

2015-2016 GRAND JURY REPORT

City of Banning Banning Chamber of Commerce

Background

The City of Banning (Banning) 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. It has a population of approximately 30,000. The railroad replaced the stagecoach in 1876; however, Banning is still known as "STAGECOACH TOWN, U.S.A." and is famous for its annual Stagecoach Days Celebration featuring a parade, carnival, and rodeo.

Banning was incorporated in 1913 as a general law city with a Council-Manager form of government. Banning has five elected council members, one of which is appointed mayor by the Council every year. The City Manager is the Chief Administrative Officer and is appointed by the City Council. The four year elected term of a Council member is staggered, with three members elected during one election cycle and two at another. Elections are consolidated with the general election in November of even-numbered years. Banning does not have council districts; Council members are elected city-wide, and represent all citizens.

The Banning Chamber of Commerce (Chamber) has operated as a not for profit entity since 1989. The mission of the Chamber as stated on its website "is dedicated to promoting a vibrant business environment by cooperative interaction among businesses, government and community." Some of the activities of the Chamber are promoting tourism in Banning, providing information to visitors and new residents to the community, maintaining a close relationship with state and county agencies regarding issues that affect the community, and participating and co-sponsoring a variety of community events.

Methodology

Evidence for this report was obtained through the review of documents and testimony of officials, past and present, of Banning and the Chamber. Documents reviewed included the following:

- a. Lease Agreement between the Community Redevelopment Agency of the City of Banning and the Banning Chamber of Commerce dated June 14, 2005.
- b. Amendment Number One to the Lease Agreement, with attachments, dated June 6, 2006.
- c. Sublease and Consent Justification by Southern California Gas Company dated May 30, 2006.
- d. Copy of Southern California Gas Company Check #623189 in the amount of \$212,616.00 payable to the "Banning Chamber of Commerce" dated June 5, 2006.
- e. Email from a member of the Banning City Council to former Banning City Manager dated September 3, 2014.
- f. Abstract of Judgment – Civil and Small Claims dated May 12, 2010, and issued on March 8, 2011.
- g. City of Banning, Office of the City Manager document dated July 16, 2014.
- h. Letter from the Banning Chamber of Commerce to Banning City Manager dated August 25, 2014.
- i. Memorandum from City of Banning Administrative Services Director/Deputy City Manager to City of Banning Interim City Manager dated July 7, 2014.

Individuals interviewed were:

- a. Two members of the Banning City Council.
- b. The President of the Chamber.
- c. The Executive Director of the Chamber.

Findings

1. In January 2006 the Chamber was given a 50 year lease by the Community Redevelopment Agency of the City of Banning for the property located at 60 East Ramsey Street in Banning, California. The rent agreed to was \$1.00 per year, for a period of 50 years. The lease requires the Chamber to name Banning as an additional insured and the payee on an insurance policy for the building. An amendment to the lease was subsequently signed by the same parties, which transferred an existing lease between Banning and the Southern California Gas Company to the Chamber. As part of the amendment the Chamber is required to establish a minimum \$10,000 maintenance fund. Neither action has been taken by the Chamber. During an interview, the Executive Director of the Chamber stated that he was not aware of any amendment to the lease and therefore had no knowledge of the requirement to establish a maintenance fund. He also stated he was unaware of the lease requirement to modify the insurance coverage. The Executive Director did not provide evidence to indicate the maintenance fund had been created, or that the insurance coverage had been modified. The Executive Director, while serving as President, was the representative who signed the lease and the amendment to the lease on the part of the Chamber. To date, the Banning City Council has not required that the maintenance fund be established or the Chamber to modify their insurance coverage naming Banning as the payee for any claim for damages to the building.
2. Utility bills incurred between 2006 and 2013 were not paid by the Chamber. A review of documents and interviews with City Council members and officers of the Chamber revealed that these bills were waived based upon a handshake agreement between the Banning City Council and the Chamber.

After waiver of these utility bills was made public, Banning legal counsel determined only the previous three years could be collected. The amount for the previous three years was \$15,795.25. The Banning City Council directed that correspondence with the Chamber be initiated requesting repayment of the \$15,795.25. In response to the request, the Chamber offered to make repayment at the rate of \$32.10 per month over the remaining 492 months (41 years) of the current lease. This offer was not accepted by Banning and a member of the City Council was appointed to continue negotiations with the Chamber regarding repayment of the debt for the utility bills. After more than one year no agreement has been reached regarding the repayment and the debt remains.

3. The sublease with the Southern California Gas Company that was transferred to the Chamber had 13 years remaining at a payment of \$2,047.50 per month, for a total of \$319,410.00. This is the amount that Banning ceded to the Chamber. This is in addition to a lease on the property for \$1.00 per year for 50 years. The Chamber made a proposal to the Southern California Gas Company for a reduced rental rate if the Southern California Gas Company paid the entire 13 years in remaining rent in advance. The Southern California Gas Company agreed to this offer and issued a check in the amount of \$212,616.00 payable to the "Banning Chamber of Commerce" dated June 6, 2006.
4. The Executive Director of the Chamber has a judgment against him in the amount of \$74,434.37 payable to Banning. This judgment was dated May 12, 2010, and was issued on March 8, 2011. To date this judgment has not been paid and Banning has not collected on the judgment.

Recommendations

Banning City Council Banning Chamber of Commerce, Board of Directors

1. Unless the Chamber complies with the requirements of the Lease and of Amendment Number One to the Lease Agreement to add Banning to their insurance policy as the payee for any claim on the property, and to establish a minimum \$10,000 maintenance fund, Banning should formally cancel the existing lease between the Community Redevelopment Agency of Banning and the Chamber. Action taken on this lease is to be made part of the open agenda at the next Banning City Council meeting following either compliance by the Chamber, or 90 days, whichever comes first.

That Banning discuss its lease proposals in the open agenda portion of the Banning City Council meetings prior to agreeing to such proposals. Those discussions to include total costs to Banning both in waived rent to the lessee, as well as in waived rents that result from modifying existing leases.

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

That Banning develop written policies and procedures necessary to review contracts and/or leases to ensure compliance.

2. That Banning reach an agreement with the Chamber for the payment of the past due utility bills in the amount of \$15,795.25. That such agreement be reached no later than 90 days after the receipt of this report, and made a part of the open agenda at the next Banning City Council meeting after agreement has been reached.
3. If the lease between the Community Redevelopment Agency of Banning and the Chamber is cancelled, that Banning seek repayment from the Chamber of the remaining prorated amount of the sublease with the Southern California Gas Company.
4. That Banning take the necessary legal action against the Executive Director of the Chamber for the payment of the judgment against him payable to Banning. Payment to include any and all interest accrued to date on the original judgment amount. Action taken by Banning to be made part of the open agenda at the next City Council meeting following payment of judgment by the Executive Director of the Chamber, or 90 days, whichever comes first.
5. That Chamber Directors request the resignation of the Executive Director unless the amount due under the judgment against him is paid to Banning. The current situation poses a conflict of interest and is in direct conflict with the Chamber mission statement of "cooperative interaction among business, government and community."

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