

ORDINANCE 1572

AN ORDINANCE OF THE CITY OF BANNING TO UPDATE THE LOCAL DEVELOPMENT MITIGATION FEE FOR FUNDING THE PRESERVATION OF NATURAL ECOSYSTEMS IN ACCORDANCE WITH THE WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN, AMENDING THE BANNING MUNICIPAL CODE AND MAKING A DETERMINATION OF EXEMPTION UNDER CEQA

WHEREAS, the City Council of the City of Banning finds that the ecosystems of the City and western Riverside County, and the vegetation communities and sensitive species they support are fragile, irreplaceable resources that are vital to the general welfare of all residents;

WHEREAS, these vegetation communities and natural areas contain habitat value which contributes to the City's and the region's environmental resources;

WHEREAS, special protections for these vegetation communities and natural areas are being established to prevent future endangerment of the plant and animal species that are dependent upon them;

WHEREAS, adoption and implementation of this Ordinance will help to enable the City to achieve the conservation goals set forth in the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"), adopted by the City Council on November 12, 2003, and to implement the associated Implementing Agreement executed by the City Council on November 12, 2003, and to preserve the ability of affected property owners to make reasonable use of their land consistent with the requirements of the National Environmental Policy Act ("NEPA"), the California Environmental Quality Act ("CEQA"), the Federal Endangered Species Act ("FESA"), the California Endangered Species Act ("CESA"), the California Natural Community Conservation Planning Act ("NCCP Act"), and other applicable laws;

WHEREAS, the purpose and intent of this Ordinance is to update its Local Development Mitigation Fee to assist in the maintenance of biological diversity and the natural ecosystem processes that support this diversity; the protection of vegetation communities and natural areas within the City and western Riverside County which are known to support threatened, endangered, or key sensitive populations of plant and wildlife species; the maintenance of economic development within the City by providing a streamlined regulatory process from which development can proceed in an orderly process; and the protection of the existing character of the City and the region through the implementation of a system of reserves which will provide for permanent open space, community edges, and habitat conservation for species covered by the MSHCP;

WHEREAS, the findings set forth herein are based on the MSHCP and the 2020 Nexus Study, and the estimated implementation costs of the MSHCP as set forth in the 2020 Nexus Study, a copy of which is on file in the City Clerk's office;

WHEREAS, The Western Riverside County Regional Conservation Authority (“RCA”) has prepared an updated nexus study entitled “WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN NEXUS FEE STUDY UPDATE” (2020 Nexus Study”) pursuant to California Government code sections 66000 et seq. for the purpose of updating the Local Development Mitigation Fee (“LDMF”). On December 7, 2020, the RCA Board of Directors reviewed the 2020 Nexus Study and directed RCA Permittees to adopt this updated MSHCP fee ordinance.

WHEREAS, pursuant to Article 11, Section 7 of the California Constitution, the City is authorized to enact measures that protect the health, safety, and welfare of its citizens;

WHEREAS, pursuant to Government Code sections 66000 et seq., the City is empowered to impose fees and other exactions to provide necessary funding and public facilities required to mitigate the negative effect of new development projects;

WHEREAS, on November 12, 2003, the City Council took action on the MSHCP and the associated Implementing Agreement and adopted the original LDMF, and made appropriate findings pursuant to CEQA;

WHEREAS, the levying of LDMF has been reviewed by the City Council and staff in accordance with the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines and it has been determined that the adoption of this ordinance is exempt from CEQA pursuant to Section 21080(b)(8) of the California Public Resources Code and Sections 15273 and 15378(b)(4) of the State CEQA Guidelines; and

WHEREAS, pursuant to Government Code sections 66016, 66017, and 66018, the City has: (a) made available to the public, at least ten (10) days prior to its public hearing, data indicating the estimated cost required to provide the facilities and infrastructure for which these development fees are levied and the revenue sources anticipated to provide those facilities and infrastructure; (b) mailed notice at least fourteen (14) days prior to this meeting to all interested parties that have requested notice of new or increased development fees; and (c) held a duly noticed, regularly scheduled public hearing at which oral and written testimony was received regarding the proposed fees.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES ORDAIN AS FOLLOWS:

