Abu Bakar mentioned letters, comments and responses that were received regarding the project. Additionally, Director Abu Bakar mentioned that technical corrections were distributed to the Planning Commission under separate cover. Lastly, Director Abu Bakar outlined staff recommendations would require separate action for each item and then concluded her presentation. The Director stated the developer and CEQA consultants were present to answer any questions and then opened the floor to the Commission asking if there were any questions and there were none.

Vice-Chairman Barsa opened the public hearing. Attorney Lona Laymon addressed Vice-Chair Barsh suggesting the applicant speak first so that the public could be as fully informed as possible.

Vice President and Regional Manager of Pardee Home, Mike Taylor, came forward to discuss the project. Mr. Taylor gave background on the project from the developer’s perspective and discussed the measures that they have taken to make this a successful project for Pardee, the City and the public and recognizes the challenges. He had technical staff present and who were open to answering technical and general questions. Mr. Taylor stated he could certainly make the commitment that they are community partners and hold that perspective with all the agencies that they deal with as it relates to this project.

Vice-Chair Barsh open the floor for public comments.

Arlene Dimatto, Highland Springs Country Club - Questioned the PowerPoint presentation in regard to Brookside Avenue and the circulation plan.

George Eldridge, Highland Springs Country Club – Mr. Eldridge inquired about the three areas that were addressed during the presentation that could not be mitigated, one being traffic flow. Mr. Eldridge asked for an explanation of what that means in terms of traffic flow, what are the impacts on overall circulation.

Patsy Reeley, 10065 Frontier Trail, Cherry Valley – Suggested that the three items that could not be mitigated should put a stop to the project. Stated that the project will make the environment
worse and requested that the EIR not be certified. Ms. Reeling was speaking for herself, Cherry Valley Acres and Neighbors, and Cherry Valley Environmental Planning Group.

Luwana Ryan, 9574 Mountain View Avenue, Cherry Valley – Requested a copy of the comment letter from Beaumont School District. She also stated the Final EIR did not adequately address deficiencies in the Draft EIR including traffic, water, air quality and impacts on National Forest and loss of agricultural land. For these reasons they request the Final EIR not be certified.

Mary Daniel, 14250 South Beaumont Avenue – She has lived here since 1955 and has seen many negative impacts to our Valley and stated every development that is approved in the Pass affects everyone who lives here. Main concern that she wanted to address was the significant traffic impact. She also referenced a letter from CHP to Beaumont City Council expressing concerns relative to traffic management and the need for traffic mitigation to be included with every proposed development. Requested the City consider alternative mitigations, example lower density.

Don Smith, W. Westward, Banning – Three comments, first believes that any development only has a benefit to the town if that development is going to make the town better, it’s bringing something that we don’t have and enhancing the neighborhood. Second, he feels that the scalping plant should be at least 2,000 feet from any existing dwelling. Third, he has concerns about the traffic on Highland Home Road.

Jim Distamer, Highland Springs Country Club – He is concerned with a golf course property that is actually in Cherry Valley on the northwest corner of Brookside. That piece of the property is part of the country club and if they annex it would then it destroy their golf course which causes concerns since it will eliminate holes 2, 3, and 4. It would reduce their quality of living and home values.

Young Kimen, Citizen of Beaumont resident (lives on Highland Springs Avenue) and is also representing Highland Springs Resort - Does not believe that the Specific Plan and EIR conform with CEQA requirements. Also stated there are too many problems that have not been solved and recommends to not recommend the certification. Main problem is the traffic issues and loss of rural character in the area. Young Kimen also brought up concern which was that the County is attempting to preserve a historical corridor in the location as it relates to Stagecoach Days. Believes annex area of the golf course should be taken off the plan. They are open to having a community meeting with the developer to discuss these issues.

Rosemarie Peterson, Highland Springs Country Club - Concerned about traffic and the parcel that belongs to the country club that is included in the plan. Director Burk had mentioned there were road studies done in the circulation element that excluded their portion of the property and she wanted to know if this could be re-evaluated to exclude their property. Ms. Peterson stated that Director Abu Bakar mentioned the right to develop over the term of the agreement, is there any way to find out the term of the agreement? She wanted to know if the Deutsch Specific Plan included their golf course property. She also requested to keep it at a lower density as described in the Deutsch Plan. Lastly, they have an endangered species that reside on the golf course.

Planning Commission Meeting
March 7, 2012
The public hearing portion of the meeting was closed.

Mike Taylor came forward to first discuss the schools by stating that is was surprising that a late letter was received by the school district because they have been working with them closely since the year 2,000, previously sold them three school sites that basically didn’t cost them any money, provided $14,000,000 upfront in schools fees to build Tournament Hills Elementary, and have always made and will continue to make every effort to mitigate issues related to schools.

Next Mike Taylor introduced Les Card from LSA Associates who is their technical expert on traffic. They are the consulting firm that prepared the traffic impact analysis that is included in the EIR. He touched on several issues including the Interstate 10 interchange and ramp improvements including the realignment of Joshua Palmer; discussed overall traffic impacts of the project which covers a sizable area including 49 intersections which includes Banning, Beaumont and Interstate (interchange). Additionally discussed they are working with Banning, Beaumont, CalTrans and Western Riverside Council of Government which has a major funding program (TUMF) for major transportation improvement projects. Because many of the locations are outside of the City’s jurisdiction, the City cannot make an adequate finding of mitigation because the City nor Pardoe has jurisdiction. That doesn’t mean there aren’t mitigation options available. Also, he mentioned that there are several funding options available. Mr. Card continued by providing responses to questions that were posed earlier by the public.

Director Zai Abu Bakar came forward to discuss two additional comments brought up by the public regarding the annexation of property and stated at this point the City has no intentions of annexing the area. The second item that she responded to was the terms of the Development Agreement which will be for forty years which is subject to milestones, essentially which is 4-10 year terms.

Next, Commissioner Hawkins spoke and stated that all the questions he had were answered and said he felt that the Butterfield Specific Plan was an improvement over the Deutsch Specific Plan.

Director Burk came forward in response to a question regarding the Water Recycling Facility. He stated that the facility on the specific plan is an option but that the City has designed a plant at its current central location which could be built at the discretion of the City; however, the City is investigating an alternative site to develop recycled water closer to the demand.

Commissioner Hawkins opened the floor for the commissioners to come to their decision.
ACTION (BRIANT/HAWKINS): A motion was moved, seconded and carried that the Planning Commission take the following action:

1. Adopt Resolution No. 2012-02 recommending the approval to the City Council the Water Supply Assessment, Certify the Final Environmental Impact Report for the Butterfield Specific Plan SCH #2007-091149 and adopt findings of fact, a statement of overriding consideration, and a Mitigation Moderating and Reporting Program.

   (Motion Carried 3 – 0) (Chairman Arterberry and Commissioner Siva were excused)

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

2. Adopt Resolution No. 2012-03 recommending approval to the City Council the approval of the General Plan Amendment No. 11-2501 and Zone Change No. 11-3501 relating to the Butterfield Specific Plan and making findings in support thereof.

   (Motion Carried 3 – 0) (Chairman Arterberry and Commissioner Siva were excused)

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

3. Adopt Resolution No. 2012-04 recommending approval to the City Council the adoption of an ordinance amending the Deutsch Specific Plan and superseding it with the Butterfield Specific Plan, adopting the conditions of approval and making findings in support thereof.

   (Motion Carried 3 – 0) (Chairman Arterberry and Commissioner Siva were excused)

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

4. Adopt Resolution No. 2012-05 recommending approval to the City Council the adoption of an ordinance amending the Development Agreement for the Deutsch Specific Plan with the Development Agreement for the Butterfield Specific Plan and making findings in support thereof.

   (Motion Carried 3 – 0) (Chairman Arterberry and Commissioner Siva were excused)
V. PLANNING COMMISSIONER COMMENTS
No comments at this time.

VI. COMMUNITY DEVELOPMENT DIRECTOR’S REPORT

1. City Council Actions from previous meetings on Planning-Related Items:
   Director Abu Bakar reported to the City Council on the Freeway-Oriented Sign
   Amendment and it was approved and adopted.

2. April Meeting: Appointment of Chairman and Vice-Chairman: Director Abu
   Bakar reminded the Commissioners that all need to be present for the elections.

3. Director Zai Abu Bakar congratulated Commissioner Siva because he was
   appointed by the City Council to continue his service on the Planning
   Commission.

4. Director Zai Abu Bakar announced that Gini Sorenson would be retiring on April
   5, 2012 and this will be her last commission meeting. Don Smith also thanked
   Gini Sorenson for her services over the years.

VII. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was
adjourned at 7:55 p.m. to the Planning Commission meeting on March 7, 2012 at 6:30 p.m.

Respectfully submitted,

Holly Stuart
Recording Secretary
Planning Commission Meeting
March 7, 2012
6:30 p.m.
City Council Chambers

Butterfield Specific Plan
Master Planned Community
Applicant:
Pardee Homes

Location:
NEC of Wilson Street & Highland Springs Avenue

Specific Plan Size:
1,543 acres

APNs:
408-060-06, -007 & -008 (por);
408-030-001 & -005; 408-120-001 through -020, -022, -024, -025,
-027 & -033; and 531-080-013 &
-014

Existing General Plan & Zoning:
Deutsch Specific Plan (DSP)
Land Use Plan

The Butterfield Specific Plan community includes:

- 5,387 homes
- 2 commercial sites (36 acres)
- Potential 18 hole golf course & clubhouse
- Pocket, Neighborhood, and Community Parks
- Natural Open Space/Trails
- 2 elementary school sites (11 acres each)
- 1.6 acre fire station site
- Backbone infrastructure - streets, sewer, water (pipeline and reservoirs), and storm drain.

The project will be developed over time (30 years) at a rate of 180 homes per year.

Existing Land Use Plan vs. Proposed

<table>
<thead>
<tr>
<th></th>
<th>Deutsch Specific Plan</th>
<th>Butterfield Specific Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Density</td>
<td>3.5 units/acre</td>
<td>3.5 units/acre</td>
</tr>
<tr>
<td>No. of homes</td>
<td>5,400</td>
<td>5,387</td>
</tr>
<tr>
<td>Gross Residential Acreage</td>
<td>1,151 acres</td>
<td>937.4 acres</td>
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<tr>
<td>Open Space/Parks</td>
<td>268 acres</td>
<td>428.8 acres</td>
</tr>
<tr>
<td>Uses other than above</td>
<td>133 acres</td>
<td>176.8 acres</td>
</tr>
</tbody>
</table>
Approvals Requested:

- General Plan Amendment No. 11-2501
- Zone Change No. 11-3501
- Amendment to the Deutsch Specific Plan
- Amendment to the previous Development Agreement
- Water Supply Analysis
- Certification of the Final EIR, Findings of Fact, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program

Planning Commission Actions:
Review and Recommend to the City Council
Current General Plan/Zoning

Proposed Zoning - Butterfield Specific Plan

Zone Change No. 11-3501

Butterfield Specific Plan

(Amendment to the Deutsch Specific Plan)
Amenities:

- Golf Course/Open Space provides north-south view widows through the middle of the project
- Improved park land
- Natural Open Space and Trails
- Complete Streets
- Thematic / Hierarchy of Parkway & Median Landscaping
- Fire Station and Community Center Sites

Potential Golf Course/ Open Space Plan
View North of SCE Easement towards the Club House

View South towards Club House
View of Park in Phase 1

View West of Golf in Southern Part of Project
Highland Springs Concept

Entry Street Concept
Concept Entry Wall

Concept Entry
Infrastructure Plan

Domestic & Recycled Water, including Water Supply Assessment, Drainage, Sanitary Sewer, & Traffic Circulation

Domestic Water Plan
Water Supply Assessment (WSA) for the Project

- The project WSA was prepared in compliance with Water Code Section 10911(b) and CEQA Section 15155. The City adopted its 2010 Urban Water Management Plan (UWMP) on June 28, 2011.

The project WSA analyzed in detail the project demand at build-out conditions and compared the demand to existing and future water supplied, and the reliability of the supply.

The WSA detailed analysis concluded that there is adequate water supply to meet the demand of the project.

The entire WSA is included in Appendix J of the Draft EIR.
Sanitary Sewer Plan

Offsite Sewer Plan
Circulation

- Street Network
- Pedestrian Access
- Onstreet Electric Vehicles / Bike Lanes (10' each internal)
- Off Site Open Space Access Trails

Amendment to the Previous Development Agreement:

Vested Right to Develop Consistent with the Butterfield Specific Plan

VS.

Public Benefits to the City
Project Benefits to the City:

- Substantial infrastructure investment – initial $100 million; ultimate $460 million (approx.)
- New and variety of home types and lot sizes; more roof-tops for economic development.
- Commercial development to serve the development and the surrounding community.
- Improved park facilities, hiking, and biking trails and complete streets for the residents.
- Revenue from property tax and sales tax
- Increase short & long term jobs in construction and other trades that support the construction industry
- Sites available for future public community center/shelter for natural disaster, fire station, schools, and sewer facility

Certification of the Final Environmental Impact Report, Findings of Fact, Mitigation Monitoring and Reporting Program, and Statement of Overriding Considerations & Water Supply Assessment

Required by the California Environmental Quality Act (CEQA)
Objective of the California Environmental Quality Act:

- Disclosure of environmental impacts to the decision makers and the public before they take action on the project
- Mitigate the project impacts to the extent feasible
- If there are impacts that cannot be mitigated, the environmental document must disclose those impacts which requires that the decision makers weigh the public benefits of the project versus the environmental impacts of the project.

Final EIR:

- The Draft EIR, technical appendices, and Final EIR were prepared consistent with the CEQA Guidelines and Process. It analyzed all of the environmental issue areas as required by CEQA.
- The EIR disclosed all of the project impacts, impacts that are mitigated and impacts that cannot be mitigated, including cumulative impacts when the City is built out.
- There are three areas of environmental impacts that cannot be avoided despite the mitigation: aesthetics, light and glare; air quality; & traffic circulation.
- At the build-out of the City, the above issue areas plus climate change and noise cannot be mitigated to less than significant which requires the Council to weigh in when they make a decision on the project.
Project Alternatives:

CEQA requires that the EIR addresses alternatives to the proposed project.

These alternatives are:

No Project/Existing Specific Plan – Site remain vacant; future development subject to the existing Deutsch Specific Plan

Reduced density – 20% reduction of the residential and commercial development

Active Adult Alternative (PAs 40-49 and 53-59)

No Golf Course Alternative – Open Space and Trails

Fiscal Impact Analysis:

- Willdan Financial prepared a Fiscal Impact Analysis to determine fiscal impact to the City for providing City services.

- Based on the financial analysis, the project will be required to pay for City services: Single Family $115/unit and Multiple Family $92/unit.

- The project is required to create Community Facilities Districts to pay for infrastructure and maintenance of the services, including police and fire.

- Alternative for maintenance of parks and landscaping within the right-of-ways – Homeowners Association
Comments Received After Publication of the Staff Report:

- Soboba Band of Luiseno Indians (2/27/12)
- Federal Emergency Management Agency (2/28/12)
- Janelle Singleton, Banning Resident (2/28/12)
- Chatten-Brown & Carstens representing Highland Springs Resort (3/6/12)

- These documents are made available for Planning Commission review and information.
- Responses to each of the comment letters are also attached.

Technical Corrections:

- Minor technical corrections to the resolutions and conditions of approval.
- Distributed to the Planning Commission on Monday and additional revisions are provided on the dates for your review and information.
Staff’s Recommendations

- Adopt Resolution No. 2012-02 recommending approval to the City Council the adoption of a Statement of Overriding Considerations and CEQA Findings of Fact, Certification of the Final Environmental Impact Report, approval of a Water Supply Assessment, adoption of the Mitigation Monitoring and Reporting Program for the Butterfield Specific Plan for the Project;

- Adopt Resolution No. 2012-03 recommending approval to the City Council the approval of General Plan Amendment No. 11-2501 and Zone Change No. 11-3501 to update the City of Banning General Plan Land Use and Zoning Overlay Map and designate the project site from "Deutsch Specific Plan" to "Butterfield Specific Plan";

- Adopt Resolution No. 2012-04 recommending approval to the City Council the adoption of an ordinance superseding the current Deutsch Specific Plan zoning regulations with Butterfield Specific Plan and subject to Conditions of Approval;

- Adopt Resolution No. 2012-05 recommending approval to the City Council the adoption of an ordinance superseding the Development Agreement for the Deutsch Specific Plan with the Development Agreement for the Butterfield Specific Plan.

Questions of Staff
City of Banning

PLANNING COMMISSION MINUTES

April 4, 2012

A regular meeting of the City of Banning Planning Commission was held on Wednesday, April 4, 2012 at 6:30 p.m., in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, CA, 92220.

Commissioners Present:  
Chairman Arterberry  
Vice-Chairman Barsh  
Commissioner Briant  
Commissioner Hawkins

Commissioners Excused:  
Commissioner Siva

Staff Present:  
Community Development Director Abu Bakar  
Assistant City Attorney Laymon  
Assistant Planner Guillot  
City Clerk Calderon  
Recording Secretary Stuart

I. CALL TO ORDER

II. PUBLIC COMMENT

No comments at this time.

III. PLANNING COMMISSION ELECTIONS

Elections postponed to the May 2, 2012 Planning Commission Meeting due to Commission Siva’s excused absence.

IV. CONSENT CALENDAR

1. Minutes of January 4, 2012

ACTION (HAWKINS / BARSH): A motion was moved, seconded and carried that item 1 be approved as presented.
V. **PUBLIC HEARINGS**

1. **ZONE TEXT AMENDMENT (ZTA) NO. 12-97501 AMENDMENT TO VARIOUS SECTIONS OF THE ZONING ORDINANCE (TITLE 17 OF THE BANNING MUNICIPAL CODE) TO FACILITATE BUSINESS DEVELOPMENT**

Assistant Planner Guillot presented the staff report and stated with the elimination of the Redevelopment Agencies in the State of California by the Governor, the ability to provide incentives for businesses is now severely limited. The change in the law along with our present economic situation makes it challenging for cities to offer any kind of incentive. Staff reviewed the code for anything that could be done to make it better for businesses in Banning. As a result, staff has prepared seven items and is recommending that this ordinance be approved by City Council. Brian proceeded to individually address each proposed item as described in the staff report and as highlighted in the attached hand-out from the Banning Municipal Code, Title 17. Each page of the hand-out has been numbered to match the items listed in the report.

In regard to item three as it relates to the Downtown Commercial Zone and buildings larger than 25,000 square feet, Commissioner Briant had two questions. First, the commissioner wanted to confirm that the change was related to the size of the building and not the size of the lot. Mr. Guillot confirmed the change is just to the size of the building. Second, the commissioner inquired where the 25,000 square foot limitation originated. Mr. Guillot speculated from experience that it may have been to keep the uses boutique like or small size. He stated if we want development to come but limit the size of the building than we are actually preventing development. We will still have boutique like businesses because we already have many existing buildings that are on that scale.

In regard to item six as it relates to outdoor uses, Commissioner Barsh asked staff about the criteria used by the technical staff for a project of this type. Mr. Guillot responded by stating that there is already a provision in the zoning ordinance, “Technical Staff Review”, which is administrative. It basically designates the different department heads responsible for reviewing plans. Mr. Guillot provided an example of the process which he stated is an existing process. The City would simply be eliminating the requirement for a public hearing and the fee. Commissioner Barsh asked what criteria would staff use when making the review and Mr. Guillot responded with examples including the following: the Fire Marshal would use the fire code; the Building Official would use the California Building Code; Planning would use the zoning ordinance and the utilities would use their standards.

Chairman Arterberry inquired that if there was an existing building that was previously renovated that a business wanted to move into then that particular person could just obtain a business license. He continued by asking if landscaping was needed and the renovation didn’t include landscaping then how would that be handled. Also if there wasn’t handicap parking then how would that be addressed. Mr. Guillot first responded to the parking question stating that parking always get reviewed upon a request for a business license. Regarding the question on
Mr. Guillot responded by expressing that the code is stated in such a manner that staff does not currently require compliance with development standards unless there is a change to more than twenty-five percent of the building area.

In regard to item seven as it related to temporary signs, Chairman Arterberry confirmed that a special event sign could be issued twice a year for a timeframe of up to ninety days per each time.

Brian continued with discussing staff’s recommendation and request that the Planning Commission approve the resolution recommending that the City Council approve the ordinance to make these changes knowing that they are minor but that they still can provide an incentive to businesses here in the City of Banning. Brian concluded his report and opened the floor for any questions.

Commissioner Hawkins stated that he thinks it is a good incentive that would improve our business situation. It might hurt the bottom line a little but down the road it should work out.

