

City of Banning

Office of the Mayor

99 East Ramsey Street

Banning, CA 92220

July 24, 2018

Becky L. Dugan, Presiding Judge
Superior Court of California, County of Riverside
4050 Main Street
Riverside, CA 92501

Re: Response to the Riverside County Grand Jury's Report Regarding
Financial Dealings with other Entities

Dear Judge Dugan:

On April 30, 2018, the Riverside County Grand Jury issued its 2017-2018 Grand Jury Report to the City of Banning. At the conclusion of the Report, the Grand Jury issued seven findings and seven recommendations. We appreciate the opportunity to provide the following responses to these findings and recommendations in accordance with Penal Code Section 933.

The City responds to the specific findings in the report as follows:

Response to Finding No. 1:

The City agrees that a City Council member verbally discussed with the City Manager the matter of assisting a local auto dealership with its request to trim brush within a Caltrans right of way.

Response to Finding No. 2:

The City agrees that the City completed the Caltrans permit application without legal review or approval of the City Council, as the City submits permit applications to Caltrans as means of conducting regular business and it is not industry standard practice to submit permit applications for legal review nor the City Council.

Response to Finding No. 3:

The City previously did not have a policy, and has since developed Policy B-32 which addresses public resources to private or public entities in the form of in-kind service monetary value.

Response to Finding No. 4:

The City agrees that some policies date back to 1974, and has since developed Policy A-35 which addresses the review of all policies, at a minimum of every five years or every two years for personnel related polices, to ensure the City is in compliance with federal, state, and local laws and regulations.

Response to Finding No. 5:

The City agrees that the City Manager turnover has fostered a poor and ineffective working relationship, thereby allowing some City Councilmembers to routinely address City staff directly, thereby violating Banning Code of Ordinances that expressly state neither the city council nor any member thereof shall give orders to any subordinate of the city manager. The City is currently in process of hiring a permanent City Manager.

Response to Finding No. 6:

The City disagrees with Finding No. 6, that in the 2016 election two incumbent City Councilmembers were re-elected and a third individual was newly elected to Council and training was not made available in a timely manner. The newly elected councilmember attended AB 1234 Ethics Training in January 2017. The remaining councilmembers have remained in compliance with their bi-annual ethics training requirements. The City shall continue to comply with training requirements timely.

Response to Finding No. 7:

The City agrees that a sales tax sharing agreement was entered into with an auto dealership. The agreement was transferred to a new ownership, which thereby commenced a new agreement of sales tax sharing.

The City responds to the specific recommendations in the report as follows:

Response to Recommendation No. 1:

The former practice of undocumented agreements has discontinued and staff developed Policy B-32 to address agreements with both governmental and non-governmental agencies not governed by the City's Purchasing Policy B-30, which is on the Agenda for Council approval.

Response to Recommendation No. 2:

This recommendation is currently in practice. The City Manager must review all agreements under \$25,000 and the City Attorney reviews and City Council must approve any agreements over \$25,000, as the City must balance minimizing risk while being fiscally responsible in reducing City Attorney expenditures. Agreements under \$25,000

that deviate from the City's standard template shall continue to be reviewed by the City Attorney.

Response to Recommendation No. 3:

As stated in recommendation no. 1, staff developed a Policy B-30 which evaluates the use of public resources in terms of a monetary value to any in-kind services to both governmental and private parties.

Response to Recommendation No. 4:

Policy A-35 was developed to ensure a review all City policies at least every five years or every two years if it is a personnel related policy. The City is in-process of updating its website to reflect all policies to the public as they have historically been available on the City's intranet.

Response to Recommendation No. 5:

The City Council worked with Human Resources to complete the City Manager recruitment process for a permanent City Manager and will continue to work with Human Resources to develop a documented recruitment process for the City Manager position going forward. Additionally City Council will comply with Ordinance 2.08.110 and work with City administrative services exclusively through the City Manager.

Response to Recommendation No. 6:

The City staff scheduled all of the referenced training after the 2016 election, however the Council postponed the training due to a request for the training to include International City Manager Association code of ethics for City Managers. The City staff shall conduct training timely for Council following future elections.