Section 1. ARTICLE II (MSHCP Mitigation Fee) of Chapter 15.72 (Western Riverside County Multiple Species Habitat Conservation Plan) of Title 15 (Buildings and Construction) of the Banning Municipal Code is hereby amended to read as follows:

“Article II. MSHCP Mitigation Fee

15.72.060 Findings.

A. The preservation of vegetation communities and natural areas within the City and western Riverside County which support species covered by the MSHCP is necessary to protect and promote the health, safety, and

welfare of all the citizens of the City by reducing the adverse direct, indirect, and cumulative effects of urbanization and development and providing for permanent conservation of habitat for species covered by the MSHCP.

B. It is necessary to update certain development impact fees to ensure that all new development within the City pays its fair share of the costs of acquiring and preserving vegetation communities and natural areas within the City and the region which are known to support plant and wildlife species covered by the MSHCP.

C. A proper funding source to pay the costs associated with mitigating the direct, indirect, and cumulative impacts of development to the natural ecosystems within the City and the region, as identified in the MSHCP, is a development impact fee for residential, commercial, and industrial development. The amount of the fee is determined by the nature and extent of the impacts from the development to the identified natural ecosystems and or the relative cost of mitigating such impacts.

D. The MSHCP and the 2020 Nexus Study, a copy of which is on file in the City Clerk's office, provides a basis for the imposition of development impact fees on new construction.

E. The use of the development impact fees to mitigate the impacts to the City and the region's natural ecosystems is reasonably related to the type and extent of impacts caused by development within the City.

F. The costs of funding the proper mitigation of natural ecosystems and biological resources impacted by development within the City and the region are apportioned relative to the type and extent of impacts caused by the development.

G. The facts and evidence provided to the City establish that there is a reasonable relationship between the need for preserving the natural ecosystems in the City and the region, as defined in the MSHCP, and the direct, indirect, and cumulative impacts to such natural ecosystems and biological resources created by the types of development on which the fee will be imposed, and that there is a reasonable relationship between the fee's use and the types of development for which the fee is charged. This reasonable relationship is described in more detail in the MSHCP and the 2020 Nexus Study.

H. The cost estimates for mitigating the impact of development on the City's and the region's natural ecosystem and biological resources, as set forth in the MSHCP, are reasonable and will not exceed the reasonably estimated total of these costs.

I. The fee set forth herein does not reflect the entire cost of the lands which need to be acquired in order to implement the MSHCP and mitigate the

impact caused by new development. Additional revenues will be required from other sources. The City Council finds that the benefit to each development project is greater than the amount of the fee to be paid by the project.

J. The fees collected pursuant to this Ordinance shall be used to finance the acquisition and perpetual conservation of the natural ecosystems and certain improvements necessary to implement the goals and objectives of the MSHCP.

15.72.070 Administrative responsibility.

The RCA is hereby reaffirmed as the Administrator of this Ordinance. The RCA is hereby authorized to receive all fees generated from the Local Development Mitigation Fee within the City, and to invest, account for, and expend such fees in accordance with the provisions of the MSHCP, MSHCP Implementing Ordinance, this Ordinance, and the MSHCP Mitigation Fee Implementation Manual. The detailed administrative procedures concerning the implementation of this Ordinance shall be contained in the MSHCP Mitigation Fee Implementation Manual adopted December 7, 2020 and as may be amended from time to time. The RCA Board of Directors may adopt a policy that will allow the City] to authorize the RCA to calculate the fees due and collect those amounts directly from property owners. If such a policy is adopted, it will be included in the MSHCP Mitigation Fee Implementation Manual.

15.72.080 Definitions.

As used in this Ordinance, the following terms shall have the following meanings:

“Accessory Dwelling Unit” means an accessory dwelling unit as defined by California Government Code section 65852.2(j)(1), or as defined in any successor statute.

“Board of Supervisors” means the Board of Supervisors of the County of Riverside, California.

“City” means the City of Banning, County of Riverside, California.