Commissioner Brian had a comment regarding created revenue. He assumes that the sales tax from a business over the long run would be much better than the one time charge of $4,900. This might be an item that someone objects to but he doesn’t. He thinks it is worthwhile to make these changes. It sounds like a lot of money and to a small business it would sound like a lot so it is a good incentive to drop it. He could also see someone from the Council meeting objecting to the loss of revenue.

Arterberry opened the meeting for public comment. Seeing that there were none, the public comment section of the meeting was closed.

Chairman Arterberry stated that being a citizen and businessman of the City he hears people saying things about the design review and stated that this will be inviting to get more people interested in applying for business licenses and to move their business here. He stated that the Commission applauds staff for taking this on and looking at it to encourage more businesses to come to Banning.

Chairman Arterberry opened the floor for the commissioners to come to their decision.

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

1. **Adopt Resolution No. 2012-06 recommending approval of Ordinance No. 1448 to City Council Amending Various Sections of the Zoning Ordinance (Title 17 of the Banning Municipal Code) to Facilitate Business Development.**

   *(Motion Carried 4 – 0) (Commissioner Siva was excused)*
VI. STAFF REPORT/INFORMATION ITEM

1. GENERAL PLAN ANNUAL REPORT CALENDAR YEAR 2011

Director Abu Bakar presented the staff report on the General Plan Annual Report. The Director stated that each year the City is required to report to the State on the progress of implementing our General Plan. The staff report includes a summary of all of the implementation actions. The City’s General Plan has a total of twenty-one different elements and the State only requires seven. Based on last year’s progress, the City has implemented a total of 224 action programs which represents about eighty-nine percent. The remaining eleven percent was not implemented due to budget cuts, reduction in staff, and project priorities. As the commission is aware, staff was working on the Pardee last year.

The year 2011 was a very busy year for the City in terms of the different projects and construction activities which included the Inland Behavioral Health Services project which is almost complete; the Family Dollar which was approved recently and is already under construction; the General Dollar is under construction; and the Courthouse which is currently under construction. The year of 2011 is also a year of mourning or sadness because of the elimination of Redevelopment. The City has been able to do many improvements especially infrastructure improvements with the Redevelopment funds. With the Redevelopment funds the City was able to replace the waterlines in the downtown area that were approximately 100 years old to ensure that everyone had proper fire flow for fire protection. There was also the Apex – Ramsey Street intersection improvements as well as the activities around the courthouse including streets; curb and gutters; and undergrounding of flood control facilities which were all funded by these monies. In regard to the downtown, there have been comments regarding the facade improvements which are funded by Redevelopment. The facades have improved the appearance of the community and eliminated blight which is the intended use of the funds. In addition to that, Redevelopment funds are also being used to assist low income residents in terms of exterior rehabilitation and provide a first time home buyers program. The money has been used for its intended purpose.

Last year, staff reported on three major policy issues. One relates to the traffic level of service. Currently we have two levels of service in our community which are level C and D which can be challenging. For example, in consideration of Highlands Springs Avenue half of the road is located in our City which is level C and the other is in Beaumont which is level D. Attempting to do traffic improvements and flow when there are different levels of services is challenging because the level of service C requires more right-of-way; therefore, staff is trying to do is make it the same level of service. The project requires an environmental impact report which will be subject to a 45 day public review period followed by responses to public comments. The other item that needs to be addressed in the circulation element is the Highland Home Road Interchange. It is not on Caltrans’ traffic improvement list at all. There is a certain distance between interchanges that Caltrans would support but this one does not meet the criteria. Also in 2008, the City did a study to see if the interchange would fit within the current configuration of the land, the railroad, and the I-10. Additionally, the City reviewed four different alternatives but
none of the alternatives fit. The City is trying to see what can be done in order to provide some type of level service for the north-south and east-west connection if Highland Home Road were eliminated. The director was happy to report that staff is working on that project right now and expects to bring the project to the Commission and Council maybe late summer or early fall.

The second item that was brought forward to the Commission and Council last year was the rezoning as it relates to the Housing Element which is necessary in order to obtain certification by the State. The director was happy to report to the Commission that staff has been working with some of the property owners of the vacant land within the City to rezone it to meet the State's requirement which is thirty dwellings units per acre. The environmental document for the project has been released and staff is anticipating bringing the matter to the Commission in May and to the Council in June.

The third item relates to residential land use and non-conformity. In 2006 the City adopted a new General Plan and zoning. The zoning for some existing home was changed from low-density to industrial. As a result, the residents have been bringing concerns to the City stating it is now making it difficult for them to get loans or to get insurance to protect their homes against fires, floods, or earthquakes. Staff has met with property owners and they have requested that staff process a General Plan Amendment and a Zone Change. Staff will bring this item along with the Housing Element re-zoning to the Commission in May and the Council in June. With that, the director concluded her report and stated she was open for questions.

Commissioner Briant responded with a question regarding the freeway access and traffic near Highland Springs and Highland Home Avenue. He wanted to know if it was the City's responsibility or if it was being funded by Redevelopment funds or by Pardée Homes. He stated that Pardée's previous presentation did not make it clear. The director responded by stating that Pardée would be responsible for the mitigation related intersections that are impacted. In regard to Highland Home Road, it is the City's responsibility which has been under review since 2008. The policy level in our general plan needs to be reviewed with regard to the circulation element. Going back to the Pardée project, it is not on the item but since it has been asked related to this, Pardée is also assisting the City with regard to improvement to Joshua Palmer in the Highland Springs area which was part of the development agreement.

Commissioner Hawkins asked if the City is considering actually doing a level change at Highland Home Road and by the freeway or railroad. Director Abu Bakar responded by stating that Highland Home Road is the interchange that is on the General Plan and as she indicated it does not fit. The City paid $60,000 to study what can be done with interchange. First of all it does not meet the criteria set forth by Caltrans. If the City crosses over Caltrans jurisdiction then we would need to work with them to have the street included as part of the State Transportation Improvement Plan. If this is done then we can get funding from them. The director mentioned that funding for that interchange is very expensive. The level of service change that we are looking at is for the entire City. Level of service D is pretty much at the freeway intersections and Ramsey Street. Staff is looking at changing this level of service from C to D.
Chairman Arterberry asked if there were any more questions finding that there were none. The Chairman then opened the meeting for public comment and there were none.

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

2. Adopt Resolution No. 2012-07 recommending to the City Council the approval of the report and direct staff to file it with the State Office of Planning and Research and State Department of Housing and Community Development.

*(Motion Carried 4 – 0) (Chairman Siva was excused)*

**VII. PLANNING COMMISSIONER COMMENTS**

No comments at this time.

**VIII. COMMUNITY DEVELOPMENT DIRECTOR’S REPORT**

1. City Council Actions from previous meetings on Planning-Related Items: Director Abu Bakar stated that the Pardee Butterfield Specific Plan was presented to Council on March 27, 2012. The Council voted 4-0 to approve the project which includes the Final Draft EIR and Mitigation and Monitoring Reporting Program, water supply analyses, development agreement, specific plan, zoning change, and General Plan Amendment.

**IX. ADJOURNMENT**

There being no further business to come before the Planning Commission, the meeting was adjourned at 7:06 p.m. to the Planning Commission meeting on April 4, 2012 at 6:30 p.m.

Respectfully submitted,

\[Signature\]

Holly Stuart
Recording Secretary
17.12.020  Permitted, conditional and prohibited uses.

The following list represents those uses in the commercial and industrial districts which are Permitted (P), subject to a Conditional Use Permit (C) or Prohibited (X). All uses proposed in the Commercial and Industrial districts are subject to Design Review.

Table 17.12.020
Permitted, Conditional and Prohibited Commercial and Industrial Uses

<table>
<thead>
<tr>
<th>Zone</th>
<th>DC</th>
<th>GC</th>
<th>HSC</th>
<th>PO</th>
<th>I</th>
<th>AI</th>
<th>BP</th>
<th>IMR</th>
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<tbody>
<tr>
<td>Resource and Open Space Uses</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Plant nurseries, with on-site sales</td>
<td>X</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
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<tr>
<td>Plant nurseries, without on-site sales</td>
<td>X</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
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<tr>
<td>Surface mining</td>
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<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>D</td>
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<td>Cargo/storage containers</td>
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<td>T</td>
<td>T</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
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<td>Recreation, Education and Public Assembly</td>
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<td>Adult entertainment</td>
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<td>X</td>
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<td>X</td>
<td>C</td>
<td>X</td>
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<td>Adult day care facilities</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
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<td>C</td>
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<td>C</td>
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<td>Community centers</td>
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<td>Convention facilities</td>
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<td>P</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
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<tr>
<td>Day care centers</td>
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<td>C</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
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<tr>
<td>Health/fitness facilities</td>
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<td>P</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
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<tr>
<td>Indoor recreation centers</td>
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<td>P</td>
<td>X</td>
<td>X</td>
<td>C</td>
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<td>P</td>
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<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>P</td>
<td>C</td>
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<td>Museums</td>
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<td>P</td>
<td>P</td>
<td>P</td>
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<td>P</td>
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<td>Outdoor commercial recreation</td>
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<td>P</td>
<td>P</td>
<td>P</td>
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<td>C</td>
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<td>Recreational vehicle (RV) parks</td>
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<td>X</td>
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<td>X</td>
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<tr>
<td>Recreational vehicle (RV) storage</td>
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<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
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<tr>
<td>Schools</td>
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<td>X</td>
<td>C</td>
<td>X</td>
<td>P</td>
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<td>Sport facilities and outdoor public assembly</td>
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<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>C</td>
<td>C</td>
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<td>Studios for dance, art, music, photography, etc.</td>
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<td>P</td>
<td>P</td>
<td>P</td>
<td>C</td>
<td>X</td>
<td>C</td>
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<td>Theatres and meeting halls</td>
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<td>X</td>
<td>C</td>
<td>X</td>
<td>C</td>
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<td>Accessory retail uses</td>
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<td>P</td>
<td>P</td>
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<td>P</td>
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<td>Alcoholic beverage sales, on- or off-site</td>
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<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>X</td>
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<td>P</td>
<td>P</td>
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<td>X</td>
<td>P</td>
<td>P</td>
<td>X</td>
</tr>
</tbody>
</table>

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C. Automobile Dismantling. As indicated in Table 17.12.020, a Conditional Use Permit is required for automobile wrecking/parts salvaging businesses. The following standards shall apply:

1. The minimum site area shall be 20,000 square feet.

2. With the exception of structures or required landscaping areas, the site shall be entirely paved.

3. All vehicles, parts of vehicles or vehicle parts shall be fully screened from view from adjacent properties, the public right of way, or the Interstate 10 corridor.

4. No activity, including dismantling, service, loading or unloading shall be permitted on the adjacent public right of way. All such activities shall be conducted entirely within the property boundaries.

5. Any service bays shall be oriented so as not to face the public right of way.

6. Storage, use and removal of toxic substances, solid waste, and flammable liquids shall conform to all applicable federal, state and local regulations. All required licensing shall be maintained in good order at all times. Lapse or revocation of any required license shall result in the voiding of the Conditional Use Permit.

7. A trash enclosure shall be constructed to the standards established by the Public Works Department, and sufficient in size to accommodate the trash generated by the business. The trash enclosure shall include three walls and a gate, in a style compatible with the structure's architecture. The gate shall be maintained in working order and shall remain closed except when in use.

8. All exterior lighting shall be approved by the Community Development Department. Lighting shall be limited to that necessary to light the project site. No lighting source shall be visible, or shall be permitted to spill over to adjacent properties.

9. Outdoor hoists shall be prohibited.

10. Exterior noise generated by the use shall not exceed 65 dBA at the property line.

11. All signage shall comply with the provisions of Chapter 17.36 (Sign Standards).

12. All landscaping shall be installed and permanently maintained pursuant to the provisions of Chapter 17.32 (Landscaping Standards).

13. All parking shall comply with the provisions of Chapter 17.28 (Parking and Loading Standards).

14. All entry shall be offset to minimize the view into the site. **TECHNICAL STAFF REVIEW**

D. Automobiles Sales/Design Review shall be required for all businesses selling new or used vehicles, and all dealerships must be constructed in the following manner:

1. The minimum site area shall be 15,000 square feet, except where a larger minimum area is required.

2. All parts, accessories, etc., shall be stored within a fully enclosed building.

3. Service and associated car storage areas shall be screened from public view.

4. All loading and unloading of vehicles shall occur on-site and not in adjoining streets or alleys.

5. All vehicles associated with the business shall be parked or stored on-site and not in adjoining streets and alleys.

6. An adequate on-site queuing area for service customers shall be provided. Required parking spaces may not be counted as queuing spaces.

7. No vehicle service or repair work shall occur except within a fully enclosed structure. Service bays with individual access from the exterior of the structure shall not directly face or front on a public right-of-way.

8. All exterior lighting shall be approved by the Community Development Department. Lighting shall be limited to that necessary to light the project site. No lighting source shall be visible, or shall be permitted to spill over to adjacent properties.

9. All landscaping shall be installed and permanently maintained pursuant to the provisions of Chapter 17.32 (Landscaping Standards).

10. All on-site signage shall comply with the provisions of Chapter 17.36 (Sign Standards).
Chapter 17.12

COMMERCIAL AND INDUSTRIAL DISTRICTS

Sections:

Article I.
General Provisions

17.12.010 Purpose—Districts designated.
17.12.020 Permitted, conditional and prohibited uses.

Article II.
Land Use District Development Standards

17.12.030 Table of commercial and industrial development standards.
17.12.040 General standards.
17.12.050 Use specific standards.
17.12.060 Applicable regulations.

Article III.
Commercial and Industrial Development Design Guidelines

17.12.070 General.
17.12.080 Applicability.
17.12.090 General design principles.
17.12.100 Site planning.
17.12.110 Parking and circulation.
17.12.120 Landscaping.
17.12.130 Walls and fences.
17.12.140 Screening.
17.12.150 Architectural design guidelines.
17.12.160 Roofs.
17.12.170 Lighting.

Article I.
General Provisions

17.12.010 Purpose—Districts designated.

A. This chapter is intended to support the development of a broad range of commercial and industrial businesses, by:

1. Preventing uses which are incompatible with commercial and industrial land uses from locating in these districts.
2. Providing for different types of commercial and industrial land uses which can locate in areas where they are assured compatible neighbors.
3. Providing sufficient safeguards for the City’s residents and workers by providing for buffers, clean industry and safe circulation.
4. Minimizing the negative impacts of traffic intensity, such as noise, polluted air, gridlock, and danger to pedestrians.
5. Planning for the provision of public improvements and infrastructure to serve Banning’s commercial and industrial neighborhoods.
6. Improving declining or blighted commercial and industrial areas.

B. Each of the commercial and industrial districts being created is described below.

1. Downtown Commercial (DC).

a. This District occurs on Ramsey Street, between 8th Street and Hargrave Street on the west and east, by Interstate 10 on the south, and by Williams and Nicolet on the north. This area is the City’s traditional commercial core, and has special significance to the community because small scale commercial retail and office uses, services, restaurants, and entertainment retail are the primary uses in this district. Large single users in excess of twenty-five thousand square feet are not appropriate in this district. Mixed Use, residential land uses in combination with commercial businesses, are also encouraged. Bed & breakfasts, hotels and motels are also appropriate in this district.

b. New auto related uses proposed after adoption of the 2005 General Plan will be prohibited. All existing auto uses in existence as of the adoption of the 2005 General Plan will be permitted until such time as the use in a particular location ceases operation for a period of six months.

c. Special standards and permits are applied to this district, and are included under Development Standards, Article II of this chapter.

2. General Commercial (GC).
within the Downtown Commercial district. Multi-family uses on Ramsey Street and San Gorgonio must occur above commercial uses. In the balance of the district, multi-family uses may occur on any level.

3. All new projects (including redevelopment projects) shall incorporate Art in Public Places in exterior space.

4. Parking requirements within the Downtown Commercial district shall be as follows:
   a. Parking for residential land uses shall be 1.5 spaces per unit.
   b. Parking for commercial land uses shall be 1 space per 300 square feet of building area.
   c. Shared parking will be allowed for complementary commercial land uses. Shared parking for complementary commercial uses can be assigned on a one-for-one basis. For example, if a law office requiring 10 spaces and a dinner house restaurant requiring 20 spaces are proposed for the same building, a total of 20 spaces may be provided. Shared parking calculations shall be reviewed and approved by the Director.
   d. If a project incorporates daytime commercial land uses with residential land uses above, shared parking can be assigned on a one-for-one basis. For example, if 10 parking spaces are required for the daytime commercial uses, and 25 spaces are required for the residential uses, a total of 25 spaces may be provided if shared parking is utilized. Daytime commercial uses shall be those whose customary hours are 8:00 A.M. to 5:00 P.M. Shared parking calculations shall be reviewed and approved by the Director.
   e. Parking may be provided as follows:
      i. On-site
      ii. On the public right-of-way adjacent to the building frontage, calculated at one space per 20 linear feet of frontage.
      iii. In a City parking lot, pursuant to the Downtown Parking Inventory assignments maintained by the Community Development Department. The Department shall maintain an inventory of public parking spaces in the Downtown Commercial District, and shall assign no more than 10% of all the parking spaces in public parking lots to one project. These parking spaces shall not be assigned parking spaces.
   iv. On an adjacent parcel through a parking easement recorded against the parcel.
   f. On-site parking must be provided on the side or in the rear of a lot.
   g. Landscaping requirements for on-site parking shall be as required in Chapter 17.32 (Landscaping Standards), except that planted window boxes and exterior hanging plants and flowers can be substituted for up to 15% of the total required landscaping.

5. The design and architecture of new development and redevelopment in the Downtown Commercial district shall be consistent with the Ramsey Street Corridor Charette (Design Guidelines).

6. All structures in the Downtown Commercial district with adjacency to an alley shall be required to maintain the alley, and to provide benches, trash receptacles, and bike racks to facilitate non-motorized transportation.

7. Buildings identified as locally historically significant shall be renovated and expanded in historically appropriate manner. Conversion of historic homes within the District to live/work spaces, offices or retail commercial is encouraged. The provisions of subsection (k) of this section, Single Family/Office Conversions, below, shall apply.

8. Covered entries and portes cochere encroaching into the public sidewalk may be permitted, when 8 feet above finished floor.

9. Outdoor patios and seating areas are permitted on public sidewalks adjacent to building frontage, when 4 feet of clear width is provided for pedestrians.

1. Drive-Through Restaurants. The following standards shall apply for all drive-through restaurants.
   1. Pedestrian walkways should not intersect the drive-through aisles, but where they do, they shall have clear visibility, and they must be emphasized by enriched paving or striping.
   2. Drive-through aisles shall have a minimum 12 foot width on curves and a minimum 11 foot
<table>
<thead>
<tr>
<th>Zone</th>
<th>DC</th>
<th>GC</th>
<th>HSC</th>
<th>PO</th>
<th>I</th>
<th>AI</th>
<th>BP</th>
<th>IMR</th>
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<tbody>
<tr>
<td>Auto, mobile home, and motor vehicle sales, and part sales, new</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>C</td>
<td>X</td>
<td>C</td>
<td>X</td>
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<tr>
<td>Auto, mobile home, and motor vehicle sales, and part sales, new and used</td>
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<td>P</td>
<td>P</td>
<td>X</td>
<td>C</td>
<td>X</td>
<td>C</td>
<td>X</td>
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<tr>
<td>Bakeries, retail</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>P</td>
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<tr>
<td>Bars and drinking establishments</td>
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<td>C</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>C</td>
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<td>Building material stores</td>
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<tr>
<td>Convenience stores</td>
<td>C</td>
<td>P</td>
<td>P</td>
<td>C</td>
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<td>C</td>
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<td>Convenience stores, no liquor sales</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Department stores</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Drive-in/drive-through sales</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Drug stores</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
</tr>
<tr>
<td>Factory outlet centers</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Farm and ranch supply stores</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Furniture, furnishings, home equipment stores</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Gift shops</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>C</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Grocery stores, retail butchers and green grocers</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Hardware/lumber stores</td>
<td>X</td>
<td>P</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Liquor stores (of-site consumption)</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Outdoor retail merchandise display &amp; activities</td>
<td>P</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Outdoor retail sales, temporary</td>
<td>T</td>
<td>T</td>
<td>T</td>
<td>T</td>
<td>T</td>
<td>T</td>
<td>T</td>
<td>T</td>
</tr>
<tr>
<td>Pawn shops</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Pet stores and grooming</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Restaurants, no beer, wine or liquor sales</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>C</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Restaurants, serving beer, wine or liquor</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>P</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Restaurants, drive-in, take-out, fast food</td>
<td>C</td>
<td>P</td>
<td>P</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Retail stores, general merchandise</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Second hand/thrift stores</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Shopping centers, 15,000 square feet or more</td>
<td>C</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Video rental stores</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Warehouse or club stores (i.e., &quot;Big box stores&quot;)</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Services</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>DC</td>
<td>GC</td>
<td>HSC</td>
<td>PO</td>
<td>I</td>
<td>AI</td>
<td>BP</td>
<td>IMR</td>
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</tr>
<tr>
<td>Min. Lot Width (Feet)</td>
<td></td>
<td>60</td>
<td>60</td>
<td>60</td>
<td>70</td>
<td>150</td>
<td>100</td>
<td>300</td>
</tr>
<tr>
<td>Min. Lot Depth (Feet)</td>
<td></td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>150</td>
<td>150</td>
<td>300</td>
</tr>
<tr>
<td>Min. Front Setback (Feet)</td>
<td>0</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>50</td>
</tr>
<tr>
<td>Min. Rear Setback (Feet)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>50</td>
</tr>
<tr>
<td>Min. Side Yard Setback (Feet)</td>
<td>0</td>
<td>0.5</td>
<td>0.5</td>
<td>0.5</td>
<td>0.10</td>
<td>0.10</td>
<td>0.10</td>
<td>0.20</td>
</tr>
<tr>
<td>Min. Street Side (Feet)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Max. Bldg. Coverage (%)</td>
<td>75</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>60</td>
<td>75</td>
<td>60</td>
<td>25</td>
</tr>
<tr>
<td>Maximum Height (stories/feet)</td>
<td>4/60</td>
<td>2/35</td>
<td>2/35</td>
<td>2/35</td>
<td>2/50</td>
<td>2/50</td>
<td>2/50</td>
<td>2/50</td>
</tr>
<tr>
<td>Maximum Fence/Wall Height (ft.)</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>8</td>
<td>8</td>
<td>6</td>
<td>8</td>
</tr>
</tbody>
</table>

12 If a commercially or industrially zoned lot is located adjacent to a residentially zoned lot, the minimum setback shall be 10 feet.