Response to Recommendation No. 7:

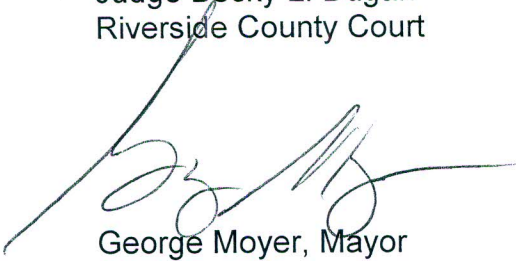
Staff prepared an economic subsidy report of the tax-sharing agreement status, as prescribed in AB 562, which will be available on the City's website upon the website update, and no later than October 1, 2018.

The City appreciates the opportunity to respond to the report. Should you have any further questions or desire any further information, please contact me or Interim City Manager, Rochelle Clayton.

Respectfully,

Judge Becky L. Dugan
Riverside County Court

Response from City of Banning
July 24, 2018



George Moyer, Mayor
City of Banning

Attachments:

Grand Jury Report dated April 30, 2018

cc: Honorable City Council
Rochelle Clayton, Interim City Manager
Kevin Ennis, City Attorney
Riverside County Grand Jury – PO Box 829, Riverside, CA 92502
Riverside County Clerk-Recorder – 2720 Gateway Dr., Riverside, CA 92507

Riverside Grand Jury
Post Office Box 829
Riverside, CA 92502

To the Honorable Members of the Grand Jury:

As the acting Mayor for the City of Banning I have signed the official response to your report dated April 30, 2018. The following are my own personal thoughts and responses to that report.

In reading your report relating to the City of Banning I agree with some of your findings but feel some of your findings are not based on adequate or accurate information. As a result, I felt it my duty as an elected Council Member to question some of your methodology and point out facts that have a profound affect on the situation, but you apparently failed to recognize.

Before I get to the findings in your report let me agree with you on your recommendation that the use of "hand shake deals" should be prohibited. As you point out, they are wrong in every way and I agree. The cutting of the bushes at the very least should have had a written agreement in place prior to the service being rendered. I also agree that the City should have a policy in place to be followed when the use of public resources is requested by private parties.

I have no way of knowing if the City Councilmember who was asked by the private party actually directed the City Manager to do work, or merely brought the request to the then City Manager's attention. I do know that the City Manager should have entered into a defined contract, and never should have done the work without one. As a retired construction estimator, I immediately recognized an error in the initial billing. No one rents operated equipment without charging for the equipment and the operator. I brought this to the City Manager's attention in open session and demanded that the billing be corrected to reflect a proper amount.

Next, I totally agree that our policies need to be updated. Many are drastically out of date.

I also agree that "City Councilmembers must comply with City Ordinance 2.08.111 and work with City administrative services exclusively through the City Manager." It is also agreed that this has not always been the case. Whereas most of the Councilmembers are pretty good at adhering to this policy, and only approach staff with allowable questions, some have not always complied with this ordinance.

Even though I am in general agreement with some of your conclusions and recommendations I do not agree with all your findings. In my opinion they are not based on complete and/or totally accurate information. You failed to do a thorough enough investigation to make a sound and fair evaluation of the situation. As a result, you have placed a negative image on the current City Council and the City of Banning that is unjustified.

One example of your failure to be thorough is your choice to only interview 3 City Councilmembers. There are five members of our Council, and why you chose to only interview 3 is a mystery to me. Also, you failed to contact and interview the recipient of the services, Diamond Hills. It seems to me that a fair and thorough investigation would demand that all involved parties would be included in the interview process.

Another example is your assertion that relates to the tax sharing agreement we negotiated with Diamond Hills. Your conclusion was based on "Information obtained from interviews with several city managers". You go on to say that these interviews "revealed these agreements are generally for a short-term duration of five to seven years". However, your report indicates you only interviewed 2 outside city managers. That is not several by my definition. In addition, you evidently did not dig deep enough to understand the process the City undertook to determine the scope of our agreement. If you had you would have seen the "Chart of Existing Sales Tax Sharing Agreements" that we used to aid us in our determination. In addition, you would have seen that Cathedral City had a ten (10) year agreement with their vendor, not 5 to 7 (a copy of that chart is attached hereto) as their City Manager testified was normal.