“City Council” means the City Council of the City of Banning, California.

“Credit” means a credit allowed pursuant to Section 10 of this Ordinance, which may be applied against the development impact fee paid.

“Development” means a human-created change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filing, grading, paving, excavating, and drilling.

“Development Project” or “Project” means any project undertaken for the purpose of development pursuant to the issuance of a building permit by the City pursuant to all applicable ordinances, regulations, and rules of the City and state law.

“Junior Accessory Dwelling Unit” means a junior accessory dwelling unit as defined by California Government Code section 65852.22(h)(1), or as defined in any successor statute.

“Local Development Mitigation Fee” or “Fee” means the development impact fee imposed pursuant to the provisions of this Ordinance.

“Multiple Species Habitat Conservation Plan” or “MSHCP” means the Western Riverside County Multiple Species Habitat Conservation Plan, adopted by the City Council on November 12, 2003.

“MSHCP Conservation Area” has the same meaning and intent as such term is defined and utilized in the MSHCP.

“Ordinance” means this Ordinance No. 1572 of the City of Banning, California.

“Project Area” means the area, measured in acres, within the Development Project including, without limitation, any areas to be developed as a condition of the Development Project. Except as otherwise provided herein, the Project Area is the area upon which the project will be assessed the Local Development Mitigation Fee. See the MSHCP Mitigation Fee Implementation Manual for additional guidance for calculating the Project Area.

“Revenue” or “Revenues” means any funds received by the City pursuant to the provisions of this Ordinance for the purpose of defraying all or a portion of the cost of acquiring and preserving vegetation communities and natural areas within the City and the region which are known to support threatened, endangered, or key sensitive populations of plant and wildlife species.

“Western Riverside County Regional Conservation Authority” or “RCA” means the governing body established pursuant to the MSHCP that is delegated the authority to oversee and implement the provisions of the MSHCP.

Any capitalized term not otherwise defined herein shall carry the same meaning and definition as that term is used and defined in the MSHCP.

15.72.080 Local development mitigation and local infrastructure fee.

A. Adoption of Local Development Mitigation Fee Schedule. The City Council shall adopt an applicable Local Development Mitigation Fee schedule provided by the RCA through a separate resolution.

B. Public Projects. The City is required to mitigate the impacts of Public Projects pursuant to the MSHCP and the MSHCP Implementing Agreement. The definition of Public Project and the method for mitigating Public Projects will be set forth in the MSHCP Mitigation Fee Implementation Manual.

C. Periodic Fee Adjustment. The Local Development Mitigation Fee schedule set forth in the fee resolution referenced above may be periodically reviewed and the amounts adjusted as set forth in the MSHCP Mitigation Fee Implementation Manual.

D. Automatic Annual Fee Adjustment. In addition to the Periodic Fee Adjustment mentioned above, the RCA shall provide the City with an automatic annual fee adjustment for the Local Development Mitigation Fee established by this Ordinance as set forth in the MSHCP Mitigation Fee Implementation Manual.

15.72.090 Imposition of the local development mitigation fee.

A. The Local Development Mitigation Fee will be paid no later than at the issuance of a building permit. Notwithstanding any other provision of the City's Municipal Code, no building permit shall be issued for any Development Project unless the Local Development Mitigation Fee applicable to such Development Project has been paid. The amount of the Fee shall be calculated in accordance with the MSHCP Mitigation Fee Implementation Manual.

B. In lieu of the payment of the Local Development Mitigation Fee as provided above, the Fee for a Development may be paid through a Community Facilities District, provided that such arrangement is approved by the RCA in writing.

15.72.100 Payment of local development mitigation fee.

A. The Local Development Mitigation Fee shall be paid in full in accordance with applicable law.

B. The Local Development Mitigation Fee required to be paid under this Ordinance shall be the fee in effect at the time the fee is paid for which the Local Development Mitigation Fee is assessed; provided, however, that Housing Development Projects as defined by California Government Code

section 65589.5(h)(2) may be entitled to pay the fee in effect at the time of the preliminary application was submitted.