13 If a commercially or industrially zoned lot is located adjacent to a residentially zoned lot, the minimum setback shall be 10 feet.

14 Not including belltowers, steeples and similar architectural embellishments not exceeding 10% of the total building area.

15 Additional height may be permitted with approval of a Conditional Use Permit.

(Zoning Ord. dated 1/31/06, § 9103.03 (part); Ord. No. 1355, § 3 (part).)

17.12.040 General standards.

These standards apply to all development in the Commercial and Industrial districts, unless otherwise addressed in this Ordinance (All standards are minimum unless stated as maximum):

A. All uses other than those specified as outdoor uses shall occur in a completely enclosed structure. Outside uses (e.g., patio dining areas and nursery sales) shall be approved through Design Review.

B. Except for the display area for sale or rent of motor vehicles, there shall be no visible storage of vehicles, trailers, airplanes, boats, recreational vehicles, or their composite parts; loose rubbish, garbage, junk, or their receptacles; tents; equipment; or building materials in any portion of a lot. Storage shall always be considered ancillary to the primary use. There shall be no storage on parcels otherwise vacant. Materials being used for the construction of a structure may be stored on the property only as long as a valid building permit is in effect.

C. All structures within the Commercial and Industrial districts shall include a trash enclosure, constructed to the standards established by the Public Works Department, and sufficient in size to accommodate the trash generated by the business. The trash enclosure shall include three walls and a gate, in a style compatible with the structure’s architecture. The gate shall be maintained in working order and shall remain closed except when in use.

D. All roof-mounted equipment, air conditioning or heating equipment, vents or ducts shall not be visible from any abutting lot, or any public street or right-of-way. (Zoning Ord. dated 1/31/06, § 9103.03(1).)

17.12.050 Use specific standards.

The following standards apply to specific uses in the Commercial and Industrial districts. For residential uses in commercial districts, see Table 17.08.030, and the use specific standards contained in Section 17.08.030.
G. New freestanding signs, except for new freeway oriented freestanding signs permitted pursuant to Section 17.36.110(B)(6).

H. Off site signs, except as permitted elsewhere in this ordinance.
   I. Permanent sale signs.
   J. Portable signs or A-frame signs.
   K. Roof signs.
   L. Signs on public property or the public rights-of-way, except for traffic regulation and signs permitted by a governmental agency.
   M. Signs painted on fences or roofs.
   N. Balloons and other inflated devices or signs designed to attract attention, except with Temporary Use Permit.
   O. Signs that are affixed to vehicles, excluding permanent signs on commercial vehicles which are driven on a daily or weekly basis.
   P. Signs which simulate in color or design a traffic sign or signal, or which make use of words, symbols or characters in such a manner to interfere with, mislead, or confuse pedestrian or vehicular traffic.
   Q. Signs which singly or in combination with other signs block more than 5% of the view from any window or door of any structure used as a residence.
   R. Signs which singly or in combination with other signs, for any portion of the day, block natural sunlight from falling upon any window or door of any structure or dwelling used primarily as a residence.
   S. Signs which singly or in combination with other signs block more than 10% of the view from any window or door of any structure used or occupied by people for more than an hour of a typical day, in all zoning districts of the City. (Zoning Ord. dated 1/31/06, § 9109.06; Ord. No. 1377, § 1.)
   (Ord. No. 1424, § 3.4, 7-13-10)

17.36.070 Temporary signs.

Special event signs and civic event signs may be approved by the Director for a limited period of time as a means of publicizing special events such as grand openings, carnivals, parades, charitable events and holiday sales. Such special event signs shall be limited to the following provisions:

A. No special event sign shall be erected without a temporary use permit.

B. Special event signs shall be limited to 30 days per event from the date of erection or date of permit, whichever occurs first.

C. Special event signs shall not include promotional sales signs, and they must be taken down within a week after the conclusion of the special event.

D. Special event signs may include balloons, inflated devices, search lights, beacons, pennants, and streamers.

E. Such temporary signs may not be granted to the same business or location more than twice during any one year. (Zoning Ord. dated 1/31/06, § 9109.07.)

17.36.080 Off-site residential subdivision directional signs.

The following shall regulate and establish a standardized program of off-site residential subdivision directional kiosk signs for the City. For the purposes of this subsection, a residential subdivision is defined as a housing project within a recorded tract where five or more structures or dwelling units are concurrently undergoing construction.

A. No kiosk sign structure shall be located less than 300 feet from an existing or previously approved kiosk site, except in the case of signs on different corners of an intersection.

B. The placement of each kiosk sign structure shall be reviewed and approved by the Director.

C. All kiosk signs shall be placed on private property with written consent of the property owner.

D. A kiosk sign location plan shall be prepared, showing the site of each kiosk directional sign, and shall be approved by the Director prior to the issuance of a sign permit.
City of Banning

PLANNING COMMISSION MINUTES

May 2, 2012

A regular meeting of the City of Banning Planning Commission was held on Wednesday, May 2, 2012 at 6:30 p.m., in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, CA, 92220.

Commissioners Present:  Chairman Arterberry  
Vice-Chairman Barsh  
Commissioner Brant  
Commissioner Hawkins  
Commissioner Siva

Commissioners Excused:  Commissioner Arterberry excused himself after the Planning Commission Elections due to a conflict of interest as a real-estate broker on the proposed Item V of the Agenda.

Staff Present:  Community Development Director Abu Bakar  
Assistant City Attorney Eric Dunn  
Assistant Planner Guillot  
Recording Secretary Stuart

I. CALL TO ORDER

II. PUBLIC COMMENT

No comments at this time.

III. PLANNING COMMISSION ELECTIONS

1. Chairperson Nomination

ACTION (BARSH was nominated for Chairperson): A motion was moved and all were in favor.

2. Vice Chair Nomination

ACTION (SIVA was nominated for Vice Chair): A motion was moved and all were in favor.
IV. CONSENT CALENDAR

None.

V. PUBLIC HEARINGS

1. INITIAL STUDY/NEGATIVE DECLARATION, GENERAL PLAN AMENDMENT (GPA) NO. 12-2502, ZONE CHANGE (ZC) NO. 12-3501, AND ZONE TEXT AMENDMENT (ZTA) NO. 12-97502 TO CHANGE LAND USE AND ZONING DESIGNATION FOR CERTAIN PROPERTIES RELATED TO REGIONAL HOUSING NEEDS ASSESSMENT FOR CERTIFICATION OF THE HOUSING ELEMENT (2008-2014) BY THE STATE HOUSING AND COMMUNITY DEVELOPMENT

Assistant Planner Guillot presented the staff report and stated that the purpose of the rezoning program is to obtain certification for the revised housing element from the State of California Department of Housing and Community Development commonly referred to as HCD. The program provides for the rezoning of several parcels of land in the City to Very High Density Residential (VHDR). The VHDR zone allows residential development at the rate of at least 20 dwelling units per acre to a maximum of 30 dwelling units per acre. The action presented this evening does not involve a project. It simply involves the rezoning of certain parcels of land within the City to meet the requirements of Housing Law as stipulated by the State of California.

The Assistant Planner continued by referencing parcel slides which have been attached hereto by reference. The parcels have been identified by numbers determined by the Assistant Planner that were created for presentation purposes. No. 1 involves a piece of land on Sunset and Lincoln which is approximately 17 acres. The proposal is to change this from Medium Density Residential (MDR) and High Density Residential (HDR) to the new designation of VHDR.

Parcel Nos. 2, 3 and 4 which total about 23.5 acres is proposed to change from VLDR to High Density Residential (HDR) zoning. These sites are located at the southwest corner of 22nd and Westward. These parcels are vacant. Through these slides, future commercial sites have been identified which is important because we want to group the high density zoned areas next to future commercial. Additionally, the Assistant Planner noted that these locations are near the freeway interchange, arterials, or state highways. Staff's intention is to make the adjustments close to the circulation aspect of the City for various reasons.

The involved includes Parcel Nos. 5 and 6 that amount to approximately 14 acres which is located on Lincoln and 22nd. The Assistant Planner noted that future commercial development is zoned for across the street; however, it is not that now. It is zoned commercial and staff hopes that is what it will be sometime in the future. Parcels No. 7, 8, 9, 10 and 11 are in the downtown area and the zoning designation will change from Downtown Commercial (DC) to a special created district identified as DC30 which will permit Downtown Commercial Mixed Use with the Higher Density up to 30 dwelling units per acre.

Planning Commission Meeting
May 2, 2012
Parcel Nos. identified as 12 and 13 amount to approximately 9 acres which is located on 8th and Barbour. The Assistant Planner noted that there is future commercial proposed next to the freeway. Parcel No. 14 is on the southeast end of town and involves a parcel of approximately ten (10) acres and the parcel adjacent to the east, is proposed for future commercial. This parcel is the farthest away from the interstate but it is adjacent to State Highway 243 that is commonly known as San Gorgonio Avenue.

The zoning map is shown with turquoise colored stars to show the locations of the proposed rezoning program. With this, it is noticeable that the rezoning is throughout the City opposed to a concentrated in one area. Also, notice the dark brown is the City’s existing high density. There is some high density in the northwest quadrant, there is some north of the freeway above downtown, and there is none in the south. Staff has tried to disburse designations throughout the areas of the City so that we do not concentrate these proposed high density zones.

The need for more housing choices and more affordability options is a problem that plagues many communities throughout California. In response, the State of California has made increasing housing supply a high priority. The State requires each City and County to identify a sufficient amount of land to accommodate its fair share of the State’s housing need. This rezoning program as proposed is for the purpose of meeting those State requirements. Again, it is a rezoning program, there are no projects proposed at this time. It is interesting to note however the table (as shown attached) was reproduced from the revised Housing Element. This was included to illustrate that in the year 2007, which is the column to the very right, what construction took place in the City of Banning that was recorded by the State for our housing needs. The right column reflects construction needed. The Assistant Planner noted that 3,841 units were needed total. Fourteen (14) units were actually built in 2007. Of the extremely low, very low or low and even the mod, zero units were built. This program that is placed upon us does not always translate to direct construction; however, its purpose is to get our housing element certified by the State. That is the purpose of the rezoning program. Failure to obtain approval of the revised Housing Element by the State place the entire City’s General Plan at risk for legal challenges. This element of risk can prove to be costly to both the City and associated developments, these housing projects could be tied up in litigation. Therefore, staff recommends approval of the proposed General Plan Amendment, Zone Change along with the Zone Text Amendment in order to provide additional housing sites at densities adequate to meet the requirements of the State of California.

Chairman Barsh opened the floor to any questions from the Commissioners.

Commissioner Briant wanted to know what criteria had been used to select the parcels. He stated in general, the south side of the City did not have the high density so it would be natural to select parcels from there but wanted to know what differentiated one parcel from another.

In response, The Assistant Planner stated that the State’s review of our revised housing element included many pages of a comment letter. In reviewing the comment letter, the State set criteria. The State requires the City to do an inventory of existing lands. Lands that are vacant and lands that could be redeveloped. Since the demise of the Redevelopment Agencies, staff focused on
vacant lands. So that was the first, review of available vacant sites and sites that were spread apart so that there was not concentration in one location. For example, one of the sites that were selected is adjacent to the new college. The idea there was that, that type of housing would serve the college sometime in the future. Again, this is zoning and not projects. Staff is thinking ahead and trying to accommodate our best anticipation with the State’s requirements so vacant land was one criterion, next to transportation corridor was another including infrastructure such as are there available roads. Most of the parcels front arterial roadways or are adjacent to the interchange.

Community Development Director Zai Abu Bakar added that the other criteria considered was not over concentrating in one particular area.

Commissioner Brian then asked about the medium income reported in the study was from 2003. His understanding was that it was updated since 2003 and wanted the current updated data, as well as, the source of the data.

The Assistant Planner responded by stating that the medium income for Riverside County is $63,300 for a family of four. For the City, depending on who you speak with, the medium is approximately $38,000-$43,000. To be classified as low or mod, the State uses a formula. For example, 30% is the very low which would be 30% of that medium and so forth. There are other items that they take into consideration which is explained in approximately 20 pages related to their formula.

Vice Chair Siva had a question related to the fact that this was a public hearing and wanted to know if staff had been previously contacted by members of the public. He noticed that responses received by the public were provided to the Planning Commission. He imagined there would be many questions asked and he wanted to know if some of these questions were already addressed. If so, he requested that the issues that were brought forth up until this point be reviewed including how staff responded to such inquiries.

The Assistant Planner responded that the entire Planning Department is standing before the Commission so he has done his best to respond to individuals. The property owners were contacted and in the report are the positive responses. He mentioned there was one response that did not want the change in zoning. He also stated that he received approximately fifteen to twenty (15-20) phone calls that he attempted to return. The department received letters, which were provided to the Commission for examination. Staff also prepared notices as required by law. Advertisement was place in the newspaper which does not provide much comfort to individuals because of the small print and placement in the newspaper but the public noticing requirements were met.

Vice Chair Siva continued and asked if there were any particular suggested sites that were more important to the individuals than any other. He is asked because they are really spread out. Also, the Commissioner wanted to know if there was a requirement by the State representing what they expected to have changed.
In response, The Assistant Planner stated that the City has a consultant that is preparing the revised draft Housing Element and they reviewed it and recommended how many acres would need to be rezoned as part of this program. Individuals were either for it or against it, and he could not recall anyone making a suggestion of a different place.

Commissioner Hawkins inquired if the parcels had multiple owners.

The Assistant Planner responded by stating they were not all owned by the same individual. He stated that he believed that all of the parcels that are contingent, in other words, if you look at them they are made up of one, two, or three parcels. Those are owned by the same owners. For example, some of the vacant ones that are quite large are owned by development companies. The property owners were contacted in order to obtain their feedback and that was included with the provided report.

Commissioner Hawkins inquired about how often staff participates in this exercise of updating the Housing Element.

Community Development Director Zai Abu Bakar commented that the state requires the City to do this every five (5) years. This is the last cycle for the five (5) year period. The next cycle, which starts in 2014, will be for an eight (8) year cycle.

Chairman Barsh inquired if there were any more comments from the Commissioners. Since there were none, the floor was opened to the public. He requested that individuals from the public state their name and address.

The City Attorney declared the public hearing to be open.

Don Smith, resident of south Banning – He opposed the rezoning because he viewed that the rezoning designation was in a concentrated area, of the seventy-five (75) acres, fifty-five (55) of the acres surround one existing development and the college. He posed the question regarding how the existing zoning compared to its proposed change and suggested one neighborhood would currently allow 161 houses which based on 2.7 people per house in Banning would be 434 people. Under the new plan there will be 1642 houses surrounding Serrano Del Vista with 4,436 people creating at least 18,000 extra vehicles trips on Sunset. Mr. Smith opposed the negative declaration. When he previously served on the GPAC committee, the high-densities were spread throughout the entire City. Mr. Smith requested that this entire proposal be turned down and that a joint session with the City Council be requested so that the elected bodies and board could decide where in town the 75 acres should be located. He requested that the proposals as it stands be rejected.

Inga Schuler, resident of southwest Banning – She concurred with Mr. Smith’s request that this be re-examined and that we have some type of similar town meeting where people are allowed to have input. Ms. Schuler stated a full fledge EIR should be required. This is just a negative declaration which means that when the new developments come in they have to do an EIR and that traffic issues needed to be considered.
Jeff Clemmons, 391 N. Main St. - Mr. Clemmons is an owner representative of a large piece of property on the south side of the freeway between Sunset and Highland and was approached by the City to have one of their parcels rezoned. He considers them to be a partner with the City and is willing to work with the City as it goes forward.

Hank Lefler, 1087 W. Westward Ave & 1104 W. Westward Ave – Opposed to the proposed changes. He concurred with Mr. Smith and Ms. Schuler and felt that it was necessary to go back to the drawing board to come up with a more feasible plan to have the high-density housing throughout the entire City opposed a concentrated area. Additionally, he mentioned that two of the parcels included in the proposal are in close proximity to the high school. Due to this fact, he suggested staff survey and collect data regarding the activities in that location. He requested that staff reconsider the proposed amendments.

Peter Patassi, Rancho Cucamonga - He represents Diversified Pacific that owns four (4) of the parcels that are under consideration which total a little over 33 of the 74 acres being considered. They were approached by the City and agree with the proposal. He pointed out that the parcels are part of an 800 acre group of parcels that are under control by Diversified Pacific which are currently in the process of being master planned for a specific plan which ultimately would need an environmental impact report.

Charles Huff, 2649 Winter Court, Serrano Del Vista- He stated anytime there is a change in zoning people who have governed their lives and investments on the present use are betrayed. He stated that if this was evaluated properly, a four lane underpass with bike lanes separated and a stop light at Lincoln would be required. The whole environment enjoyed by the senior community would be changed.

Linda Pippenger, 2553 W. Westward Ave – Lives on the corner of Westward and Woodland on horse property which will be surrounded by these projects and she was not notified by the City. She stated the re-zoning will deem her property worthless and requested that the proposal be rejected.

Rick Pippenger, 2553 W. Westward Ave – Lives same place as identified above for twenty-five (25) years. The re-zoning would affect the agricultural aspect of the location. He mentioned there are people that raise cattle in that area and it is part of the Banning’s economy. Mr. Pippenger stated the roads are not adequate and the need for the Sunset Grade Separation and that more traffic or people in the area should not be added. He supports horse property in that area.

Kevin Taylor, 1810 S. 22nd Street – His parcel and house are on the corner of 22nd and Westward. He agrees that it is a complete betrayal of the citizens and that residents there want the natural views of cattle grazing and horse property opposed to multi-family dwellings which will bring traffic and other problems. He requested the scope be changed, that development be phased in and is requesting an alternative instead of putting it right across the street or in front of a ten acre property or half acre parcel.
Ed Barba, Serrano Del Vista, 2843 Cloudy Circle – Suggested that Banning is already pretty riddled with low income housing. He recommended that Code Enforcement staff should direct its energy to take care of projects and houses that are semi-finished or empty. Serrano Del Vista is already experiencing break-ins and thefts and if the zoning is change to low-income housing it will only get worse and law enforcement expenses will only increase. He requested that the City give consideration to direct their attention to Code Enforcement and changes the rest of Banning.

Gene Kato, Economists and a trustee on the Board of Trustees for Mt. San Jacinto College and is the former chair of the Economic Development Committee for the City of Banning – He reviewed the numbers and suggested that the current number of residents in that area is 548 and with high density housing it is expected to go to a little over 6,000 but yet the report states no significant impact upon the institutions. He stated this is a significant impact to elementary and intermediate schools, as well as, the college. He also stated that it was going to be a significant impact on the traffic on Sunset and Westward also on the other streets immediate to that area. He suggested as a matter of courtesy that the City should have contacted the college, as well as, others that were not notified.