One final example is your use of an article from the Banning Informer as a creditable source of information. Had you done a thorough investigation you would have seen that this website has always had a venomous and negative approach to issues in our City. They have been particularly aggressive in trying to discredit the integrity of several of our City elected officials, including Art Welch and Debbie Franklin. Utilizing unsubstantiated hear say, partial statements and incidents out of context to continually create half-truths they have been relentless in their attacks. This is not a creditable journalistic organization. It is a website set up to support the agenda of a few people and destroy anyone, or anything, that gets in their way.

Finally, I do not know where you got your information, but all Councilmembers are currently, and to my knowledge always have been, in compliance with their mandatory Brown Act and ethics training. The one new member had this training in January, immediately after being elected. Our H.R. department is very good at following up to insure continued compliance. The Code of conduct and ethics training would have been held sooner except for the one Council Member's refusal to attend unless his specific demands were met. However, in December, prior to the City receiving your report a workshop on City rules, procedure and the Brown act was held, despite that member's objections.

In closing I want to make it clear that I have total respect for the mission of the Grand Jury and its purpose. Used properly it is a valuable and necessary tool. However, it should never be allowed to be used to further anyone's personal agenda. The Jury has an obligation to be thorough and unbiased in their investigations, and in the reporting of their conclusions. Too many people, cities and organizations are affected by their reports for them not to be as accurate and factually sound as possible.



George Moyer, City Council Member
City of Banning

Attachments: (1)

Cc: Becky L. Dugan, Presiding Judge
4050 Main Street
Riverside, Ca 92501

Riverside County Clerk-Recorder
2720 Gateway Drive
Riverside, Ca 92507

Chart of Existing Sales Tax Sharing Agreement s

City	Auto Dealer	Effective Date	Agreement Type	% or Amount Paid to Dealer	Not to Exceed	Term
Anaheim	J Star Auto Group	2014	Reimbursement	40% of sales tax	\$ 3,000,000	Remain open 15 years; must complete improvements
Cathedral City	GL HOD LLC, DBA Honda of the Desert	3/23/2016	Expand/Remodel Subsidy	50% of sales tax over 1st \$347,000 Annually	\$ 427,000	**NTE 10 Years & 50% Unless City deems warranted
Claremont	Premier Automotive Group	2011	Tax Rebate	50% of sales tax	\$ 4,375,000	Remain open 10 years; must complete improvements
Downey	Downey Nissan	2015	Sales Tax Sharing	50% of sales tax over 1st \$400,000 & 30% over \$670,000 Annually		Remain open 12 years
Huntington Beach	Surf City Auto - Subaru	4/24/2016	Sales Tax Sharing	30% Annually**		30% Annually **after 1st \$25,000,000 in sales; 20 years
Long Beach	Worthington Toyota	2016	Development Subsidy	50% of sales tax over 1st \$270,826 Annually	\$ 4,200,000	15 years; Not to exceed \$4.2M, 50% of construction cost
Norco	Paul Blanco Good Car Company	3/16/2016	Development Subsidy	Loan Term 10 yrs w/ 2% int yr 1-5 & 3% 6-10		Loan \$805k; 1st \$200k-no credit, next \$100k-100% cr, over \$300k-50/50 split of sales tax
Ontario	Mark Christopher Chevrolet	2016	Sales Tax Sharing	50% of sales tax	\$ 7,000,000	\$700,000 Annually for 10 years; Retain approx. 200 jobs
San Juan Capistrano	Tuttle-Click Capistrano Ford	10/19/2011	Sales Tax Sharing	City pays \$3M & 50%	\$ 5,000,000	City pays \$3M upon opening & 50% of sales tax over first \$150,000, up to additional \$2M
Upland	CNC Motors	2015	Sales Tax Sharing	50% on sales tax	\$ 2,000,000	Minimum of 5 years; 15% held in escrow
Upland	Ford of Upland	8/11/14 & Amended 9/14/15	Sales Tax Sharing	75% of sales tax over \$312,000 Annually	\$ 2,100,000	Minimum of 5 years; 15% held in escrow