C. Notwithstanding anything in the City's Municipal Code, or any other written documentation to the contrary, the Local Development Mitigation Fee shall be paid whether or not the Development Project is subject to conditions of approval by the City imposing the requirement to pay the fee.

D. If all or part of the Development Project is sold prior to payment of the Local Development Mitigation Fee, the Project shall continue to be subject to the requirement to pay the fee as provided herein.

E. The fee title owner(s) of the Property is responsible for the payment of the Local Development Mitigation Fee.

15.72.110 Refunds.

A. Under certain circumstances, such as double payment, expiration of a building permit, or fee miscalculation due to clerical error, an applicant may be entitled to a refund. Refunds will be reimbursed by the end of the fiscal year on a first come, first served basis, depending upon the net revenue stream. Refunds will only be considered reimbursable if requested within 3 years of the original LDMF payment. In all cases, the applicant must promptly submit a refund request with proof of LDMF payment to the RCA if RCA collected the LDMF, or if collected by a local jurisdiction, the refund request shall be submitted to that local jurisdiction, which will subsequently forward the request to RCA for verification, review, and possible action.

B. Expiration of Building Permits. If a building permit should expire, is revoked, or is voluntarily surrendered and is, therefore voided and no construction or improvement of land has commenced, then the applicant may be entitled to a refund of the LDMF collected which was paid as a condition of approval, less administration costs. Any refund must be requested within three (3) years of the original payment. The applicant shall pay the current LDMF in effect at the time in full if s/he reapplies for the permit.

C. Double Payments. On occasion due to a clerical error, a developer has paid all or a portion of the required LDMF for project twice. In such cases, a refund of the double payment may be required.

D. Balance Due. When LDMF is incorrectly calculated due to City clerical error, it is the City's responsibility to remit the balance due to RCA. The error must be discovered within three (3) years of the original payment for the City to be held accountable. The amount due can be remitted through alternate methods agreed to by the RCA Executive Committee. If first approved through RCA staff in writing, the calculation is not subject to additional review.

15.72.120 Accounting and disbursement of collected local development mitigation fees.

A. All fees paid pursuant to this Ordinance shall be deposited, invested, accounted for, and expended in accordance with Section 66006 of the Government Code and all other applicable provisions of law.

B. Subject to the provisions of this section, all fees collected pursuant to this Ordinance shall be remitted to the Western Riverside County Regional Conservation Authority at least quarterly.

C. In the resolution mentioned in Section 15.72.080 A, the City may also add an additional cost to the Local Development Mitigation Fee schedule to cover the costs of collecting the fees from project proponents. Any amounts collected by the City shall not reduce the amount collected and remitted to the RCA under this Ordinance.

15.72.130 Exemptions.

The following types of construction shall be exempt from the provisions of this Ordinance:

A. Reconstruction or improvements that were damaged or destroyed by fire or other natural causes, provided that the reconstruction or improvements do not result in additional usable square footage.

B. Rehabilitation or remodeling to an existing Development Project, provided that the rehabilitation or remodeling does not result in additional usable square footage.

C. Accessory Dwelling Units, but only to the extent such fee is exempted under state law.

D. Junior Accessory Dwelling Units, but only to the extent such fee is exempted under state law.

E. Existing structures where the use is changed from an existing permitted use to a different permitted use, provided that no additional improvements are constructed and does not result in additional usable square footage.

F. Certain Agricultural Operations as allowed by the MSHCP, as amended.

G. Vesting Tentative Tract Maps entered into pursuant to Government Code section 66452 et seq. (also, Government Code section 66498.1 et seq.) and Development Projects which are the subject of a development agreement entered into pursuant to Government Code section 65864 et seq., prior to the effective date of Ordinance No. 1305, wherein the imposition of new fees are

expressly prohibited, provided that if the term of such a vesting map or development agreement is extended by amendment or by any other manner after the effective date of Ordinance No. 1305, the MSHCP Fee shall be imposed.

Except as exempted above, all projects are required to make a mitigation payment/ contribution and where no mitigation payment process is specified, the project will pay the updated per acre mitigation fee.