Ann Price, 3120 Summerset Circle in Serrano Del Vista- She voiced her opposition to the rezoning. She stated that the residents were very concerned that there are so many projects that have been talked about including the railroad underpass and the road between Sunset and Highland Springs but have not even been started. This proposal could severely impact the police and fire protection that we have; the ability for the school district to handle the influx of additional children; the capabilities of our utilities system; and impact the City’s fiscal problems.

Joe Fernandez, 77 Autumn Way Serrano Del Vista, - He moved here a year ago to get some peace and quiet and to get away from the crime. If this goes through there is going to be a lot more crime out here. The City is going to need more police and the expenses are going to increase.

Margaret Fador – She was representing her neighbors and family that live on the 900 block of E. Charles Street. She stated that they do in fact concur with the change that is proposed as it pertains to their area. Recently five parcels which affect eight (8) families were changed from residential to industrial. They support the rezoning back to residential because as it stands now they would be unable to sell their homes since they are categorized as legal non-conforming.

Mikayla Cashea, 981 E. Charles – Has been a resident of Banning since 1993. Where she lives now is considered a non-conforming structure so to sell her house it would be a problem because it could not be sold for residential use. She supports the proposal to re-zone the property back to residential so she can pass her inheritance to her children.

Dakota Poplett, 981 E. Charles Street - He was in support to change his house back to residential because he did not want to inherit a non-conforming structure.
Jeffery, 981 E. Charles Street – Supported the rezoning from industrial back to residential because the initial zone change to industrial has caused stressed and extreme problems related to obtaining loans, taxes, and insurance.

Chairman Barsh thanked everyone that contributed their concerns and stated the floor would be turned back to the committee.

The City Attorney recommended that Chairman Barsh ask if there are any further public comments and then if there is not then close the public hearing before turning the meeting back to the Commission.

Resident of Serrano Del Vista – Supports the approval of the portion of the rezoning related to Charles Street if perhaps some parcels could be re-zoned while others stayed the same. His objection to the Serrano Del Vista area is that Sunset basically dead ends at Westward and Westward basically dead ends at Sunset. It forms a triangle and neither one goes through creating traffic issues in what would be high density area. A thoroughfare is necessary. Also he attended a Water District meeting and the simulation between both meetings is that all proposals seem to be in the same area. There are no proposals for other areas and he advised that the City should think very strongly that it is dealing with two streets that are two lanes and dead end in the proposed area that is subject to the re-zoning.

Manny Perez, Southeast side of the area that has been designated for potential residential zoning - Supports the motion to proceed with the residential zoning area. He is a horse and property owner that sits adjacent to the area that is being considered. He enjoys the community and the quiet peaceful neighborhood. Seven years ago he moved from Mira Loma where he had ranch property that was turned commercial later exposed to traffic and pollution. He did not want to see what happened in Mira Loma duplicated here and supports the motion as a constituent of this great city that the zoning of the designated areas return to residential.

Neighbor of Manny (previous speaker): He owns over an acre of land that is now zoned as light industrial that was previously zoned as R1A. He bought the property in 1994 as it was then zoned as R1A, raising children, grandchildren, and had horses among other agricultural animals and thoroughly enjoyed the southwest side of Banning, a beautiful community. He requested that the goals of the City are kept in mind when making these decisions. It has always been a stagecoach town and residences are proud of that. He asked that the City keep this in mind because these residencies are now worthless, residences cannot obtain a permit to rebuild if there is have a fire although permits were procured for everything that has done to improve the property and they are now out of compliance because it is industrial.

Linda Premise, 55 S 22nd – She lives on a half-acre parcel and was not notified of the public hearing. The property was bought because of the view, because of the quietness around the area. There is not a safety precaution set in place because Sunset, the railroad stops. She has friends that work the railroad, they know, there are several times 22nd Street is block off and Sunset is blocked off. The City is going to have a lot traffic going down to 8th Street because that is the only way to get through. Sunset dead ends down at Wildwood. She stated the impact would be
huge at that it is ironic that it has been declared to adopt a negative declaration. The infrastructure needs to be addressed. She requested that if homes are put in that it is not at a rate of 30 homes per acre.

Chairman Barsh requested if there is anybody else, if not we will close the public hearing.

Jim Blackman, 769 Amber Sky Street (Serrano Del Vista) –

43 of these acres that we are talking are within a diameter of a mile. They surround Serrano Del Vista. Everyone here as pleaded a good cause tonight. This has to do with infrastructure and our ability to take care of the people that are going to be moving here. He stated that the trains going through Banning with the chemicals and petroleum products could create a problem that Banning could have years of overcoming. He reiterated the issue with Sunset and Westward and the fact that all of our medical facilities accept for the ones recently added in Beaumont are across the street for most of these people. He also stated the City will not have the necessary police and fire personnel and that infrastructure was lacking. He agreed Banning needs to grow and that Federal and State regulations should be adhere to but that it should be at a minimal level. He suggested that the State, Federal Government or the County usually provides figures and information to the public related to how many people, how many homes, school information, etc.

Lupe Vonjuelos, 932 E. Charles Street – Lived at the location for 22 years and is not sure when the zoning was changed to Industrial but that it is a residential neighborhood and is requesting the zone be changed back to residential.

Chairman Barsh requested if there was anyone else that would like to speak.

Gene Hawver, 992 E. Charles – Mr. Hawver spoke of the need to change the area back to residential zoning.

Chairman Barsh requested if there are any additional comments.

Versia Tovar- She stated she was not aware or notified of when the area was changed to industrial but is requesting to have the zoning changed back to residential again.

Chairman Barsh stated that since he saw nobody else that the public hearing would be closed. He stated that many of the people have come about the change to industrial and this has nothing to do with anything that is happening here today. He stated that he just wanted to let them know because this has nothing to do with the change of any properties. He then opened the floor for and questions from the Commissioners.

Vice Chair Siva stated he had a question and a comment. He thanked everyone that came and spoke and that it was an honor to sit on the Commission. The recommendations that are made here are sometimes very difficult. We are all for progress in Banning and so many of these comments tonight are so well thought out. As a matter of fact, it even seems that some of the comments are people that have residences in that area that have direct insight on potential
changes. The Commissioner stated that the problem he has with this is two-fold. One is the history of what has been going on in the south side for so many years and that is the Residential A1 designation that has been an issue in Banning for a long time because so many people wanted to keep that designation and at the same time other citizens in Banning wanted progression to happen for Banning. Now we are faced with a situation where it looks like progress is going to jump on us in a huge manner. Vice Chair Siva stated his problem with this really is that staff is recommending that we do a negative declaration. There have been a couple of comments brought up tonight that are very significant. One is what is going to happen to any kind of environmental impact or infrastructure impact when developments do happen. The Vice Chair stated he is not trying to put the cart before the horse here but it seems that we are creating a situation, we are giving an opportunity for people to capitalize now on property that they have in ways that we don’t perceive that the impact could be. He posed the question to staff asking what is going to be done when 30 acres are developed or when 15 acres are developed and whether then an environmental impact report was going to then be required. He also posed the questions that if 40 acres were developed on the south side and we discovered there are so many thousands or hundreds of families with possibly hundreds of kids that they are going to need to have a school. Those kinds of issues are items that we need to address before we issue a negative declaration. Vice Chair Siva stated he did not know what to suggest about that other than to suggest it is something that the Commission needs to have input on. The Commission needs to have information on it and needs to know how far the City’s plan is when they are going to impact lives. He stated that he was not talking about a lot of lives but that he talking about the people that are out here now that have invested their lives in those particular areas and maybe the rest of the citizens don’t know what is going on but the Planning Commission has the responsibility of trying to understand what the impact is going to be in this project. He commented that he did not think a negative declaration would serve from that standpoint. It is not Banning that is going to be developing those areas it is going to be the City of Banning thinking about progress and giving the opportunity to developers to impact that area.

Chairman Barsh requested if there were any other comments.

Commissioner Hawkins stated that he was agreeable to a possible joint meeting with Council prior to making a final decision.

Chairman Barsh requested what the feeling was from the other Commissioners.

Vice Chair Siva stated he would certainly support that recommendation. The more people involved the better.

Barsh summarized by stating the Commission would like to proceed with a joint meeting with the City Council regarding some of the concerns. Chairman Barsh turned the meeting over to the Planning Director so that she can provide insight.

Director Zai Abu Bakar responded to the Commission stating that we can have a joint meeting with the Council but before we get to that point there were a couple of items that she wanted to address. They are many sentiments from the community about location but so far this evening
she has not heard an alternative location which is a concern. Possibly staff can schedule a community meeting with the neighborhood and hopefully come up with an alternative. The third item is that Vice Chair Siva brought up a concern about the negative declaration. The reason that a negative declaration was declared is because we do not have a project. The project is just to change the zone and she understands what the alternate is but we do not have a specific detail as to the actual development. When an actual development is submitted, it will have to be evaluated again whether it is a negative declaration, it could need and environmental impact report if we are talking about a larger area. That will have to come back to the Planning Commission and City Council and the recommendation is not final before the Commission. It will have to go to the City Council but staff is not opposed to having a community meeting, as well as, a joint meeting with City Council.

Vice Chair Siva responded by stating that was an excellent idea. As far as the negative declaration, he wanted to make sure that we realize as staff and as the Commission that if these items are going to be identified individually that at some point there is going to be a need for some overall big picture that is created establishing possibilities. The Commissioner stated he realized that we do not have anything planned right now but the major concerns that we have heard tonight is the “what if”, the difference between high density and very high density is an issue that has been raised. The traffic situation has been raised and the possibility of it in other words, the worst case scenario. We are going to increase traffic over long periods of time during the day and the issue of the railroad that impacts. Those are all issues that we need to see the big picture.

Chairman Barsh stated that he understood Vice Chair Siva’s point but noted that all of the items discussed would have to come after a decision was made about what is before them.

Vice Chair Siva agreed.

The City Attorney for clarification purposes stated that in the staff report and by a number of speakers that talked about their zoning being proposed to change from Industrial back to residential which that is actually part of the proposed change. There is about nine quarter acres that would go back from Industrial to Very Low Density Residential (VLDR).

Vice Chair Siva asked if there was a way to separate the issues.

The City Attorney responded by stating that it could be separated but that it would be very difficult to segregate all of these, or this project as a whole. Right now it is proposed as a unified item to go forward and that is where the negative declaration applies to all of these items. If the Commission decided to segregate the proposal than it would be up to the City Council if they want to proceed in that manner. So then, that would something, it would take a little longer, the Commission would have to direct staff to come back with pieces of this proposal as opposed to approving one of those options tonight. It would just take more time.

Vice Chair Siva stated that he would certainly encourage those that spoke tonight to come back again and reiterate what was stated tonight and that he appreciated it.
Chairman Barsh requested if there were any other comments.

Commissioner Hawkins commented by asking staff what is the drop dead date with the state.

Director Zai Abu Bakar responded by saying it was three years ago.

The City Attorney commented by stating the problem is that if you do not have a certified Housing Element than future projects that come forward have a possibility of not being consistent with the General Plan. So other projects that might come forward by developers or homeowners or the City itself are susceptible to being challenge.

Commissioner Brian asked if the City could apply for an extension.

Director Zai Abu Bakar responded stating there is no extension to the deadline. If the housing element is not approved then what will happen is that when the next cycle begins in 2014, the numbers that we have today which is 3,841 will be compounded to 7,682. That number will be added to the future program for year 2014 and the number that has been assigned for the future housing element is 5,792. That is what will happen if the housing element is not approved as soon as possible, the number that will be assigned for 2014 will be 11,474 units.

Vice Chair Siva asked how that compares to 30 units per acre.

The City Attorney responded by stating that the State and the Regional Planning Commission divide up the number of housing units and essentially assigns them to various cities around Southern California. They leave it up to the city to figure out where those go but each city is obligated to produce or allow or zone for a certain number of residential units over what use to be a (five) 5 year period which is now going to be an (eight) 8 year period. The cities are obligated to do that and it is up to the City to figure out where.

Vice Chair Siva stated this is obviously something that the quicker the better.

Chairman Barsh stated that some planning needs to be done and meet with City Council and see what will come of that. Chairman Barsh confirmed that would be the objective.

Director Zai Abu Bakar responded to the Commission asking the Commission table this or take it off calendar and then staff will arrange for the community meeting. Subsequent to that, there will be a joint meeting between the City Council and the Planning Commission.

Chairman Barsh opened the floor for the commissioners to come to their decision.
ACTION (BARSH/HAWKINS): A motion was moved, seconded and carried that the Planning Commission take the following action:

1. Remove the following from the calendar and arrange a community meeting followed by a Joint Planning Commission and City Council meeting to further discuss this item: INITIAL STUDY/NEGATIVE DECLARATION, GENERAL PLAN AMENDMENTS (GPA) NO. 12-2502, ZONE CHANGE (ZC) NO. 12-3501, AND ZONE TEXT AMENDMENT (ZTA) NO. 12-97502 TO CHANGE LAND USE AND ZONING DESIGNATION FOR CERTAIN PROPERTIES RELATED TO REGIONAL HOUSING NEEDS ASSESSMENT FOR CERTIFICATION OF THE HOUSING ELEMENT (2008-2014) BY THE STATE HOUSING AND COMMUNITY DEVELOPMENT

(Motion Carried 4–0) (Commissioner Arterberry was excused)

The City Attorney noted for the audience that all future actions would require another notice to provide an opportunity for those to speak at a public hearing again.

VI. STAFF REPORT/INFORMATION ITEM

None

VII. PLANNING COMMISSIONER COMMENTS

Vice Chair Siva congratulated the new chairman.

VIII. COMMUNITY DEVELOPMENT DIRECTOR’S REPORT

1. City Council Actions from previous meetings on Planning-Related Items: Director Abu Bakar stated that staff took the Zone Text Amendment for business development in order to streamline the processes and timelines. This item was adopted by the City Council so it is ready for the second reading next week.

IX. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 8:03 p.m. to the Planning Commission meeting on May 2, 2012 at 6:30 p.m.

Respectfully submitted,

Holly Stuart
Recording Secretary

Planning Commission Meeting
May 2, 2012
Housing and Community Development (HCD).

The purpose of the rezoning program is to obtain certification for the revised Housing Element of the General Plan by the State of California Department of

To the Regional Housing Needs Assessment
Certain properties in the City of Banning Related Change Land Use and Zoning Designations for 12-3501 Zone Amendment (TA) No. 12-9750 Amendment (CPA) No. 12-2502 Zone Change (ZC) No.
Initial Study/Negative Declaration/General Plan

Proud History. Tomorrow.
No. 12, 13
9.29 Acres
VLDR→VHDR

No. 14
10 Acres
VLDR→VHDR
<table>
<thead>
<tr>
<th>Source: 2006-2014 Regional Housing Allocation Plan SCAG</th>
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</thead>
<tbody>
<tr>
<td>14</td>
</tr>
<tr>
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<td>0</td>
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<td>0</td>
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<td>0</td>
</tr>
</tbody>
</table>

### Table M-63

**HANING REGIONAL ALLOCATION (2008-2014)**

The need for more housing choices and more affordable options is a problem that plagues sufficient amount of land to accommodate its "fair share" of the state's housing need. Increasing the housing supply is a priority. The State requires each city and county to identify a community throughout much of California. In response, the State of California has made communities throughout much of California.
CITY OF BANNING
PLANNING COMMISSION REPORT

DATE: November 7, 2012

TO: Mr. Chairman and Members of the Planning Commission

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: CONDITIONAL USE PERMIT (CUP) #12-802
VERIZON WIRELESS TELECOMMUNICATIONS ANTENNAE
2010 E. WESTWARD AVENUE (APN 532-180-044)

STAFF RECOMMENDATION

The Planning Division recommends the Planning Commission take the following actions:

1. Adopt a Class 32 Categorical Exemption in compliance with CEQA Guidelines Section 15332 (In-Fill Development Projects); and,

2. Adopt PC Resolution No. 2012-11 (Attachment 1) approving Conditional Use Permit #12-802 subject to conditions of approval.

PROJECT/APPLICANT INFORMATION

Project Location: 2010 E. Westward Avenue
APN Information: 532-180-044
Parcel Area: 2.27 Acres (99,007 square feet)
Land Use/Zoning District: Industrial (I)
Specific Plan: No
Project Applicant: SiteMaster, Inc.
6914 South Yorktown Avenue, Suite 210
Tulsa, OK 74136
Property Owner: Level 3 Communications, Inc.
1025 Eldorado Boulevard
Bloomfield, CO 80021
PROJECT BACKGROUND AND DESCRIPTION

Project Description:

The applicant is requesting approval of a Conditional Use Permit to locate a wireless telecommunications facility (microwave) at the partially developed parcel located at 2010 E. Westward Avenue in the Industrial (I) zone (see Attachment 2 - Location Map and Aerial Photo). The telecommunications antenna tower is proposed as a monopine (simulated pine tree) to be located within a 4,675 square foot lease area within the subject parcel. The height of the monopine tower is 80 feet. The new antenna tower and associated telecommunication equipment panels are proposed to be located within a 50' x 45' area enclosed by a six foot tall masonry wall. The application includes the request to place a total of two 4 foot diameter Verizon Wireless microwave antennae on the monopine tower. A diesel generator will provide emergency back-up power.

Land Use Information

The parcel is located in the Industrial (I) General Plan land use district. The project site is located on the south side of Westward Avenue, approximately 1,500 feet east of Hathaway Street. The site is bordered on the west by vacant land; however, there is an existing single family dwelling located approximately 300 feet farther to the west within the Industrial zoning district. To the north, south, and east the site is bordered by vacant lots. To the southwest and across Charles Street, approximately 500 feet away, there are several existing single family dwellings located within the Public Facilities-Government zoning district.

The parcel has a previously approved use as a fiber optic amplification facility. This use was approved by City Council on January 11, 2000, as Unclassified Use Permit (UUP) #1999-01. The existing facility consists of a modular building located on the northeast corner of the parcel with dimensions of approximately 30 feet by 48 feet. An area of approximately 155 feet by 110 feet around the modular building is paved; and, the entire facility is enclosed by a 6 foot tall chain-link fence.

<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>Vacant lot (across Westward Avenue)</td>
<td>Industrial</td>
<td>Industrial</td>
</tr>
<tr>
<td>South</td>
<td>Vacant lot</td>
<td>Industrial</td>
<td>Industrial</td>
</tr>
<tr>
<td>East</td>
<td>Vacant Lot</td>
<td>Industrial</td>
<td>Industrial</td>
</tr>
<tr>
<td>West</td>
<td>Vacant Lot</td>
<td>Industrial</td>
<td>Industrial</td>
</tr>
</tbody>
</table>

Land Use Summary Table
PROJECT ANALYSIS

Zoning Analysis:

The site is located in the Industrial (I) zoning district. This district includes industrial parks and freestanding industrial users. Examples of permitted uses include light and medium intensity manufacturing operations, warehousing and distribution, ministorage, and associated offices. Commercial recreation facilities, auto storage and repair is also allowed. Retail uses ancillary to the industrial use are also appropriate. Section 17.12.020 *Permitted, conditional, and prohibited uses* of the Zoning Ordinance allows telecommunications antennae subject to approval of a Conditional Use Permit (CUP) by the Planning Commission. This location does not presently have an approved CUP or any other approved special use permit.

The maximum height of structures located in the Industrial zoning district is 50 feet. However, this height restriction may be amended to a maximum height of 80 feet through approval of a conditional use permit by Planning Commission.

Below is a chart listing the development standards for the Industrial (I) zoning district (Table 17.12.030) including those standards required at Section 17.24.060 *Antennae, vertical design standards*, and how the proposed project meets the standards.

<table>
<thead>
<tr>
<th>Development Standards</th>
<th>Required</th>
<th>Provided</th>
<th>Complies With Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Lot Area</td>
<td>10,000 square feet</td>
<td>99,007 square feet</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum Lot Dimensions</td>
<td>Min. Lot Width: 70 feet Min. Lot Depth: 100 feet</td>
<td>330 feet x 300 feet</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum Front Yard Setback</td>
<td>10 feet</td>
<td>40 feet</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum Rear Yard Setback</td>
<td>0 feet</td>
<td>210 feet</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum Side Yard Setback</td>
<td>Adjacent to street: 10 feet Interior lot: 0 feet</td>
<td>62 feet</td>
<td>Yes</td>
</tr>
<tr>
<td>Maximum Building Coverage</td>
<td>60%</td>
<td>3%</td>
<td>Yes</td>
</tr>
<tr>
<td>Maximum Height (stories/feet)</td>
<td>2 stories/50 feet</td>
<td>80 feet</td>
<td>Amended through CUP - Yes</td>
</tr>
<tr>
<td>Maximum Fence/Wall Height</td>
<td>8 feet</td>
<td>6 feet</td>
<td>Yes</td>
</tr>
<tr>
<td>Maximum Antenna Height</td>
<td>80 feet</td>
<td>80 feet</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Site Plan Analysis:

The proposed lease area for the subject project consists of approximately 85 feet by 55 feet telecommunications facility located within the northerly portion of the 2.27 acre parcel. Adjacent to and immediately to the east is the existing fiber optic amplification facility located within an area of approximately 120 feet in width by 175 feet in depth. The site is accessed by the existing driveway fronting Westward Avenue and is intended to be shared by both facilities. The driveway and parking area is paved in accordance with Section 17.28.060 of the Municipal Code.

