

ORDINANCE NO. 1545

AN ORDINANCE OF THE CITY OF BANNING AMENDING CHAPTER 3.18 (MINING TAX AND MINING IMPACT FUND) OF TITLE 3 (REVENUE AND FINANCE) OF THE BANNING MUNICIPAL CODE TO SPECIFY THE USE OF DIFFERENT CONSUMER PRICE INDEXES COMMENCING FISCAL YEARS 2019 AND 2020 TO ADDRESS COST OF LIVING ADJUSTMENTS FOR THE MINING TAX AND MAKING A DETERMINATION PURSUANT TO CEQA

WHEREAS, in August 2014, the City Council placed a proposed tax on surface mining operations within the City limits ("Mining Tax") on the November 2014 election ballot, known as Measure J; and

WHEREAS, the voters of the City of Banning ("City") passed Measure J, which set the tax rate at \$0.80 per ton of mined aggregate, applicable to operations in the City, including, but not limited to those conducted by Robertson's Ready Mix, Ltd. ("Robertson's"); and

WHEREAS, as allowable under Banning Municipal Code Section 3.18.070 (Modification by Council), in September 2016, the City and Robertson's entered into a Memorandum of Understanding ("MOU") to resolve existing and potential legal actions, effective July 1, 2016; and

WHEREAS, the MOU set forth the terms and conditions of the City's and Robertson's settlement and compromise of its disputes, and agreed that the City would suspend and reduce the voter-approved Mining Tax rate of \$0.80 per ton aggregate down to \$0.25 per ton aggregate; and

WHEREAS, thereafter the City Council adopted Ordinance 1502, amending Section 3.18.030 to temporarily suspend and reduce the \$0.80 per ton tax rate and establish a lower rate of \$0.25 per ton tax rate, which rate could be increased by the Council at a later date; and

WHEREAS, existing Banning Municipal Code Section 3.18.030(D) (Cost of Living Adjustment) states "[t]he taxes imposed in subsection A and B above shall be paid quarterly on the twentieth day in the months of July, October, January and April of each year, and shall be annually adjusted based upon the percentage change equal to the percentage change in the Los Angeles-Anaheim-Riverside Consumer Price Index (C.P.I.) from July of the current year compared with July of the prior year. The C.P.I. change shall take place on October 1 of each year"; and

WHEREAS, in January 2018, the United States Bureau of Labor Statistics ("BLS") eliminated the Los Angeles-Anaheim-Riverside Consumer Price Index and replaced it with two new indexes: Los Angeles-Long Beach-Anaheim and Riverside-San Bernardino-Ontario; and

WHEREAS, the 2019 C.P.I. adjustment cannot be made in accordance with the existing methodology defined by Banning Municipal Code Section 3.18.030(D); and

WHEREAS, a revised methodology for determining the rate adjustment calculation must be approved in order to implement a Consumer Price Index adjustment for Fiscal Year 2019 and beyond; and

WHEREAS, the new Los Angeles-Long Beach-Anaheim index adopted the historical data of the Los Angeles-Orange County-Riverside index that was previously used and will provide the best index to use for Fiscal Year 2019 before applying the new Riverside-San Bernardino-Ontario index for fiscal years following Fiscal Year 2019; and

WHEREAS, staff recommends updating the BLS Index specified in Section 3.18.030 (D) from the Los Angeles-Anaheim-Riverside C.P.I., which is no longer active, to the newly created (a) Los Angeles-Long Beach-Anaheim C.P.I. for Fiscal Year 2019 and (b) Riverside-San Bernardino-Ontario C.P.I. for the fiscal years following Fiscal Year 2019, with a month to month comparison to be adjusted to align with an effective date equivalent to the City's fiscal year (March to March), effective July 1 of every year; and

WHEREAS, City staff has evaluated the mining tax on excavation and processing methodology and recommends that the month to month comparison be adjusted to align with an effective date equivalent to the beginning of the City's fiscal year: March to March, effective July 1st.

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

Section 1. California Environmental Quality Act (CEQA). The City Council finds and determines that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a project as defined by the CEQA Guidelines Section 15378. Adoption of the Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. The City Council hereby adopts a categorical exemption for this Ordinance and directs staff to file a Notice of Exemption.

Section 2. Code Amendment. The City Council hereby amends Subsection "D" of Section 3.18.030 (Mining tax on excavation and processing.) of Chapter 3.18 (Mining Tax and Mining Impact Fund) of Title 3 (Revenue and Finance), to read as follows:

"D. Cost of Living Adjustment. The taxes imposed in subsections A and B above shall be paid quarterly on the twentieth day in the months of July, October, January and April of each year, and shall be adjusted for Fiscal Year 2018-2019 based upon the percentage change in the Los Angeles-Long Beach-Anaheim Consumer Price Index (C.P.I.) and based upon the

Riverside-San Bernardino-Ontario C.P.I. for Fiscal Year 2019-2020 and thereafter, with the twelve month period being measured from March of the current year compared with March of the prior year. The C.P.I. adjustment shall take effect and be imposed on July 1 of each year."

Section 3. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 4. Savings Clause. Neither the adoption of this Ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution of any violation of any City ordinance or provision of the Banning Municipal Code, committed prior to the effective date hereto, nor be construed as a waiver of any license or penalty or the penal provision applicable to any violation thereof.

Section 5. Publication, Effective Date. The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a minute order of the passage and adoption thereof in the records and the proceedings of the City Council at which time the same is passed and adopted. This Ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) calendar days after its final passage, the City Clerk shall cause a summary of this Ordinance to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California. The City Clerk shall cause the Ordinance to be printed, published, and circulated.

PASSED, APPROVED, AND ADOPTED on the 28th day of May, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning, California

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

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

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CERTIFICATION

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1545, was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 14th day of May, 2019, and was duly adopted at a regular meeting of said City Council on the 28th day of May, 2019, by the following vote to wit:

AYES: Happe, Peterson, Wallace, Andrade, & Welch

NOES: None

ABSTAIN: None

ABSENT: None

Daryl Betancur, Deputy City Clerk
City of Banning, California