15.72.140 Fee credits.

Any Local Development Mitigation Fee credit that may be applicable to a Development Project shall be determined by the City and approved by the RCA. All Fee Credits shall comply with the resolutions, ordinances, Implementing Agreement, and policies of the Western Riverside County Regional Conservation Authority including, without limitation, the MSHCP Mitigation Fee Implementation Manual.”

Section 2. CEQA Findings. The City Council hereby finds that in accordance with CEQA and the CEQA Guidelines the adoption of this Ordinance is exempt from CEQA pursuant to Section 21080(b)(8) of the California Public Resources Code and Sections 15273 and 15378(b)(4) of the State CEQA Guidelines.

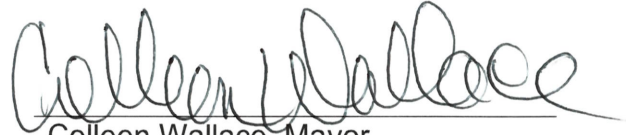
Section 3. Severability. This Ordinance and the various parts, sections, and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid, the remainder of this Ordinance shall be affected thereby. If any part, sentence, paragraph, section, or clause of this Ordinance, or its application to any person entity is adjudged unconstitutional or invalid, such unconstitutionality or invalidity shall affect only such part, sentence, paragraph, section, or clause of this Ordinance, or person or entity; and shall not affect or impair any of the remaining provision, parts, sentences, paragraphs, sections, or clauses of this Ordinance, or its application to other persons or entities. The City Council hereby declares that this Ordinance would have been adopted had such unconstitutional or invalid part, sentence, paragraph, section, or clause of this Ordinance not been included herein; or had such person or entity been expressly exempted from the application of this Ordinance.

Section 4. Prior Ordinances Superseded. This Ordinance supersedes the provisions of Ordinance No. 1305 provided this Ordinance is not declared invalid or unenforceable by a court of competent jurisdiction. If, for whatever reason, this Ordinance is declared invalid or unenforceable by a court of competent jurisdiction, Ordinance No. 1305 and all other related ordinances and policies shall remain in full force and effect.

Section 5. Effective Date. The Mayor shall sign this Ordinance and the City Clerk shall attest thereto and shall within fifteen (15) days of its adoption cause it, or a summary of it, to be published in the Record Gazette, a newspaper published and circulated in the City of Banning, and thereupon and thereafter this Ordinance shall take effect and be in force according to law. Pursuant to Section 13.2(A) of the MSHCP Implementing

Agreement, the City Clerk shall send a copy of this Ordinance to RCA within 30 days of the date of adoption.

PASSED, APPROVED AND ADOPTED this 25th day of May 2021.



Colleen Wallace, Mayor
City of Banning

ATTEST:



Caroline Patton, Deputy City Clerk
City of Banning

**APPROVED AS TO FORM AND
LEGAL CONTENT:**



Kevin G. Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

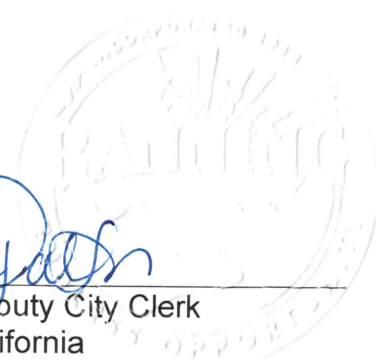
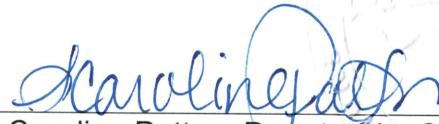
I, Caroline Patton, Deputy City Clerk of the City of Banning, California, do hereby certify that Ordinance 1572 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 11th day of May 2021, and was duly adopted at a regular meeting of said City Council on the 25th day of May 2021, by the following vote, to wit:

AYES: Council Members Happe, Hamlin, Pingree, Sanchez, and Mayor Wallace.

NOES:

ABSENT:

ABSTAIN:



Caroline Patton, Deputy City Clerk
City of Banning, California