Parking Analysis:

One parking space is required for the telecommunications service truck and one parking space is proposed.

Architectural Analysis:

Section 17.24.060 of the Zoning Code requires antennae not be visible from a federal highway and be camouflaged. The antenna tower installation is proposed as a monopine (simulated pine tree) located within the 6 foot tall masonry wall enclosure. Additional natural pine trees are proposed to be planted and maintained adjacent to the monopine antenna tower to assist in camouflaging the tower by providing a tree-scaped background. The 10 foot setback area fronting Westward Avenue is proposed to be landscaped along with the area around the front of the proposed enclosure, which will add to screening of the installation. The site is located approximately 2,700 feet south of Interstate 10 and likely will not be recognizable as an antenna tower from the highway. The antenna tower is camouflaged in that it is constructed as a simulated pine tree (monopine) placed within the area of other natural pine trees planted in connection with the project.

Projects Near Airports

The site is located in Zone “E” airport compatibility zone as identified in the Riverside County Airport Land Use Compatibility Plan dated October 14, 2008, for Banning Municipal Airport. This zone is described as the “other airport environs” zone and as such is subject low noise impacts and low risk level. Therefore, it is recommended that the project be reviewed by the Riverside County Airport Land Use Commission prior to issuance of any building permits.

Conclusion

Staff recommends approval of the subject conditional use permit as the proposed project is consistent with the requirements of the Zoning Ordinance, while not significantly effecting the environment. The design of the antenna tower along with the proposed landscaping in all probability will not draw the attention of those passing by. This is the intention of the Section 17.24.060 of the Zoning Ordinance and represents the best available application of materials and design to camouflage the site.
ENIRONMENTAL DETERMINATION

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21065 of the California Environmental Quality Act (CEQA) Guidelines requires that all projects that have the potential to affect the environment must be evaluated to determine the extent of the project impacts and mitigation measures that must be incorporated into the projects to lessen or alleviate the impacts. CEQA Guidelines also provide for statutory exemptions of projects that meet certain thresholds.

1. Section 15332 of CEQA exempts from preparation of an environmental document since the proposed communications antenna is considered an in-fill development that meets the following four criteria under CEQA:

a. The project is consistent with the applicable general plan designation and all applicable general plan policies, as well as, with the applicable zoning designations and regulations.

The General Plan Land Use and Zoning Map designates the project site as Industrial (I), which allows communication antennae installations through approval of a conditional use permit. The project as proposed meets the design standards for the Industrial zoning district (Section 17.12.030) and the use specific antennae installation standards (Section 17.24.060) as shown in the Staff Report dated November 7, 2012. Additionally, the project 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 proposed antenna installation will facilitate wireless communications as a commercial service to the public, while not adversely affecting residential lands in that the closest residential use is located 330 feet to the west of the project.

b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

The proposed communications facility will be constructed within the city limits on a 2.27-acre property, which is less than five acres. While the land immediately adjacent to the subject parcel consists of vacant lots, the City’s Sewer Treatment Plant is located approximately 370 feet to the south; a single family dwelling is located approximately 330 feet to the west; and, other existing industrial developments exist within proximity of the site that includes a large manufacturing complex that is presently vacant and office buildings.

c. The project site has no value as habitat or endangered, rare or threatened species.

The site is presently developed as a fiber optic amplification facility and has no value as habitat for endangered, rare or threatened species.

d. The site can be adequately served by all required utilities and public services.
The site is presently developed as a fiber optic amplification facility and has existing utilities serving the building. Since the project site is located along a well-established industrial corridor and is surrounded by existing developments, all of the required utilities, including sewer, water, electricity, gas, and cable are readily available and can serve the development.

2. None of the exceptions to the Categorical Exemptions contained in CEQA Guidelines Section 15300.2 prevent CEQA Guidelines Section 15332 from exempting the project for the following reasons:

   a. The project is not a Class 3, 4, 5, 6, or 11 project; and, therefore is not subject to the exception pertaining to projects located in particularly sensitive environments.

   b. The nature of the project is such that significant cumulative impacts will not occur from successive projects of this type occurring in the same location over time. The Industrial zoning standards regulate land use around the site. The project is to be un-manned in that no offices or other occupied buildings are proposed; therefore, there can be no cumulative impacts related to traffic, noise, or air quality.

   c. There is no reasonable possibility that unusual circumstances will cause the project to have a significant effect on the environment because the proposed communications facility is not in itself a hazardous use; the City’s utilities and roads are adequate to serve the project, and the surrounding properties are not environmentally sensitive properties.

   d. The project will not result in damage to scenic resources within a designated state scenic highway because there is no designated state scenic highway in the project area.

   e. The project site has not been listed as a hazardous waste and substance facility or site by the Department of Toxic Substances Control pursuant to California Government Code Section 65962.5.

   f. The project will not cause a substantial adverse change to the significance of a historical resource. The site is previously developed and a historical resource or its immediate surroundings will not be demolished, destroyed, relocated, or altered such that the significance of the historical resource would be materially impaired.

**MULTIPLE SPECIES HABITAT CONSERVATION PLAN (MSHCP)**

3. 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 (CUP) #12-802

The Zoning Ordinance requires that each Conditional Use Permit application meet certain findings in Section 17.52.050 in order to be approved by the Planning Commission. The following findings are provided for Planning Commission consideration:

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

Findings of Fact: The project is consistent with General Plan Economic Development Element Policy #3 which states: “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.” By locating the telecommunications facility at the existing site used for communications, there will be a lesser need for utilizing a nearby vacant land thereby leaving parcels available for other industrial and commercial development.

Finding No. 2: The proposed use as an antennae tower/telecommunications facility is conditionally permitted within the subject land use district.

Findings of Fact: The project site is zoned Industrial (I). Antennae tower/telecommunications facilities are allowed in the Industrial zoning district subject to approval of a conditional use permit (CUP) by Planning Commission as stipulated in Table 17.12.020 of the Zoning Ordinance. The applicant is requesting approval of CUP which is consistent with the zoning. Furthermore, the project is conditioned to meet all local standards pertaining to development and use, including providing sufficient parking, setbacks, fencing, screening from a state or federal highway, and landscaping.

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.

Findings of Fact: The proposed use will not impair the integrity and character of the Industrial (I) land use district in which it is to be located because the proposed telecommunications facility will be camouflaged from public view by use of the monopine tower (simulated pine tree) planting of natural pine trees, and landscaping proposed along the project frontage. Additionally, a 6 foot tall masonry wall will surround and screen the communications equipment from public view.

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

Findings of Fact: The subject site is currently developed as a fiber optic amplification facility. The telecommunications facility is proposed within a vacant portion of the parcel in a lease area with dimensions of 55 feet by 85 feet. The topography of the parcel is gently sloping to the south and will not require substantial grading or other modifications to the land to accommodate the project. The project is proposed to be an un-manned facility, no offices are proposed; and, therefore will not add additional traffic, noise, or congestion to the area.
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 public and private utilities, including the City’s water and electrical utilities. The site is accessed and served from Westward Avenue, an existing developed roadway with existing utilities located within the roadway right-of-way. Furthermore, the project as proposed is un-manned, that is it consists of communications equipment only and will not require the typical provisions for an occupied structure.

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

Finding of Fact: The project is proposed on an existing developed parcel (Parcel 2 of Parcel Map 24908). The subdivision map creating the parcel was approved by Planning Commission on June 4, 1990 and a Negative Declaration was recorded in connection with the creation of the subdivision. The parcel map was approved by City Council on January 14, 1992 and recorded on February 1, 1992. The site and surrounding neighborhood is currently developed. The parcel is flat (unable to support bodies of water) and the street frontage is fully improved.

While the land immediately adjacent to the subject parcel consists of vacant lots, the City’s Sewer Treatment Plant is located approximately 370 feet to the south; a single family dwelling is located approximately 330 feet to the west; and, other existing industrial developments exist within proximity of the site that includes a large manufacturing complex that is presently vacant and office buildings. The proposed project consists primarily of landscape features, a masonry wall, and pavement which are characteristics of the existing neighborhood.

Furthermore, the project is Categorically Exempt from CEQA in accordance with Section 15332 (In-Fill Development) in that the staff report dated November 7, 2012, submitted by the Planning Division and other findings made in the report demonstrate that Conditional Use Permit (CUP) #12-802 meets the criteria for the 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 location of a wireless telecommunication facility will not be detrimental to the City’s health, safety, and welfare in that it complies with the Zoning Ordinance development standards as shown in the staff report dated November 7, 2012. Furthermore, by locating the telecommunications facility at the existing fiber optic amplification facility, there will be a lesser need for other free-standing cell-sites thereby leaving parcels available for other industrial and commercial development.

The project will not generate excessive noise or traffic. There is adequate parking and screening from adjacent uses.
PUBLIC COMMUNICATION

The proposed project was advertised in the Record Gazette newspaper, a newspaper of general circulation within the City of Banning, on October 26, 2012, and notices were mailed to all property owners within a 1,200-foot radius of the site. The public notice portion of the Zoning Ordinance requires mailed notice to properties within a 300-foot radius; however, the applicant decided to provide notice to properties within a 1,200-foot radius. As of the date of this report, staff has not received any verbal or written comments for or against the proposed project.

Prepared By:

Brian Guillot  
Associate Planner

Approved By:

Zai Abu Bakar  
Community Development Director

PC Attachments:

1. Resolution No. 2012-11 (with Conditions of Approval)
2. Location Map and Aerial Photograph
3. Site Photographs
4. Project Plans
5. Photo Simulations
Attachment 1

(Resolution No. 2012-11)
RESOLUTION NO. 2012-11

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA APPROVING CONDITIONAL USE PERMIT #12-802 A REQUEST BY SITEMASTER, INC. OF TULSA OKLAHOMA TO LOCATE A WIRELESS TELECOMMUNICATIONS FACILITY AT THE EXISTING FACILITY LOCATED AT 2010 E. WESTWARD AVENUE IN THE INDUSTRIAL (I) ZONING DISTRICT

WHEREAS, an application for a telecommunications antenna/facility has been duly filed by:

Project Applicant: SiteMaster, Inc.
6914 South Yorktown Avenue, Suite 210
Tulsa, OK 74136

Property Owner: Level 3 Communications, Inc.
1025 Eldorado Boulevard
Bloomfield, CO 80021

Project Location: 2010 E. Westward Avenue

APN Information: 532-180-044

Specific Plan: No

Lot Size 2.27 acres (99,007 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 #12-802 to locate a telecommunications facility in the Industrial (I) zoning district; and

WHEREAS, on 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 November 7, 2012, 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 #12-802, and at which meeting the Planning Commission considered the Conditional Use Permit; and

WHEREAS, the Community Development Director has reviewed the project's potential effects on the environment and has recommended that the project is categorically exempt from the California Environmental Quality Act ("CEQA") under CEQA Guidelines Section 15332
“In-Fill Development” and the exceptions to the categorical exemptions contained in CEQA Guidelines Section 15300.2 are not applicable to the project.

NOW THEREFORE, the Planning Commission of the City of Banning does Resolve, Determine, Find, and Order as follows:

SECTION 1 ENVIRONMENTAL FINDINGS.

The Planning Commission, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines and Thresholds of Significance, the recommendation of the Community Development Director as provided in the Staff Report dated November 7, 2012 and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21060(c) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) Section 15332 of CEQA exempts from preparation of an environmental document since the proposed communications antenna is considered an in-fill development that meets the following four criteria under CEQA:

   a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designations and regulations.

      The General Plan Land Use and Zoning Map designates the project site as Industrial (I), which allows communication antennae installations through approval of a conditional use permit. The project as proposed meets the design standards for the Industrial zoning district (Section 17.12.030) and the use specific antennae installation standards (Section 17.24.060) as shown in the Staff Report dated November 7, 2012. Additionally, the project 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 proposed antenna installation will facilitate wireless communications as a commercial service to the public, while not adversely affecting residential lands in that the closest residential use is located 330 feet to the west of the project.

   b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

      The proposed communications facility will be constructed within the city limits on a 2.27-acre property, which is less than five acres. While the land immediately adjacent to the subject parcel consists of vacant lots, the City’s Sewer Treatment Plant is located approximately 370 feet to the south; a single family dwelling is located approximately 330 feet to the west; and, other existing industrial developments exist within proximity of the site that includes a large manufacturing complex that is presently vacant and office buildings.
c. The project site has no value as habitat or endangered, rare or threatened species.

The site is presently developed as a fiber optic amplification facility and has no value as habitat for endangered, rare or threatened species.

d. The site can be adequately served by all required utilities and public services.

The site is presently developed as a fiber optic amplification facility and has existing utilities serving the building. Since the project site is located along a well-established industrial corridor and is surrounded by existing developments, all of the required utilities, including sewer, water, electricity, gas, and cable are readily available and can serve the development.

2. None of the exceptions to the Categorical Exemptions contained in CEQA Guidelines Section 15300.2 prevent CEQA Guidelines Section 15332 from exempting the project for the following reasons:

a. The project is not a Class 3, 4, 5, 6, or 11 project; and, therefore is not subject to the exemption pertaining to projects located in particularly sensitive environments.

b. The nature of the project is such that significant cumulative impacts will not occur from successive projects of this type occurring in the same location over time. The Industrial zoning standards regulate land use around the site. The project is to be un-manned in that no offices or other occupied buildings are proposed; therefore, there can be no cumulative impacts related to traffic, noise, or air quality.

c. There is no reasonable possibility that unusual circumstances will cause the project to have a significant effect on the environment because the proposed communications facility is not in itself a hazardous use; the City’s utilities and roads are adequate to serve the project, and the surrounding properties are not environmentally sensitive properties.

d. The project will not result in damage to scenic resources within a designated state scenic highway because there is no designated state scenic highway in the project area.

e. The project site has not been listed as a hazardous waste and substance facility or site by the Department of Toxic Substances Control pursuant to California Government Code Section 65962.5.

f. The project will not cause a substantial adverse change to the significance of a historical resource. The site is previously developed and a historical resource or its immediate surroundings will not be demolished, destroyed, relocated, or altered such that the significance of the historical resource would be materially impaired.
3. **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.

**SECTION 2 REQUIRED FINDINGS.**

Pursuant to Banning Municipal Code Chapter 17.52 and in light of the record before it including the staff report dated November 7, 2012, all evidence and testimony heard at the public hearing of this item, the Planning Commission hereby finds as follows:

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

Findings of Fact: The project is consistent with General Plan Economic Development Element Policy #3 which states: “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.” By locating the telecommunications facility at the existing site used for communications, there will be a lesser need for utilizing a nearby vacant land thereby leaving parcels available for other industrial and commercial development.

**Finding No. 2: The proposed use as a telecommunications facility is conditionally permitted within the subject land use district.**

Findings of Fact: The project site is zoned Industrial (I). Antennae tower/telecommunications facilities are allowed in the Industrial zoning district subject to approval of a conditional use permit (CUP) by Planning Commission as stipulated in Table 17.12.020 of the Zoning Ordinance. The applicant is requesting approval of CUP which is consistent with the zoning. Furthermore, the project is conditioned to meet all local standards pertaining to development and use, including providing sufficient parking, setbacks, fencing, screening from a state or federal highway, and landscaping.

**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.**

Findings of Fact: The proposed use will not impair the integrity and character of the Industrial (I) land use district in which it is to be located because the proposed telecommunications facility will be camouflaged from public view by use of the monopine tower (simulated pine tree) planting of natural pine trees, and landscaping proposed along the project frontage. Additionally, a 6 foot tall masonry wall will surround and screen the communications equipment from public view.

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

Findings of Fact: The subject site is currently developed as a fiber optic amplification facility. The telecommunications facility is proposed within a vacant portion of the parcel in a lease area with dimensions of 55 feet by 85 feet. The topography of the parcel is gently
sloping to the south and will not require substantial grading or other modifications to the land to accommodate the project. The project is proposed to be an un-manned facility, no offices are proposed; and, therefore will not add additional traffic, noise, or congestion to the area.

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 public and private utilities, including the City’s water and electrical utilities. The site is accessed and served from Westward Avenue, an existing developed roadway with existing utilities located within the roadway right-of-way. Furthermore, the project as proposed is un-manned, that is it consists of communications equipment only and will not require the typical provisions for an occupied structure.

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

Finding of Fact: The project is proposed on an existing developed parcel (Parcel 2 of Parcel Map 24908). The subdivision map creating the parcel was approved by Planning Commission on June 4, 1990 and a Negative Declaration was recorded in connection with the creation of the subdivision. The parcel map was approved by City Council on January 14, 1992 and recorded on February 1, 1992. The site and surrounding neighborhood is currently developed. The parcel is flat (unable to support bodies of water) and the street frontage is fully improved.

While the land immediately adjacent to the subject parcel consists of vacant lots, the City’s Sewer Treatment Plant is located approximately 370 feet to the south; a single family dwelling is located approximately 330 feet to the west; and, other existing industrial developments exist within proximity of the site that includes a large manufacturing complex that is presently vacant and office buildings. The proposed project consists primarily of landscape features, a masonry wall, and pavement which are characteristics of the existing neighborhood.

Furthermore, the project is Categorically Exempt from CEQA in accordance with Section 15332 (In-Fill Development) in that the staff report dated November 7, 2012, submitted by the Planning Division and other findings made in the report demonstrate that Conditional Use Permit (CUP) #12-802 meets the criteria for the 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 location of a wireless telecommunication facility will not be detrimental to the City’s health, safety, and welfare in that it complies with the Zoning Ordinance development standards as shown in the staff report dated November 7, 2012. Furthermore, by locating the telecommunications facility at the existing fiber optic
amplification facility, there will be a lesser need for other free-standing cell-sites thereby leaving parcels available for other industrial and commercial development.

The project will not generate excessive noise or traffic. There is adequate parking and screening from adjacent uses.

SECTION 3 PLANNING COMMISSION ACTIONS.

The Planning Commission hereby takes the following actions:

1. Notice of Exemption. In accordance with Public Resources Code Section 21152(b) and CEQA Guidelines Section 15062 the Planning Commission hereby approves a categorical exemption under CEQA Guidelines Section 15301 and directs the Planning 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.

2. Conditional Use Permit (CUP) #12-802 is hereby approved subject to the Conditions of Approval attached hereto and incorporated herein by reference as Attachment “A”.
PASSED, APPROVED AND ADOPTED this 7th day of November, 2012.

Dennis Aterberry, Chairman
Banning Planning Commission

APPROVED AS TO FORM AND
LEGAL CONTENT:

____________________
Lona N. Laymon
Aleshire & Wynder, LLP
Assistant City Attorney
City of Banning, California

CERTIFICATION:

I, Holly Stuart, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2012-11 was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 7th day of November, 2012 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

____________________
Holly Stuart, Recording Secretary
City of Banning, California
Planning Division
Attachment “A” to PC Resolution No. 2012-11

PROJECT #: Conditional Use Permit Amendment (CUP) #12-802
SUBJECT: Antennae Tower/Telecommunications Facility (Verizon Wireless Telecommunications Antenna)
APPLICANT: SiteMaster, Inc.
LOCATION: 2010 E. Westward Avenue (APN 532-180-044)

CONDITIONS OF APPROVAL

Planning
THE APPLICANT MAY CONTACT THE PLANNING DIVISION, (951) 922-3125, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

A. General Requirements

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. A Conditional Use Permit shall be exercised by the commencement of construction within two (2) years from the date of approval or the Conditional Use Permit shall become null and void. In addition, if after commencement of construction, work is discontinued for a period of one year, the Conditional Use Permit shall become null and void. Extension: 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 12 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 Unclassified Use Permit (UUP) #1999-01 approved by City Council on January 11, 2000. Should there be a conflict between UUP #1999-01 and the subject Conditional Use Permit, the more restrictive requirement of the two conditions shall apply.

