

# 2017-2018 GRAND JURY REPORT

## City of Banning

### Background

The city of Banning (City) is located in the San Gorgonio Pass, between Mt. San Gorgonio to the north and Mt. San Jacinto to the south in Riverside County, approximately 30 miles east of the city of Riverside. The City has been rapidly growing in size and population since the 1990s. According to the 2010 U.S. Census Bureau report, the City has a population of 29,603 residents with a median income of \$38,919. It is primarily a small working-class city with an annual operating budget of approximately \$16 million.

Banning was incorporated in 1913 as a General Law City. General Law cities operate under the general laws of the State of California and have less autonomy than those that adopt their own charter. General Law cities follow laws set forth in the State of California Government Code §34102.

Banning has a Council-Manager form of government with five elected Councilmembers. The City is transitioning from an at-large council election system to one where Councilmembers are elected from individual districts. The City Councilmembers serve four-year terms which are staggered, with three members chosen during one election cycle and two at another. Three of the five Councilmembers were elected from individual districts (Districts 1, 2 and 3) in 2016. The other two will be elected from the remaining districts (Districts 4 and 5) in 2018. Every year, the City Council appoints one of its members as Mayor. Elections are consolidated with general elections in November during even-numbered years. City Councilmembers serve as the legislative branch of city government and vote on laws and proposals relating to various community issues. Councilmembers make legislative decisions dealing with topics such as allocating funds to provide for public services, community development projects, issues of land use, and budget matters.

The City Manager is the Chief Administrative Officer, hired by the City Council and retained on an "at-will" negotiated contract. The City Manager is responsible for the day-to-day operations of Banning. This includes, but is not limited to, the preparation and monitoring of the City's budget. The City Manager supervises the City Departments and staff through department heads, and provides oversight of recruitment, dismissal and disciplining of employees. In addition, the City Manager serves as the main professional and technical advisor to the City Council on government operations.

## Methodology

The Riverside County Grand Jury (Grand Jury) obtained information for this report through the review of documents, testimony of officials, and site visitations.

The Grand Jury reviewed the following documents/items:

- a. City of Banning, Council meeting video, April 17, 2017
- b. Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning
- c. Banning City Biennial Budget, Fiscal Years 2013-14 and 2014-15
- d. Banning City Biennial Budget, Fiscal Years 2016-17 and 2017-18
- e. 2015-2016 Riverside County Grand Jury Report (City of Banning-Banning Chamber of Commerce)
- f. Sales Tax Sharing and Operating Agreement between the City of Banning and an auto dealership, February 2017
- g. California Government Code §34102, General Law Cities
- h. State of California, Department of Transportation, Standard Encroachment Permit Application (Form TR-0100, REV. 03/2015), January 18, 2017
- i. Banning Informer article, "Your Tax Dollars at Work: City Workforce Used to Clear Vegetation for Private Business," April 5, 2017 [www.thebanninginformer.com/?page\\_id=9923](http://www.thebanninginformer.com/?page_id=9923)
- j. The Press-Enterprise article, "Questions raised over use of Banning crews for business benefit," Gail Wesson, April 29, 2017, updated May 2, 2017
- k. California Assembly Bill (AB) 1234, Article 2.4, Ethics Training §53235.1(b)
- l. Letter from the City of Banning Finance Department to the auto dealership to request payment, April 10, 2017
- m. Letter from the City of Banning Finance Department, May 2, 2017, to amend the payment request of the April 10, 2017 letter

- n. Banning, California – Code of Ordinances/Title 2 – Administration/Chapter 2.08 – City Manager/2.08.110 – City council to deal only with city manager

The Grand Jury conducted the following interviews:

- a. City of Banning, Director of Public Works
- b. City of Banning, Interim City Manager/Chief of Police
- c. City of Banning, Director of Administrative Services/Deputy City Manager
- d. City of Norco, City Manager
- e. Three Banning City Councilmembers, individually
- f. City of Cathedral City, City Manager
- g. City of Banning, former City Manager

The Grand Jury conducted a site visit to the Interstate 10 Freeway right-of-way (brush removal site).

## **Findings**

1. A member of the City Council verbally directed the City Manager to assist a local auto dealership by trimming the brush along the Interstate 10 right-of-way adjacent to the business. The shrubbery obscured the view of the business property. The City Manager directed the Public Works Director to arrange for the trimming of the shrubbery by City employees. The Public Works Director applied for, and received, a no-fee public agency encroachment permit from the California Department of Transportation (Caltrans), and City employees completed the project in early April 2017. There was no written agreement between the City and the auto dealership for this project.

After this use of City resources became public knowledge through the local media, the City Council directed the Finance Department to prepare an invoice for City services and submit it to the auto dealership. On April 10, 2017, the City received a check in the amount of \$3,000 prior to an invoice being prepared. Later that same day, the City calculated the cost of the project at \$3,431.66. They then prepared a Reimbursement Request for \$431.66 to cover the balance due to the City and submitted the invoice to the auto dealership for payment.

In a subsequent City Council meeting, a Councilmember questioned whether the amount billed to the dealership reflected the full cost to the City, including use of the City equipment. As a result, the Council directed that an amended invoice be prepared to include the equipment costs. The City Administrative Services Director prepared a second invoice on May 2, 2017, in the amount of \$3,549.64 for equipment use. The auto dealership then issued a second check bringing the total amount received by the City to \$6,981.30, which completed the payment of the amount billed.