4. This Conditional Use Permit is specifically for the placement of two 4 foot diameter microwave telecommunications antennae on the 80 foot tall monopine (simulated pine tree) antenna tower and the placement of related equipment in the lease area enclosure with dimensions of approximately 55 feet by 85 feet rectangular. Any modification, or addition to the specific approvals listed herein shall be approved by the City.

5. The project shall be reviewed and approved by the Riverside County Airport Land Use Commission prior to issuance of any building permit. The applicant shall comply with all conditions of approval as stipulated by the Airport Land Use Commission (ALUC) project review, and any amendments; including any requirements stipulated by the Federal Aviation Administration (FAA) Aeronautical Study.

6. A copy of the signed Resolution of Approval or Community Development Director's letter of approval, and all Standard Conditions, shall be included in legible form on any plans required by the City and submitted for plan check.

7. Prior to the issuance of building permits a copy of the lease and easement agreement with the property owner shall be filed with the City.

B. Site Development

8. The site shall be developed and maintained in accordance with the approved plans approved by Planning Commission on November 7, 2012, (on file with the Planning Division), the conditions contained herein, and zoning code regulations. Changes to approved plans, incorporating all Conditions of Approval shall be submitted for Community Development Director for review and approval prior to the issuance of building permits.

9. Prior to any use of the project site or business activity being commenced thereon, including any operation of the wireless telecommunications facility, all Conditions of Approval shall be completed to the satisfaction of the Community Development Director.
10. Permanent electric connections for telecommunications location purposes shall not commence until such time as all California Building Code and State Fire Marshal regulations have been complied with. Prior to operation of the telecommunications facility, plans shall be submitted to the City of Banning Fire Marshal and the Building and Safety Division for review and approval. All facilities shall be inspected for compliance prior to the commencement of operations of the telecommunications facility.

11. All site, grading, landscape, irrigation, and street improvement plans shall be coordinated for consistency prior to issuance of any permits (such as grading, tree removal, encroachment, building, etc.).

12. Approval of this request shall not waive compliance with all sections of the Zoning Ordinance and other applicable City Ordinances in effect at the time of building permit issuance.

13. All ground-mounted utility appurtenances such as transformers, AC condensers, etc., including the electric connection point for the temporary electric generator, shall be located out of public view and adequately screened through the use of a combination of concrete or masonry walls, berming, and/or landscaping to the satisfaction of the Community Development Director.

14. Trash collection shall occur between the hours of 8:00 and 6:00 only.

15. Graffiti shall be removed within 72 hours or within 24 hours of notice from the City.

16. The entire site shall be kept free from trash and debris at all times and in no event shall trash and debris remain for more than 24 hours.

17. Detailed plans shall be included in the landscape and irrigation plans to be submitted for Planning Division approval prior to the issuance of building permits.

18. The lighting fixture design shall compliment or be consistent with the existing site architectural program.

C. Building Design

19. All roof appurtenances, including air conditioners and other roof mounted equipment and/or projections shall be shielded from view and the sound buffered from adjacent properties and streets as required by the Planning Division. Such screening shall be architecturally integrated with the enclosure design and constructed to the satisfaction of the Community Development Director. Details shall be included in building plans.

20. The telecommunications antennae and dishes shall be completely concealed from public view and all related structures shall not be visible from Interstate 10 or the surrounding public right-of-way.
21. The quality and appearance of the monopine antenna tower material (simulated pine tree) shall be of the same quality and appearance as reflected in the applicant’s statements, representations and/or exhibits presented to the City’s staff or Planning Commission or the Conditional Use Permit Amendment shall be revoked. Should the monopine antenna tower material degrade over time or become damaged, the applicant shall replace the material within 30-day’s notice from the City.

22. Provide for the following design features to the satisfaction of the Community Development Director:

   a. Architecturally integrate features of the design of the existing facility with the antennae installation and equipment enclosure to match existing.
   b. Provide one on-site parking space for service vehicle.
   c. All parking spaces shall be striped per City standards.

D. Landscaping

23. A detailed landscape and irrigation plan shall be prepared by a licensed landscape architect and submitted for Community Development Director review and approval prior to the issuance of building permits.

24. The front setback area shall be landscaped in accordance with the Zoning Ordinance.

25. The applicant is responsible for the continual maintenance of all landscaped areas on-site (as provided for in approved landscaping and irrigation plans), as well as contiguous planted areas within the public right-of-way. All landscaped areas shall be kept free from weeds and debris and maintained in healthy and thriving condition, and shall receive regular pruning, fertilizing, mowing, and trimming. Any damaged, dead, diseased, or decaying plant material shall be replaced within 30 days from the date of damage or within 10 days’ notice from City.

26. Three mature natural pine trees shall be permanently maintained to provide camouflage for the monopine antenna tower in accordance with the approved landscaping plans. Should any of these trees become diseased, damaged, or otherwise removed from the site, the applicant shall be responsible for replacement of the same within 30 days’ notice from the City. Failure to comply with this Condition of Approval is grounds for revoking the subject Conditional Use Permit by Planning Commission.

27. Landscaping and irrigation shall be designed to conserve water through the principles of Xeriscape.

Building and Safety
THE APPLICANT MAY CONTACT THE BUILDING AND SAFETY DIVISION, (951) 922-3120, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:
E. General Requirements

28. Submit four complete sets of plans including the following:

Site/Plot Plan;
Foundation Plan;
Floor Plan;
Electrical Plans (2 sets, detached) including the size of the main switch, number and size of service entrance conductors, panel schedules, and single line diagrams;
Plumbing and Sewer Plans, including isometrics, underground diagrams, water and waste diagram, sewer or septic system location, fixture units, gas piping, and heating and air conditioning.

29. Submit two sets of structural calculations, energy conservation calculations, and a soils report. Architect's/Engineer's stamp and "wet" signature as required prior to plan check submittal.

30. Separate permits are required for fencing and/or walls.

31. Contractors must show proof of State and City licenses and Workers' Compensation coverage to the City prior to permit issuance.

32. The wireless telecommunications company shall not be in operation prior to posting the Certificate of Occupancy issued by the Building and Safety Division.

   a) Approval of the Community Development Director shall be required prior to release of all utilities and/or finalization of the building permit and issuance of the Certificate of Occupancy to ensure that project was designed and constructed consistent with all photos or other depictions or representations submitted or made by applicant to the City or Planning Commission.

   b) The plans shall not include any sites or plans for future carriers or new antennas. Applicant acknowledges that city approvals are required for any new antenna consistent with city codes and governing law.

   c) Applicant shall not use, create, store or allow any hazardous substances on the site in violation of any law or regulation. In no case shall applicant cause or allow the deposit or disposal of any hazardous substances on the site in violation of any law or regulation. City, or its agents or contractors, shall upon at least 48 hours written notice to Applicant, have the right to go upon and inspect the site to assure compliance with the requirements herein stated. Applicant shall be responsible for and bear the entire cost of removal and disposal of hazardous substances introduced to the site from the proposed project or any expansion thereof. Applicant shall also be responsible for any clean-up and decontamination on the site or the property necessitated by the introduction of such hazardous substances on the site. Applicant shall not be responsible for or bear the cost of removal or
disposal of hazardous substances introduced to the site during any period prior to construction of the proposed project. Applicant shall indemnify, defend and hold City harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, reasonable attorneys’ fees) incurred by or brought against City in connection with and to the extent arising out of the use, storage, disposal, release or other presence of hazardous substances on, in, under or about the Site, except to the extent caused by any actions or inactions of City, its agents, contractors or employees. The phrase “hazardous substance”, as used herein, has the same meaning as that phrase has under Section 25359.7 of the California Health and Safety Code. Notwithstanding anything to the contrary in this paragraph, City and applicant acknowledge that applicant shall be utilizing and maintaining on the site sealed batteries, propane/diesel/gasoline, HVAC system, and a halon/FM200 fire suppression system and that the use and maintenance of such items shall not constitute a violation or breach of this paragraph; provided, that if that use, retention or maintenance causes or allows the deposit or disposal of any hazardous substances on the site in violation of any law or regulation, then applicant’s obligations to indemnify, defend and hold harmless as set out in this paragraph shall be fully applicable.

F. Site Development

33. Plans shall be submitted for plan check and approved prior to construction. All plans shall be marked with the project file number (i.e., CUP 12-802). The applicant shall comply with the latest adopted California Building Code, California Mechanical Code, California Plumbing Code, National Electric Code, Title 24 Accessibility requirements, and all other applicable codes, ordinances, and regulations in effect at the time of permit application.

34. Prior to issuance of building permits the applicant shall pay development fees at the established rate. Such fees may include, but are not limited to: Permit and Plan Checking Fees.

35. Street addresses shall be provided by the Building Official, prior to issuance of building permits.

36. Construction activity shall not occur between the hours of 8:00 p.m. and 6:30 a.m. Monday through Saturday, with no construction on Sunday or holidays.

Engineering
THE APPLICANT MAY CONTACT THE ENGINEERING DIVISION, (951) 922-3130, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

The following conditions of approval shall be completed prior to issuance of a building permit:
37. The Department of Public Works recommends the Conditions of Approval listed herein for CUP# 12-802. Unless stated otherwise, all conditions shall be completed by the applicant at no cost to any government agency.

38. Submit a site plan to the City Engineer for review and approval showing drainage patterns (existing and proposed contours, flow lines, etc.), elevations and any required cut or fill. The plan shall provide for positive drainage away from, and around existing and proposed structures in accordance with City of Banning standard plans and specifications dated January 1, 1983. All drainage from the property shall drain to the public right-of-way, or applicant shall obtain drainage easement acceptance letter from downstream property owners.

39. Grading and excavations in the public right-of-way shall be supplemented with a soils and geology report prepared by a professional engineer or geologist licensed by the State of California.

40. The applicant shall identify and include in its improvement plans those routine structural and non-structural Best Management Practices (BMP’s) as outlined in Supplement “A” to the Riverside County Drainage Area Management Plans and any attachments (see Riverside County Flood Control and Water Conservation District stormwater quality web site at http://floodcontrol.co.riverside.ca.us/districtsite for more information).

41. Offer to dedicate to the City of Banning for public purposes the right-of-way for Westward Avenue fronting the site as a collector highway; 33 feet o.n.half width (3 foot dedication).

42. Submit a copy of the Title Report to the City Engineer prior to site plan review and approval.

43. Submit detailed drawings showing the existing and proposed utility connections (water, sewer, electric, etc.) to the City Engineer for review and approval. Construct all necessary infrastructures to provide utilities to the proposed project. Contact the Public Works Department prior to any utility construction as a Public Works Permit may be required.

The following conditions of approval shall be completed prior to issuance of a certificate of occupancy:

44. Obtain a Public Works Permit prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class “A” State Contractor’s License, City of Banning Business License, and Liability Insurance. Any existing public improvements that are damaged during construction, or public improvements not accepted by the City’s representative in the field, shall be removed and replaced as determined by the City Engineer.

45. Place the property address numbering in a conspicuous place.
46. Any public improvements damaged during the course of construction shall be replaced to the satisfaction of the City Engineer, or his/her designee.

47. Ensure that the disposal of construction debris is conducted at a certified recycling site. It is recommended that the developer contact the City's franchised solid waste hauler (Waste Management) for disposal of construction debris.

48. Applicant shall ensure that any and all access easements are paved. In addition, the access easement from the driveway shall be a minimum of 15 feet in width.

49. All required Plans and applicable Fees must be submitted to the Public Works Department prior to the Engineering Division’s approval of the Building Permit.

Fire Services
THE APPLICANT MAY CONTACT FIRE SERVICES, (951) 922-3210, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

50. The following are the minimum Fire Department requirements. There may be additional requirements when the project specifics are defined and the final proposal is submitted for approval.

FIRE DEPARTMENT DEVELOPER FEES:

Fees are increased annually and may be different at the time of construction. The fee schedule at the time of plan submittal shall apply.

Plan Check and Inspection: $ 134.00 per hour

51. CODE COMPLIANCE:

All Plans, Specifications and Construction shall comply with and conform to the current edition of the California Fire Code (CFC), California Building Code (CBC), and other state and local laws as applicable.

Special Requirements for this project:

Fire Department access shall be provided to within 150 feet of all portions of the facility. The road shall be considered “all weather” accessible for a fire truck.

Emergency power supply systems such as generators and batteries may require a Hazardous Materials Management Permit. Secondary containment for the batteries and generator may be required and ventilation may be required for the batteries.

52. Work begun without a permit or without an approved set of plans at the job site will result in a triple fee and/or the work stopped.
NOTE: More specific requirements may be presented when detailed plans are submitted, especially building plans.

**Electric Utility**
THE APPLICANT MAY CONTACT ELECTRICAL DEPARTMENT FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

53. The customer shall be responsible for:

   Submitting detailed plans indicating lot lines, streets, easements, building layout, anticipated loading information, etc. These plans are required in electronic format. We currently use AutoCad2006. Plans should consist of a plot plan, site plan, one line diagram of proposed electrical main service panel and a sheet showing load calculations by an electrical engineer. Additional sheets may be required upon request.

   Submitting electrical information included service voltage and panel size, load schedule showing the largest motor load, and electrical one line diagram.

   Paying required fees - electrical permit, plan check fee, inspection fees, meter fee and cost of electrical apparatus for completing the underground line extension.

   Granting easement for electric facilities installation/maintenance, etc.

   All trenching, backfill, and compaction.

   All conduits, vaults, and other materials associated with their installation (except primary cables and their terminations).

54. The City Electric Department shall be responsible for:

   Reviewing plans submitted by customer.

   Design an electrical utility plan for the installation of structures and conduit by developer.

END
Attachment 2

(Location Map and Aerial Photo)
Attachment 3

(Site Photographs)
Looking southwesterly from Westward Avenue

Looking southeasterly from Westward Avenue
Attachment 4

(Project Plans)
Attachment 5

(Photo Simulations)
DATE: November 7, 2012

TO: Chairman and Members of the Planning Commission

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: CONDITIONAL USE PERMIT (CUP) #12-803
COUNTY OF RIVERSIDE DEPARTMENT OF MENTAL HEALTH
1330 W. RAMSEY STREET (APN 540-180-004)

STAFF RECOMMENDATION:

That the Planning Commission takes the following actions:

1. Adopt a Class I Categorical Exemption in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15301 (Existing Facilities); and,

2. Adopt PC Resolution No. 2012-12 approving Conditional Use Permit #12-803 subject to conditions of approval.

PROJECT/APPLICANT INFORMATION

Project Location: 1330 W. Ramsey Street
APN Information: 540-180-004
Parcel Area: 0.96 acres (41,850 square feet)
Land Use/Zoning District: Highway Serving Commercial (HSC)
Specific Plan: No
Project Applicant: BH Properties, LLC
P.O. Box 49993
Los Angeles, CA 90049

Property Owner: Same as applicant
Agent: Jesse Roxas
PROJECT BACKGROUND AND DESCRIPTION:

Project Description

The applicant is requesting approval of a Conditional Use Permit to expand the use of an existing 14,600 square foot building located at 1330 W. Ramsey Street (see Attachment 2 - Location Map and Aerial Photo) in the Highway Serving Commercial (HSC) zone as a government office (mental health facility).

The proposed use of the building is as a government office operated by the Riverside County Department of Mental Health. The hours of operation will be 8:00 a.m. to 5:30 p.m. Mondays through Thursdays and 8:00 a.m. to 5:00 p.m. on Fridays, closed Saturdays and Sundays. The office will offer psychiatric services, medications, and individual and group therapy for children, adolescents, adults, and older adults. It is estimated that fifty-percent of the patients will drive themselves to the facility; while forty-percent will have others drop them off at the facility. Approximately, ten-percent of the patients will utilize public transportation. Individual sessions are usually one-hour in duration; group sessions are usually two-hours in duration; assessments can be up to four-hours long. A typical patient would be at the clinic on average of 1.5 to 2 hours. It is estimated that 40 patients a day will visit the facility.

It is estimated that the Mental Health Office will have a total of 40 employees, however some of the employees only work part time at the office. Two medical doctors are scheduled to be at the office two days each week. Some of the employees utilizing this office work a flexible schedule and thus are present at the office only a few days each week.

Site Description

The project area consists of a 0.96 acre (41,850 square feet) parcel, Assessor’s Parcel Number (APN) 540-180-004. The site is presently developed with a 14,600 square foot masonry building constructed in the 1960’s, and includes an asphalt concrete paved parking area with landscaping. The parcel is rectangular being approximately 152 feet wide by 275 feet in depth. The ground is relatively flat-lying with a southeasterly slope; however, the parking entrances/exits along Ramsey Street have steep driveways. The rear 9,128 square feet of the building is currently occupied by the Riverside County Department of Mental Health. The tenant that used the front 5,472 square feet of the building moved out, and Department of Mental Health is proposing to utilize the entire 14,600 square foot building as a government office.

The site fronts on Ramsey Street, which is classified as an arterial highway 110 feet in width. Interstate 10 serves as the southern border to the property. The frontage along Ramsey Street is fully improved with curb, gutter, and sidewalk. The eastern and southern property boundary has a 4 foot tall iron fence. The site has a drive aisle that connects with the property to the west (Bank of America) that allows traffic to circulate on both parcels.
Surrounding Land Use

Located north of the site and across Ramsey Street is a restaurant and retail store within the Highway Serving Commercial (HSC) zoning district. West of the site is a commercial building (Bank of America). East of the site is a vacant lot that is the undeveloped portion of the Hacienda Inn property. South of the site is Interstate 10, which serves as the southern property boundary.

The nature of the surrounding uses, zoning and General Plan land use designations are delineated for Planning Commission consideration in the following table.

<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>Existing commercial building</td>
<td>Highway Serving Commercial</td>
<td>Highway Serving Commercial</td>
</tr>
<tr>
<td></td>
<td>Restaurant (Johnny Russo’s)</td>
<td>Highway Serving Commercial</td>
<td>Highway Serving Commercial</td>
</tr>
<tr>
<td></td>
<td>Retail Store (Dollar General)</td>
<td>Highway Serving Commercial</td>
<td>Highway Serving Commercial</td>
</tr>
<tr>
<td>South</td>
<td>Interstate 10</td>
<td>Highway Serving Commercial</td>
<td>Highway Serving Commercial</td>
</tr>
<tr>
<td>East</td>
<td>Vacant lot¹ (Un-developed portion of the Hacienda Inn property)</td>
<td>Highway Serving Commercial</td>
<td>Highway Serving Commercial</td>
</tr>
<tr>
<td>West</td>
<td>Commercial Building (Bank of America)</td>
<td>Highway Serving Commercial</td>
<td>Highway Serving Commercial</td>
</tr>
</tbody>
</table>

¹ A vacant lot is one described as improved by a subdivision map where public improvements are present, or will be present, such as public streets, lighting, water mains and sewer mains.

² Unimproved land is land that does not have public improvements.

PROJECT ANALYSIS:

Zoning

The project is located in the Highway Serving Commercial (HSC) zone. This district allows land uses geared toward the Interstate 10 traveler, including restaurants (fast food and sit down), hotels and motels, auto related retail, repair and services, including gas stations, convenience stores and similar uses. Medical services and government offices such as the proposed mental
health facility are permitted subject to approval of a conditional use permit by Planning Commission. Section 17.12.020 Permit, conditional, and prohibited uses of the Zoning Ordinance allows government offices subject to approval of a Conditional Use Permit (CUP) by the Planning Commission. This site does not presently have an approved CUP or any other approved special use permit.

Planning Commission consideration of the proposed CUP shall include 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 impacts which it may cause. Limits which the Planning Commission might want to impose could include conditions that help make the use more compatible with the existing neighborhood.

Compliance with HSC Development Standards

The applicant will be required to submit building plans for review and approval of the Building and Safety Division and Planning Division to assure compliance with development regulations if any additions or modifications are proposed for the existing building. The table below shows how the proposed project meets those standards.

### Commercial and Industrial Development Standards

<table>
<thead>
<tr>
<th>Development Standards*</th>
<th>Required</th>
<th>Provided</th>
<th>Complies With Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Lot Size</td>
<td>6,000 square feet</td>
<td>41,850 square feet</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum Lot Width</td>
<td>60 feet</td>
<td>150 feet</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum Lot Depth</td>
<td>100 feet</td>
<td>279 feet</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum Front Setback</td>
<td>10 feet</td>
<td>60 feet</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum Rear Setback</td>
<td>0 feet</td>
<td>58 feet</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum Side Yard Setback</td>
<td>0 feet</td>
<td>20 feet</td>
<td>Yes</td>
</tr>
<tr>
<td>Maximum Building Coverage</td>
<td>35 %</td>
<td>34.8 %</td>
<td>Yes</td>
</tr>
<tr>
<td>Maximum Building Height</td>
<td>2 stories/35 feet</td>
<td>1 story/16 feet</td>
<td>Yes</td>
</tr>
<tr>
<td>Maximum Fence/Wall Height</td>
<td>6 feet</td>
<td>n/a</td>
<td>Yes</td>
</tr>
</tbody>
</table>

* per Table 17.12.030 of the Banning Municipal Code.
Parking Requirements

The site is accessed by two driveways fronting Ramsey Street. Table 17.28.040.B of the Zoning Ordinance requires that for an office use with a gross floor area of greater than 7,500 square feet, one space be provided for each 300 square feet. Using that formula, 49 parking spaces would be required if the building was constructed under the current development regulations. Section 17.88.020(G) of the Zoning Ordinance states that if a structure is non-conforming due to off-street parking and loading standards, expansion of the structure would require compliance with current parking standards. Since the applicant is not adding additional building square footage as part of the project, the current parking standards of the development regulations would not apply. At this time the structure is considered legal non-conforming as to parking and loading standards only. Compliance with all parking and loading standards would be required should the applicant expand the structure in the future.

It is noteworthy that the applicant appealed to the property owners immediately adjacent to the site to obtain reciprocal parking agreements. However, as shown in the letter from the applicant dated October 20, 2012, that appeal was not successful (see Attachment 5). Additionally, a parking demand study was prepared by K2 Traffic Engineers dated October 2, 2012, that reviewed the parking requirements for the mental health office (see Attachment 6). The study details the existing conditions and includes a parking survey of the existing office. The conclusions of the study relate that based on the actual operations of the mental health facility by Riverside County, 29 parking spaces should be adequate. The site presently provides 34 spaces. This appears to be sufficient parking for the mental health office as operated by the County of Riverside Department of Mental Health. In order to address any changing conditions during the term of the CUP, a condition of approval is recommended allowing Planning Commission to review the parking requirements in further detail should there be complaints from the public.

Also, the asphalt concrete pavement of the parking area is cracked and in need of some repairs. Therefore, staff recommends that a condition of approval be placed on the project to repair the asphalt concrete pavement surface and repaint the parking stalls in accordance with City design standards.

Architectural Design

The architecture of the existing structure is a simple painted rectangular masonry block building with mansard roof attachments on the front and rear elevations (see Attachment 3-site photographs). No modifications to the architectural design of the structure were requested in connection with the CUP application. Staff recommends that in addition to any modifications required by the safety code, that a condition of approval be placed on the project to maintain the paint and repair any of the aesthetic elements of the building (windows, doors, roof, etc).

Landscaping and Lighting Design

The existing landscaping has not been updated to meet the present development standards that include water conservation elements. The Zoning Ordinance requires that 15% of the parking area be landscaped. The existing parking area is approximately 27,250 square feet. Therefore,
15% of that area would amount to 4,087 square feet. The existing site provides approximately 4,100 square feet of landscaping. The landscape material and irrigation equipment does not meet the current development standards and therefore will need to be updated. A landscaping plan and irrigation plan that includes a water conservation statement shall be required before issuance of permits for final approval.

Future exterior lighting for the building or parking area requires that it be shielded or recessed so that light is contained within the boundaries of the parcel on which the lighting is located. All lighting shall be directed downward and away from adjoining properties and public rights-of-way.

Conclusion

Staff recommends approval of the subject conditional use permit as the proposed project is consistent with the requirements of the Zoning Ordinance, while not significantly effecting the environment. Additionally, the use of the existing commercial building as a government office would not significantly impact the character of the existing neighborhood, as the project is located along a long-established commercial corridor, Ramsey Street, and commercial uses surround the site.

ENVIRONMENTAL RESOURCES:

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)
Section 21065 of the California Environmental Quality Act (CEQA) Guidelines requires that all projects that have the potential to affect the environment must be evaluated to determine the extent of the project impacts and mitigation measures that must be incorporated into the projects to lessen or alleviate the impacts. CEQA Guidelines also provide for statutory exemptions of projects that meet certain thresholds.

1. The project is Categorically Exempt from CEQA in accordance with Section 15301 (Existing Facilities-Class 1) in that the staff report submitted by the Planning Division and other findings made in this staff report demonstrate that Conditional Use Permit #12-803 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of original construction in the early 1960’s. Examples include the exterior alterations involving such things as electrical conveyances; existing facilities of both investor and publicly-owned utilities used to provide public utility services; and, additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less.
2. None of the exceptions to the Categorical Exemptions contained in CEQA Guidelines Section 15300.2 prevent CEQA Guidelines Section 15301 from exempting the project for the following reasons:

a. The project is not a Class 3 (new construction or conversion of small structures), Class 4 (minor alterations to land), Class 5 (Minor Alterations in Land Use Limitations), Class 6 (Information Collection), or Class 11 (Accessory Structures) project; and, therefore is not subject to the exception pertaining to projects located in particularly sensitive environments.

b. The nature of the project is such that significant cumulative impacts will not occur from successive projects of this type occurring in the same location over time. The Highway Serving Commercial (HSC) zoning standards regulates the land use around the site. West of the site is a commercial building (Bank of America). East of the site is vacant land. Interstate 10 is located along the southern property boundary. This is a long-established, freeway-adjacent, commercial area along Ramsey Street, one of the City’s major commercial corridors.

c. There is no reasonable possibility that unusual circumstances will cause the project to have a significant effect on the environment because the existing commercial building used as a medical office is not in itself a hazardous use; the City’s utilities and roads are adequate to serve the project and the surrounding properties are not environmentally sensitive properties.

d. The project will not result in damage to scenic resources within a designated state scenic highway because there is no designated state scenic highway in the project area.

e. The project site has not been listed as a hazardous waste and substance facility or site by the Department of Toxic Substances Control pursuant to California Government Code Section 659625.

f. The project will not cause a substantial adverse change to the significance of a historical resource. The site is developed as a commercial building and there is no historical resource or in its immediate surroundings will be demolished, destroyed, relocated, or altered such that the significance of the historical resource would be materially impaired.

3. 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 NO. 12-803:

Section 17.52.050 requires that each Conditional Use Permit application meet certain findings in order to be approved by the Planning Commission. The following findings are provided for Planning Commission consideration:

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

Findings of Fact: The project is consistent with the General Plan because the project site is zoned HSC and designated Highway Serving Commercial on the General Plan Land Use Map. The HSC zone allows the government office use to locate within an existing commercial building. Furthermore, the project is consistent with the General Plan Land Use Goal of “a balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents”. A mental health office provides services that contribute to increased health and improved quality of life for all by providing mental health services.

Additionally, any improvements proposed for the existing commercial building will be in conformance with the Zoning Ordinance in particular Division III Development Standards for the Highway Serving Commercial zone. The project is in keeping with the spirit and intent of the General Plan and therefore is consistent with the General Plan.

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

Findings of Fact: The use of an existing commercial building as a government office is allowed in accordance with Section 17.12.020 Permitted, conditional and prohibited uses of the Zoning Ordinance subject to approval of a Conditional Use Permit by Planning Commission. Additionally, the existing building meets the front, rear, and side setback requirements of the HSC development standards as shown in the staff report dated November 7, 2012. The proposed project is conditioned to meet all local standards pertaining to the mental health office use and any proposed improvements.

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.

Findings of Fact: The proposed use will not impair the integrity and character of the Highway Serving Commercial land use district in which it is to be located because the project is occupying an existing building constructed for commercial use and it is surrounded by a mix of existing commercial uses along a well-established commercial corridor of the City (Ramsey Street).

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

Findings of Fact: The subject site is currently developed with a 14,600 square foot commercial building with a parking lot. The 0.96 acre land area is of adequate size to
accommodate the proposed use including building setbacks, and landscaping with conditions as shown in the staff report dated November 7, 2012.

**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.

Findings of Fact: The site is served by the public and private utilities, including the City’s water, sewer, and electrical utilities. The existing commercial building is currently accessed and served from Ramsey Street, an existing fully developed public arterial highway.

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

Findings of Fact: There is no evidence that the proposed project will have the potential for any adverse effect on environmental quality, wildlife resources, or the habitat upon which wildlife depends. The site is already developed with an existing commercial building. The site was found to contain no suitable habitat for threatened or endangered species. There is no evidence that vernal pool complex, similar bodies of water, or conditions suitable for forming such bodies of water exist on the site. The site and surrounding neighborhood is currently developed. The parcel is flat (unable to support bodies of water).

**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.

Findings of Fact: A government office is a conditionally permitted use in the Highway Serving Commercial (HSC) zone. The use of an existing commercial building at 1330 W. Ramsey Street as a government office will not be detrimental to the City’s health, safety, and welfare in that it complies with the development standards of the Zoning Ordinance with the conditions of approval referenced herein. The project will not generate excessive noise or traffic. Furthermore, CEQA Guidelines Section 15301 exempts the project because it is an existing facility.

**PUBLIC COMMUNICATION:**

The proposed project was advertised in the Record Gazette newspaper, and notices were mailed to all property owners within a 300-foot radius of the site on October 26, 2012. As of the date of this report, staff has not received any verbal or written comments for or against the proposed project.
PREPARED BY:

Brian Guillot
Associate Planner

APPROVED BY:

Zai Abu Bakar
Community Development Director

PC Attachments:

1. PC Resolution No. 2012-12 (with Conditions of Approval)
2. Location Map and Aerial Photo
3. Site Photographs
4. Plans
5. Copy applicant’s letter dated October 20, 2012
Attachment 1

(PC Resolution No. 2012-12)
RESOLUTION NO. 2012-12

A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF BANNING, CALIFORNIA APPROVING
CONDITIONAL USE PERMIT NO. 12-803 TO USE THE
BUILDING LOCATED AT 1330 W. RAMSEY STREET
(APN 540-180-004) IN THE HIGHWAY SERVING
COMMERCIAL (HSC) ZONE AS A
GOVERNMENT/MEDICAL OFFICE

WHEREAS, an application for a medical office has been duly filed by:

Project Applicant: BH Properties, LLC
P.O. Box 49993
Los Angeles, CA 90049

Property Owner: Same as applicant

Agent: Jesse Roxas

Parcel Area: 0.96 acres (41,850 square feet)

Land Use/Zoning District: Highway Serving Commercial (HSC)

Specific Plan: No

WHEREAS, the Planning Commission has the authority per Chapters 17.52 and 17.88 of
the Banning Municipal Code to take action on Conditional Use Permit No. 12-803: A request to
use the existing building located at 1330 W. Ramsey Street in the Highway Serving Commercial
(HSC) zone for a government/medical office; and

WHEREAS, on October 26, 2012, 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 November 7, 2012, the Planning Commission held the noticed public
hearing at which interested persons had an opportunity to testify in support of, or in opposition to
Conditional Use Permit No. 12-803; and, at which the Planning Commission considered the
Conditional Use Permit; and

WHEREAS, the project’s potential effects on the environment and has recommended
that the project is categorically exempt from the California Environmental Quality Act
(“CEQA”) under CEQA Guidelines Section 15301 “Existing Facilities” and the exceptions to the
categorical exemptions contained in CEQA Guidelines Section 15300.2 are not applicable to the
project because the project involves approving a government/medical office use in an existing
commercial building;
NOW THEREFORE, the Planning Commission of the City of Banning does Resolve, Determine, Find, and Order as follows:

SECTION 1 ENVIRONMENTAL FINDINGS.

The Planning Commission, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines, the recommendation of the Planning Division as provided in this Staff Report dated November 7, 2012 and documents incorporated herein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(c) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

   (a) The project is Categorically Exempt from CEQA in accordance with Section 15301 (Existing Facilities-Class 1) in that the staff report submitted by the Planning Division and other findings made in this Resolution demonstrate that Conditional Use Permit #12-803 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of original construction in the early 1960’s. Examples include the exterior alterations involving such things as electrical conveyances; existing facilities of both investor and publicly-owned utilities used to provide public utility services; and, additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less.

   (b) None of the exceptions to the Categorical Exemptions contained in CEQA Guidelines Section 15300.2 prevent CEQA Guidelines Section 15301 from exempting the project for the following reasons:

      i. The project is not a Class 3 (new construction or conversion of small structures), Class 4 (minor alterations to land), Class 5 (Minor Alterations in Land Use Limitations), Class 6 (Information Collection), or Class 11 (Accessory Structures) project; and, therefore is not subject to the exception pertaining to projects located in particularly sensitive environments.

      ii. The nature of the project is such that significant cumulative impacts will not occur from successive projects of this type occurring in the same location over time. The Highway Serving Commercial (HSC) zoning standards regulates the land use around the site. West of the site is a commercial building (Bank of America). East of the site is vacant land. Interstate 10 is located along the southern property boundary. This is a long-established, freeway-adjacent, commercial area along Ramsey Street, one of the City's major commercial corridors.

      iii. There is no reasonable possibility that unusual circumstances will cause the project to have a significant effect on the environment because the existing commercial building used as a medical office is not in itself a hazardous use; the
City’s utilities and roads are adequate to serve the project and the surrounding properties are not environmentally sensitive properties.

iv. The project will not result in damage to scenic resources within a designated state scenic highway because there is no designated state scenic highway in the project area.

v. The project site has not been listed as a hazardous waste and substance facility or site by the Department of Toxic Substances Control pursuant to California Government Code Section 659625.

vi. The project will not cause a substantial adverse change to the significance of a historical resource. The site is developed as a commercial building and there is no historical resource or in its immediate surroundings will be demolished, destroyed, relocated, or altered such that the significance of the historical resource would be materially impaired.

2. **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.

**SECTION 2. REQUIRED FINDINGS CONDITIONAL USE PERMIT #12-803.**

Section 17.52.050 of the Zoning Ordinance requires that each Conditional Use Permit application meet certain findings in order to be approved by the Planning Commission. The following findings are made for Conditional Use Permit #12-803:

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

Findings of Fact: The project is consistent with the General Plan because the project site is zoned HSC and designated Highway Serving Commercial on the General Plan Land Use Map. The HSC zone allows the government office use to locate within an existing commercial building. Furthermore, the project is consistent with the General Plan Land Use Goal of “a balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents”. A mental health office provides services that contribute to increased health and improved quality of life for all by providing mental health services.

Additionally, any improvements proposed for the existing commercial building will be in conformance with the Zoning Ordinance in particular Division III Development Standards for the Highway Serving Commercial zone. The project is in keeping with the spirit and intent of the General Plan and therefore is consistent with the General Plan.

**Finding No. 2: The proposed use is conditionally permitted within the subject land use district and complies with the applicable provisions of the Zoning Code.**
Findings of Fact: The use of an existing commercial building as a government office is allowed in accordance with Section 17.12.020 *Permitted, conditional and prohibited uses* of the Zoning Ordinance subject to approval of a Conditional Use Permit by Planning Commission. Additionally, the existing building meets the front, rear, and side setback requirements of the HSC development standards as shown in the staff report dated November 7, 2012. The proposed project is conditioned to meet all local standards pertaining to the mental health office use and any proposed improvements.

**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.

Findings of Fact: The proposed use will not impair the integrity and character of the Highway Serving Commercial land use district in which it is to be located because the project is occupying an existing building constructed for commercial use and it is surrounded by a mix of existing commercial uses along a well established commercial corridor of the City (Ramsey Street).

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

Findings of Fact: The subject site is currently developed with a 14,600 square foot commercial building with a parking lot. The 0.96 acre land area is of adequate size to accommodate the proposed use including building setbacks, and landscaping with conditions as shown in the staff report dated November 7, 2012.

**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.

Findings of Fact: The site is served by the public and private utilities, including the City’s water, sewer, and electrical utilities. The existing commercial building is currently accessed and served from Ramsey Street, an existing fully developed public arterial highway.

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

Findings of Fact: There is no evidence that the proposed project will have the potential for any adverse effect on environmental quality, wildlife resources, or the habitat upon which wildlife depends. The site is already developed with an existing commercial building. The site was found to contain no suitable habitat for threatened or endangered species. There is no evidence that vernal pool complex, similar bodies of water, or conditions suitable for forming such bodies of water exist on the site. The site and surrounding neighborhood is currently developed. The parcel is flat (unable to support bodies of water).
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.

Findings of Fact: A government office is a conditionally permitted use in the Highway Serving Commercial (HSC) zone. The use of an existing commercial building at 1330 W. Ramsey Street as a government office will not be detrimental to the City’s health, safety, and welfare in that it complies with the development standards of the Zoning Ordinance with the conditions of approval referenced herein. The project will not generate excessive noise or traffic. Furthermore, CEQA Guidelines Section 15301 exempts the project because it is an existing facility.

SECTION 3 PLANNING COMMISSION ACTIONS.

The Planning Commission hereby takes the following actions:

1. In accordance with Public Resources Code Section 21152(b) and CEQA Guidelines Section 15062 the Planning Commission hereby approves a categorical exemption under CEQA Guidelines Section 15301 and directs the Planning 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.

2. Conditional Use Permit (CUP) #12-803 is hereby approved subject to the Conditions of Approval attached hereto and incorporated herein by reference as Exhibit A.
PASSED, APPROVED AND ADOPTED this 7th day of November, 2012.

Dennis Arterberry, Chairman
Banning Planning Commission

APPROVED AS TO FORM AND LEGAL CONTENT:

Lona N. Laymon
Aleshire & Wynder, LLP
Assistant City Attorney
City of Banning, California

ATTEST:

Holly Stuart, Recording Secretary
City of Banning, California

CERTIFICATION:

I, Holly Stuart, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2012-12, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 7th day of November, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Holly Stuart, Recording Secretary
City of Banning, California
EXHIBIT A

PROJECT #: Conditional Use Permit #12-803
SUBJECT: Conditions of Approval
APPLICANT: BH Properties, LLC (Riverside County Department of Mental Health)
LOCATION: 1330 W. Ramsey Street

* 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.

I. General/On-Going.

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. If during the term of the permit the City determines based upon substantial evidence that the permit activity is exercised so as to be detrimental to the public health, safety or welfare, or, so as to be a nuisance to other property owners in the general area which by any means shall interfere with the comfortable peaceful use, possession and enjoyment of property by any person, the Conditional Use Permit shall be subject to revocation as outlined in section 17.52.100 “Revocation” of the Banning Zoning Code.

3. Construction shall commence within two (2) years from the date of Planning Commission approval, or the conditional use permit shall become null and void. Additionally, if after commencement of construction work is discontinued for a period of one year, the conditional use permit shall become null and void. The Community Development Director may upon an application being filed 30 days prior to expiration and for good cause, grant a one-time extension not to exceed 12 months.

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

5. A copy of the signed resolution of approval and all conditions of approval shall be reproduced in legible form on any grading plans, site plan, and building and construction plans submitted for review and approval as required by the reviewing department.

6. Onsite parking for the facility is limited. Therefore, if at least two written complaints are received by the Community Development Department from the public or nearby property owners within any six-month period, the applicant agrees to re-open the review of Conditional Use Permit #12-803 by Planning Commission subject to the discretion of the Community Development Director. This review may result in modifications to the CUP, or revocation as directed by Planning Commission.

7. Trash collection shall occur between the hours of 8:00 a.m. and 6:00 p.m. only.

8. All graffiti shall be removed immediately or within 24 hours of notice from the City.

9. The entire site shall be kept free from trash and debris at all times and in no event shall trash and debris remain for more than 24 hours.

10. The property owner shall permanently maintain all parking lot signs and markings in a clear and visible manner.

11. Maintenance/Cleaning of the parking lot shall not occur between hours of 10 p.m. and 6 a.m.

12. The property owner shall continually maintain all landscaped areas on-site, as well as contiguous planted areas within the parkway in accordance with the approved landscape and irrigation plan. All landscaped areas shall be kept free from weeds and debris and maintained in healthy and thriving condition, and shall receive regular pruning,
fertilizing, mowing, and trimming. Any damaged, dead, diseased, or decaying plant material shall be replaced within 30 days of notice from the City.

13. The property owner shall continually maintain the safety lightings within the parking area in accordance with the approved plans. Any damaged or inoperative lighting fixtures shall be replaced within 30 days of notice from the City.

14. The site shall be developed and maintained in accordance with the stamped approved plans which include site plans, architectural elevations, exterior materials and colors and any grading plan on file in the Planning Division; the conditions contained herein; and, Municipal Code regulations.

**Public Works**

15. A Public Works Permit shall be required prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class “A” State Contractor’s License, City of Banning Business License, and Liability Insurance. Any existing public improvements, or public improvements not accepted by the City that are damaged during construction shall be removed and replaced as determined by the City Engineer or his/her representative.

16. Construction debris shall be disposed of at a certified recycling site. It is recommended that the developer contact the City’s franchised solid waste hauler, Waste Management (1-800-858-8884) for disposal of construction debris.