A 2015-2016 Riverside County Grand Jury report identified a similar finding of undocumented, informal agreements and recommended:

*That Banning formalize its financial dealings and not utilize handshakes or past practices with other entities.*

The City continues to engage in informal and undocumented “handshake” agreements with private parties. To date, no policy has been developed or implemented to prohibit the practice of using “handshake” agreements.

2. To benefit a private party, the undertaking of the shrubbery removal project required agreement to an indemnity clause in the Caltrans permit application which was done without legal review or approval of the City Council. This action placed the City at a greater risk of financial liability.

The Caltrans Encroachment Permit Application states:

*The applicant, understands and herein agrees to the general provisions, special provisions and conditions of the encroachment permit, and to indemnify and hold harmless the State, its officers, directors, agents, employees and each of them (Indemnitees) from and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, judgments, losses and liabilities of every kind and nature whatsoever (Claims) arising out of or in connection with the issuance and/or use of this encroachment permit and the placement and subsequent operation and maintenance of said encroachment for: 1) bodily injury and/or death to persons including but not limited to the Applicant, the State and its officers, directors, agents and employees, the Indemnities, and the public; and 2) damage to property of anyone. Except as provided by law, the Indemnification provisions stated above shall apply regardless of the existence or degree of*

*fault of Indemnities. The Applicant, however, shall not be obligated to indemnify Indemnities for Claims arising from the sole negligence and willful misconduct of State, its officers, directors, agents or employees. [sic]*

3. The City has no policy addressing the use of public resources and/or equipment to provide services to private parties.
4. The City's Policies and Procedures manual is outdated. Some of the policies are 40 years old and date back to 1977. Additionally, there is no evidence policies and procedures are being reviewed on a regular basis to ensure that they are relevant and accurate.
5. In the past eight years (2010-2017), the City Council has hired seven individuals to serve as City Manager, Interim City Manager, or Contract City Manager, with some serving in that capacity on a repeat basis. Instability in the relationship of the City Council to the City Manager weakens the effectiveness of City management. This poor and *ineffective* relationship has allowed some City Councilmembers to routinely address City staff directly, thereby circumventing the authority and expertise of the City Manager.

Banning Code of Ordinances expressly states:

*The city council and its members shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry; and neither the city council nor any member thereof shall give orders to any subordinate of the city manager.*

6. In the 2016 election, two incumbent City Councilmembers were re-elected and a third individual was newly elected to the Council. Training on critical matters such as ethics, harassment, and the Brown Act, was not made available to the Councilmembers in a timely manner.

Per California AB 1234, Article 2.4, Ethics Training §53235.1(b)

*(b) Each local agency official who commences service with a local agency on or after January 1, 2006, shall receive the training required by subdivision (a) of Section 53235 no later than one year from the first day of service with the local agency. Thereafter, each local agency official shall receive the training required by subdivision (a) of Section 53235 at least once every two years.*

7. Sales tax sharing agreements are commonly used to encourage businesses to locate and develop large sales tax-generating enterprises within a city. While these can be used to retain a business within a city, they are generally used to attract new businesses. Information obtained from interviews of several city managers revealed these agreements are generally for a short term duration of five to seven years and usually employ an equal sharing of sales tax revenues.

In Banning, a sales tax sharing agreement between the City and an auto dealership was established by the Redevelopment Agency in 2005. Extension clauses were activated and the agreement was renegotiated in 2012 for an additional five years. When the auto dealership was sold in 2016, a condition of the sale was that the City would accept terms of a new sales tax sharing agreement. This new agreement rebated to the auto dealer 85% of the sales tax due to the City up to a maximum of \$3.5 million. These payments will continue for a period not to exceed 15 years or until the auto dealership has received the maximum recoverable amount as defined in the agreement.

The City has been sharing sales tax revenue with this tax-generating business for 13 years. The agreement with the new owner would extend this substantial reduction in sales tax revenue to the City for up to an additional 15 years.

## **Recommendations**

### **Banning City Council**

1. The City immediately discontinue and prohibit the use of undocumented and informal “handshake” agreements. The City adopt strict policies for formalizing agreements and/or contracts with private parties. Stricter policies would preclude the appearance of the gifting or misuse of public funds.
2. The City Manager review all contracts and agreements to ensure any terms affecting liabilities that might be borne by the City are reviewed and evaluated by the City Attorney and approved by the City Council in order to minimize or eliminate any risks of financial liability to the City.
3. The City establish a comprehensive policy to address the use of public resources including City labor and/or equipment when providing services to private parties.

4. The City establish a policy to review and update all City Policies and Procedures on a regular basis. Policies and Procedures should be made available to the public on the City website.
5. The City carefully review and revise its hiring and recruitment processes and procedures, to ensure job objectives and responsibilities for the City Manager's position are clearly defined. The City needs to incorporate and outline expectations and performance measures into the recruitment process for the City Manager. City Councilmembers must comply with City Ordinance 2.08.110 and work with City administrative services exclusively through the City Manager.
6. The City must establish a policy for the training of the new Councilmembers in a timely manner in accordance with AB 1234. Many public and free resources are available for training, including ethics in government, Code of Conduct, proper chain-of-command, transparency in government, and Brown Act obligations. The City Manager should also implement refresher training programs for all City Councilmembers including negotiation skills, civil discourse, and team building.
7. The City should conduct a biennial review and assessment of the financial burden to the City of any tax-sharing agreements which are more than five years old, and report its findings at a regular open City Council meeting.

Continuing agreements should be monitored to ensure that future City leaders agree the City is receiving appropriate benefits in return for the forfeiture of a portion of available sales tax revenue.

Report Issued: 4/30/2018  
Report Public: 5/2/2018  
Response Due: 7/30/2018