17. A backflow device must be installed on all commercial buildings and at each irrigation water connection. The backflow device must be in compliance with the State Department of Health Regulations.

**Fire Services**

18. All Plans, Specifications and Construction shall comply with and conform to the current edition of the California Fire Code (CFC), California Building Code (CBC), City of Banning’s [COB] Ordinance and other state and local laws as applicable.

19. Alarm monitoring stations must be located within 100 miles of the City of Banning or approved by the Fire Marshal.

20. No work shall be started prior to issuance of Conditional Use Permit #12-803 and related building permits.

21. The minimum size for water supply to the base of the riser shall be six (6) inches for commercial systems.
22. An approved AWWA double check detector check assembly, as approved by the C.O.B Water Department located as close to the property line as possible, and a minimum of twelve (12) inches above the ground shall be provided.

23. All design plans involving City owned water mains shall be subject to the review and approval of the City Engineer.

24. Prior to construction or renovation, working fire hydrants shall be provided when any portion of any structure, or any combustible materials, exceeds 150 feet from a water supply on a public street. The City standard fire hydrant is the Clow Model 960, or an equivalent approved by the Fire Marshal.

25. Spacing of fire hydrants shall comply with CFC Appendix C and the City of Banning Public Works Standards, (maximum 300 feet)

26. Minimum 6-inch riser, street valve, approved shear valve and blue dot identification marker shall be provided for each fire hydrant.

27. Fire flow shall be established by the Fire Department using the information provided in the CFC Appendix BB and COB Ordinances. Fire Flow may be adjusted upward where conditions indicate an unusual susceptibility to fire, (minimum 1500gpm for 2 hours)

28. Fire department access shall be required when any portion of the first story of any structure is more than 150 feet from Fire Department apparatus access.

29. Minimum clearances or widths may be increased when the minimum standards are not adequate for Fire Department access at the sole discretion of the Fire Marshal.

30. Surfaces shall be designed and maintained to support the imposed loads of fire apparatus (75,000gvw). Surfaces shall have all-weather driving capabilities, including bridges.

31. Access roads, built to City Public Works Standards, shall be in place prior to the delivery of combustible materials to the site.

   Exception: If existing City streets will provide access to within 150 feet of all combustible materials, access roads built to City Public Works Standards will not be required during construction.

32. Minimum unobstructed width shall be 20 feet.

33. Minimum unobstructed vertical clearance shall not be less than 13 feet 6 inches.

34. Minimum turning radius shall be 42 feet.
35. All dead-end access roads in excess of 150 feet shall have approved provisions for turning around of fire apparatus.

36. Maximum 15% grade for streets and driveways.

37. Vehicles shall not be parked or otherwise obstruct the required width of any fire apparatus access.

38. Two means of ingress/egress shall be provided for emergency vehicles and fire apparatus.

39. Fire apparatus access roads shall be identified by curbs painted red on both the top and face along the entire length of the fire apparatus access road. Where no curb exists, or a rolled curb is installed, a 6 inch wide red stripe or approved posted signs applied the full length of the fire apparatus access road shall be installed.

40. A “Knox” box, Fire Department padlock and/or an automatic gate opener may be required for emergency access.

41. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background.

42. Commercial properties shall have a minimum of 6 inch numbers with contrasting backgrounds up to 20 feet, and commercial buildings up to 25 feet shall have 12 inch numbers, and buildings over 25 feet shall be 24 inch numbers.

43. The storage, dispensing, use or handling of hazardous materials during construction shall be in accordance with the provisions of CFC Chapter 27 and CBC Section 414 and 415, in addition to all federal, state and local laws or ordinances. Business Plans may be required per SB 2186 and 2187 including MSDS, HMMP and RMPP.

44. Fire year certification and maintenance records for fire sprinkler systems will be required.

45. Fire alarm maintenance records required.

II. Prior to Issuance of a Certificate of Occupancy.

46. If the building is modified, plans shall be submitted for plan check and approved prior to construction. All plans shall be marked with the project number (i.e., CUP #12-803). The applicant shall comply with 2007 California Model Codes, and all other applicable codes, ordinances, and regulations in effect at the time of permit application.

47. A preconstruction meeting shall be held for all participating field personnel and appropriate City staff prior to the commencement of construction activities.
48. A complete landscape/irrigation package prepared by a landscape architect licensed by the State of California shall be reviewed and approved by the Planning Division prior to issuance of building permit. The plans shall include the following elements:

   i. Water conservation concept statement.
   ii. Landscape design plan.
   iii. Irrigation design plan.

49. Replace landscaping in accordance with the approved landscaping and irrigation plans per Chapter 17.32 of the Zoning Ordinance.

50. Provide for the following design features for the existing commercial building, to the satisfaction of the Community Development Director:

   - The windows, siding, and other exterior building materials shall be repaired. The entire building shall be repainted/refinished.
   - The asphalt concrete parking area shall be repaired/resurfaced and the parking spaces painted in accordance with the design standards of the “Zoning Ordinance”.
   - All roof mounted equipment and/or projections shall be shielded from view and the sound buffered from adjacent properties. Such screening shall be architecturally integrated with the building design.

Public Works

51. Construct commercial style driveway approaches at both vehicular access points along Ramsey Street.

52. An automatic sprinkler system and landscaping shall be installed, prior to occupancy of the first unit of the development, within the parkway fronting Ramsey Street. Landscaping plans and specifications shall be reviewed and approved by the City Engineer.

53. All required public improvements shall be completed, tested, and approved by the Engineering Division prior to issuance of any Certificate of Occupancy.

54. A separate landscape water meter shall be installed for all projects except for single family homes or any project with a landscaped area of less than 2,500 square feet.

55. Landscape improvements shall be certified by a licensed landscape architect or licensed landscape contractor as having been installed in accordance with the City of Banning Municipal Code Chapter 17.32 Landscape Standards. The applicant shall furnish said certification, including an irrigation management report, for each landscape irrigation system and any other required implementation report determined applicable, to the City Engineer for review and approval.
56. The developer shall participate in the City’s recycling program by providing two trash receptacles, one for regular trash and one for recycling, within a trash enclosure. The trash enclosure shall be designed and constructed in such a manner to accommodate a recycling bin as well as the necessary solid waste containers.

**Fire Services**

57. Fire Sprinkler Systems shall be installed in all commercial buildings as required by the CFC and the City of Banning's ordinance, or in any and all structures that are thirty-six hundred (3,600) sq. ft. or more. Also refer to CFC Appendix B

58. Three (3) sets of plans and calculations, including three (3) sets of manufacturer’s hardware specifications, shall be submitted to a State Certified Fire Protection Engineering Firm, designated by the Fire Marshal, for review for compliance with recognized codes and standards.

59. Fire Hydrants are to be painted by the developer, contractor, etc., prior to the final inspection. (EOS Standard W714) Rustoleum Red, damp proof #769 and two (2) coats of Rustoleum semi-gloss yellow #659, or an approved equivalent.

60. Fire sprinkler and alarm plans shall be reviewed and approved by the Fire Marshal before any construction work begins.

61. The project plans shall show all walls and ceiling demolition and relocations.

62. Exiting and exit lighting plans and occupant loads shall be required. The occupancy type and use of the building shall be placed on plans.

63. Additional requirements may be placed upon the project after the above requirements are illustrated on plans at the sole discretion of the Fire Marshall.

END
Attachment 2

(Vicinity map and aerial photo)
Attachment 3

(Site photograph)
Attachment 4

(Plans)
Attachment 5

(Letter)
October 20, 2012

Ms. Zai Abu Bakar
Community Development Director
City of Banning
99 E Ramsey Street
Banning, CA 92220

RE: Variance application for 1330 W. Ramsey Street

Dear Ms. Abu Bakar,

In relation to our Variance application, we would like to confirm that we have already used up our best efforts to obtain reciprocal parking agreement to the neighboring vicinity. However, we were unable to obtain one despite such effort.

Thank you for your kind consideration.

B.H. Properties, LLC,

Arsalan Gozini
Attachment 6

(Parking Demand Study)
October 2, 2012

BH Properties, LLC
11111 Santa Monica Blvd., Suite 600
Los Angeles, CA 90025

ATTN: Steve Gozini

Re: Parking Demand Study – Banning Clinic
Riverside County Department of Mental Health

Hi Steve,

Per your request, we have conducted a parking demand study for the existing facilities at 1330 W. Ramsey Street in the City of Banning. This letter presents our methodology, finding, and recommendation in regards to the parking demand for the business.

PROJECT INFORMATION

Riverside County Department of Mental Health (RCDMH) operates Banning Mental Health Clinic at 1330 W. Ramsey Street in the City of Banning. It plans to expand from 9,000 sq. ft. to the entire building of 14,600 sq. ft. as its adjoining tenant, House of Miracle, moves out from this location. The main objectives of this study are recommending the parking ratio and determining the sufficiency of parking capacity within the project site. Site plan is shown in Exhibit 1.

EXISTING CONDITIONS

This RCDMH facility provides community-based psychiatric services such as medications, individual and group therapy for children, adolescents, adults, and older adult consumers. The business hours are 8:00 AM to 5:30 PM, Monday through Thursday, and 8:00 AM to 5:00 PM, Friday.
The clinic is staffed with full-time and part-time employees and MDs. Many employees and most MDs have flexible schedules because they are assigned to the entire desert region and only visit this clinic by appointment.

The facility estimates that 50 percent of consumers drive themselves, 40 percent of consumers have family members drive them, and 10 percent use public transportation. Individual and group sessions are normally one to two hours, and assessment can be up to 4 hours long. The clinic estimates that the average duration of consumer’s visit is approximately 1.5 to 2 hours long.

PARKING SURVEY

For this study, K2 Traffic Engineering conducted an onsite parking observation at this clinic between 9 AM and 4 PM on Thursday, September 27, 2012. The study found that peak parking demand at this existing facility occurred at 11:00 AM when 14 parking spaces were occupied. Complete survey data are shown in Appendix A.

PARKING DEMAND

Based on observation of actual operations, up to 14 parking spaces are used for 9,000 sq. ft. of clinic use. The actual usage is equal to one parking space per 643 sq. ft. of mental health clinic use.

The study conservatively recommends the following parking demand:

*One space per 500 sq. ft. gross floor area of mental health clinic use.*
CONCLUSION

Based on our recommended parking ratio of one space per 500 sq. ft. gross floor area, 29 parking spaces are required for the proposed expansion to 14,600 sq. ft. of mental health clinic use. Project site provides a capacity of 34 parking spaces, exceeding the parking demand. The study, therefore, concludes that project site can sufficiently accommodate the proposed expansion of RCDMH’s Banning Clinic.

Regards,

K2 Traffic Engineering, Inc.

Jende Kay Hsu, T.E.
California License T2285
### APPENDIX A. PARKING SURVEY

P6111 - Banning Parking Study
1330 W. Ramsey, Banning

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**Peak Usage** 0 14 0 14

*Peak usage occurred at 11:00 AM

**Note:** The count includes all parked vehicles of Banning Clinic. Parking of other designations has been excluded.
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

Marie Calderon
City Clerk

David J. Aleshire
City Attorney
OUTLINE OF PROCEDURAL MANUAL PROVISIONS

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

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

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

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

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

E. Public Comments (7.1 – 7.4)
   1. Time limits are 3 minutes and 5 minutes for public hearing but applicant not limited.
   2. Public comment periods include initial comment period on non-agenda items; comment on agenda items.
F. **Hearings (8.1 – 8.4)**

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

G. **Conduct of Members**

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

H. **Procedures**

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

ARTICLE I – SCOPE

1.1 Application of Rules

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

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

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

1.2 Definitions

The following definitions shall apply to these rules and procedures:

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

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

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

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

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

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

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

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

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

**ARTICLE II – MEETINGS**

2.1 Regular Meetings

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

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

2.3 Special Emergency Meetings

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

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

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

2.4 Attendance

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

2.5 Study Sessions

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

3.1 Notice and Agenda for Regular Meetings

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

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

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

3.2 Notice and Agenda for Special Meetings

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

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

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

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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.
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.

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5.10 Minutes and Recordings

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

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

ARTICLE VI – ORDER OF BUSINESS

6.1 Order of Business

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

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

6.2 Call to Order

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

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

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

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

6.4 City Representatives and Advisory Bodies (City Council Only)

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

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

Advisory bodies and committees may take the following form:

i) The Council may, as the need arises, authorize the appointment of "ad hoc" Council committees composed of two members. Except where otherwise specifically provided by law, the Presiding Officer shall appoint the members of the Council committees, subject to the approval of the Council. Any committee so created shall cease to exist upon the accomplishment of the special purpose for which it was created or when abolished by a majority vote of the Council.
ii) The Council may, subject to the Brown Act, create other committees, boards, and commissions, whether Legislative Bodies or Non-Governing Bodies, to assist in the conduct and operation of the City government with such jurisdiction and duties as the Council may specify. Except as otherwise required by law, the Mayor shall make appointments of members to such committees, boards or commissions subject to the approval of the Council. The procedure of filling vacancies and provision of notice thereof shall be subject to the provisions of the Maddy Act (Government Code §§ 54970-54974). Absent any other provision to the contrary, members of committees, boards and commissions may be removed by the Council without cause by a majority vote of the whole Council body. Any member of the City Council may place the question of such removal on the agenda. Any committees, boards, or commissions so created may be abolished by a majority vote of the whole Council body by repeal of the enacting ordinance or resolution.

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

6.5 Budgets

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

6.6 Items from Members

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

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

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

ARTICLE VII—PUBLIC COMMENT

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

Generally the time limit to speak for public comments is 3 minutes, but 5 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. Generally the Presiding Officer should allow speakers in favor of projects, then those opposed, and then rebuttal. Any testimony shall be truthful.

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

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

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

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

8.4 Extra-Meeting Contacts on Matters Set for Public Hearing

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

(b) If a Legislative Body member is contacted directly by such person outside the meeting setting, the member shall refrain from expressing any viewpoints or thought processes to the person until after the public hearing. The Legislative Body member may explain that they are unable to express any viewpoint on the matter until all evidence has been heard in the course of a public hearing and should encourage any such person to present their position in writing or orally at the public hearing.

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

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

9.1 Presiding Officer

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

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

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

9.2 Representation of Legislative Body

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

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

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

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

9.4 Clerk/Secretary

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

9.5 City Manager

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

9.6 General Counsel

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

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

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

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

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

9.7 Conflicts of Interest

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

9.8 Reserved

9.9 No Financial Interest in Contracts

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

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

ARTICLE X—DECORUM AND ORDER

10.1 Decorum and Order—Legislative Body Members

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

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

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

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

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

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

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

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

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

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

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

10.2 Decorum and Order – Employees

(a) Members of administrative staff and employees of the Legislative Body shall observe the same rules of procedure and decorum applicable to Legislative Body members. The City Manager shall ensure that all staff and employees observe such decorum. Any staff members, including the City Manager, desiring to address the Legislative Body or members of the public shall first be recognized by the Presiding Officer. All remarks shall be addressed to the Presiding Officer and not to 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) 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 his 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 charges to the member and Clerk/Secretary. The hearing may not be continued except upon the absence from the meeting of a member of the Legislative Body other than the member bringing the charge or the member who is the subject of the charge.
(i) The hearing shall be conducted in an open session by the Presiding Officer unless the Presiding Officer is a party to the action, in which case the Vice Chair or some other member shall conduct the proceedings.

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

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

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

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

10.6 Persons Authorized To Be Within Platform/Dais

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

10.7 Personal Privilege

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

ARTICLE XI – PARLIMENTARY 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.

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

11.4 Reconsider

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

11.5 Tie Votes

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

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

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

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

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

11.7 Votes Of Members Previously Absent

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

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

(c) The 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 - MISCELLANEOUS

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.

-30-
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 in 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.
### Manual Exhibit “A”: Chart of Motions

1. Motions listed in the order of precedence.

<table>
<thead>
<tr>
<th>MOTION</th>
<th>YOU SAY THIS:</th>
<th>May you interrupt the speaker?</th>
<th>Do you need a second?</th>
<th>Is it a debatable?</th>
<th>Can it be amended?</th>
<th>What vote is needed?</th>
<th>Can it be reconsidered?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjourn meeting</td>
<td>“I move to adjourn”</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Majority</td>
<td>No</td>
</tr>
<tr>
<td>Call an intermission¹</td>
<td>“I move to recess for…”</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Majority</td>
<td>No</td>
</tr>
<tr>
<td>Register a complaint</td>
<td>“I rise to a question of privilege”</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>None</td>
<td>No (usually)</td>
</tr>
<tr>
<td>Temporarily suspend consideration of an issue²</td>
<td>“I move to table the motion”</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Majority</td>
<td>No</td>
</tr>
<tr>
<td>Close debate</td>
<td>“I move the previous question”</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>2/3</td>
<td>No, unless the vote on question has not been taken</td>
</tr>
<tr>
<td>Limit or extend debate</td>
<td>“I move that the debate be limited [or “extended”] to…”</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>2/3</td>
<td>Yes</td>
</tr>
<tr>
<td>Give closer study of something³</td>
<td>“I move to refer the motion to the committee”</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes, unless the board has already taken up the subject</td>
</tr>
<tr>
<td>Amend a motion</td>
<td>“I move to amend the motion by…”</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Motion to continue to a certain time</td>
<td>“I move that the motion be continued to…”</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Introduce business (bring a main motion)</td>
<td>“I move that [or “to”]…”</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
</tbody>
</table>

¹ Should specify period of recess.
² A motion to take up a matter previously tabled must be made at the same meeting as the motion to table. If not, the motion tabled dies.
³ May contain specific instructions for board members and a date for certain for reconsideration. If not date is not certain, restored by a motion to “take up matter previously tabled” which is permissible in this case even if not same or next meeting.
2. **Incidental Motions — no order or precedence. Arise incidentally and decided immediately.**

<table>
<thead>
<tr>
<th>MOTION</th>
<th>YOU SAY THIS:</th>
<th>May you interrupt the speaker?</th>
<th>Do you need a second?</th>
<th>Is it a debatable?</th>
<th>Can it be amended?</th>
<th>What vote is needed?</th>
<th>Can it be reconsidered?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protest breach of rules (i.e., Point of Order)⁴</td>
<td>“I rise to a point of order...”</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Motion to appeal the ruling⁵</td>
<td>“I appeal from the decision of the Presiding Officer [or “Chair”]”</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Suspend rules temporarily</td>
<td>“I move to suspend the rules so that...”</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>2/3</td>
<td>No</td>
</tr>
<tr>
<td>Avoid considering an improper matter</td>
<td>“I object to the consideration of the question...”</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>2/3</td>
<td>No, only if the main question or motion was no, in fact considered.</td>
</tr>
<tr>
<td>Divide motion</td>
<td>“I move to divide the question”</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Majority</td>
<td>No</td>
</tr>
<tr>
<td>Parliamentary law question</td>
<td>Parliamentary inquiry</td>
<td>Yes, if urgent</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Motion to depart from the agenda</td>
<td>“I move to consider matter out of order”</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Take up matter previously tabled⁶</td>
<td>“I move to take from the table...”</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Majority</td>
<td>No</td>
</tr>
<tr>
<td>Cancel or change previous action⁷</td>
<td>“I move to rescind/amend something previously adopted...”</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>2/3 or majority with notice</td>
<td>No</td>
</tr>
<tr>
<td>Reconsider motion</td>
<td>“I move to reconsider the vote on...”</td>
<td>Yes</td>
<td>Yes</td>
<td>Only if motion to be reconsidered is debatable⁸</td>
<td>No</td>
<td>Majority</td>
<td>No</td>
</tr>
</tbody>
</table>

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⁴ Decision of the Presiding Officer is final, unless overturned by motion to appeal the ruling.

⁵ Presiding Officer may participate in debate. Negative or tie vote sustains ruling.

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01002/001295706.1
A motion to take up a matter previously tabled must be made at the same meeting as the motion to table. If not, the motion tabled dies.

Does not void action ab initio, only from point of rescission. Motion is out of order if relates to contract upon which another party has detrimentally relied, relates to issuance of bonded indebtedness, or relates to the collection of any tax.

Cannot be made on a quasi judicial matter or matters requiring a noticed public hearing. Can only be made by a member who voted with the previously prevailing side. May be made at the same meeting or a subsequent meeting subject to the same restrictions as a motion to rescind.
SAMPLE AFFIDAVIT OF POSTING

CITY OF BANNING

AFFIDAVIT OF POSTING

I hereby certify under penalty of perjury under the laws of the State of California, that I caused to be posted the agenda of the regular ____________________________ on the Banning City Hall Bulletin Board on _____ (date) ________.

Signed: _______________________
(Name and Title)