I. CALL TO ORDER: Chairman Barsh

- Pledge of Allegiance: Commissioner Arterberry
- Roll Call: Chairman Barsh; Commissioner Arterberry; Commissioner Briant, Commissioner Hawkins; Commissioner Siva

II. PUBLIC COMMENTS:

At this time, the general public is invited to address the Planning Commission concerning any items that **are not listed on the agenda**, which are not public hearings or other items under the jurisdiction of the Planning Commission. Comments from the public of any non-agenda items will be limited to three (3) minutes in accordance with City policy.

III. PLANNING COMMISSION ELECTIONS

IV. PRESENTATION:

Project No. 2013-01, “Corporate Yard Operations Building” presentation to be provided by the Director of Public Works, Duane Burk. As part of this project, the City plans to demolish an existing Corporate Yard building (approx. 6,000) which currently houses the Electric and Street/Parks Departments. The conceptual designs that will be presented will be of a new, enhanced metal building (approx. 22,500 SF) which will house the same functions, as well as, enhanced programs.
V. CONSENT CALENDAR ITEMS:

Note: All items listed on the Consent Calendar may be enacted by a single motion without separate discussion. If a discussion or a separate vote on any item is desired by a Planning Commissioner, that item may be removed from the Consent Calendar and considered separately. All remaining items not removed from the Consent Calendar by a Planning Commissioner shall be voted on prior to discussion of the item(s) requested to be pulled.

1. Minutes of November 7, 2012 meeting

VI. PUBLIC HEARING

1. ORDINANCE NO. 1461-DENSITY BONUS

Staff Report

Order of Procedure:
1. Request staff report / Questions of staff
2. Open public hearing
3. Close public hearing
4. Planning Commission discussion / Questions of staff
5. Motion and Second
6. Discussion on motion
7. Call the question (Roll call vote)

Recommendations:

That the Planning Commission take the following action:

1. That the Planning Commission adopt PC Resolution No. 2013-02 recommending to the City Council the adoption of Ordinance No. 1461 repealing Chapter 15.60 in its entirety and replacing it with a new Chapter 15.60 to the Banning Municipal Code and Amending Section 17.08.070 of the Banning Zoning Code regarding density bonus.

2. ORDINANCE NO. 1462 – ZONING ORDINANCE AMENDMENT ADDING CHAPTER 17.42 TO THE BANNING ZONING CODE REGARDING REASONABLE ACCOMMODATIONS FOR DISABLED INDIVIDUALS

Staff Report
Order of Procedure:
1. Request staff report / Questions of staff
2. Open public hearing
3. Close public hearing
4. Planning Commission discussion / Questions of staff
5. Motion and Second
6. Discussion on motion
7. Call the question (Roll call vote)

Recommendations:

That the Planning Commission take the following actions:

1. Adopt Class 1 (Existing Facilities) and Class 3 (New Construction of Conversion of Small Structures) Categorical Exemption in compliance with California Environmental Quality Act (CEQA) Guidelines; and

2. Adopt PC Resolution No. 2013-01 recommending to the City Council the approval of Ordinance No. 1462 amending Title 17 of the Banning Zoning Code regarding Reasonable Accommodations for Disabled Individuals.

VII. PLANNING COMMISSIONER COMMENTS

VIII. COMMUNITY DEVELOPMENT DIRECTOR’S REPORT

IX. ADJOURNMENT

The City of Banning Planning Commission is hereby adjourned to the regular Planning Commission meeting of March 6, 2013 starting at 6:30 p.m. in the City Council Chambers.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Department (951) 922-3125. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting [28 CFR 35.102-35.104 ADA title II]
OUTLINE OF PROCEDURES FOR ELECTION OF OFFICERS

Chairperson: Nominations for the office of Chairperson are now open. A second to the nominations is required.

(Commissioners shall nominate the person of their choice)

Chairperson: Are there any further nominations? If not, I will entertain a motion that the nominations be closed.

(Motion is made)

Is there a second?

All those in favor say Aye, those opposed no.

Chairperson I will take a roll call vote. Please signify your choice for Chairperson when your name is called. The roll call will be in alphabetical order.

<table>
<thead>
<tr>
<th>ROLL CALL VOTE</th>
<th>Commissioner Arterberry</th>
<th>Commissioner Barsh</th>
<th>Commissioner Briant</th>
<th>Commissioner Hawkins</th>
<th>Commissioner Siva</th>
</tr>
</thead>
</table>

Chairperson: The vote is in favor of Commissioner ____________ who is our newly elected Chairperson. Chairperson ____________ shall now preside over the election of Vice-chairperson. (Repeat this procedure for Vice-chairperson.)
City of Banning

PLANNING COMMISSION MINUTES

November 7, 2012

A regular meeting of the City of Banning Planning Commission was held on Wednesday, November 7, 2012 at 6:30 p.m., in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, CA, 92220.

Commissioners Present:  Chairman Barsh
Commissioner Arterberry
Commissioner Briant
Commissioner Hawkins

Commissioners Excused:  Vice-Chairman Siva

Staff Present:  Community Development Director Abu Bakar
Director of Public Works Burk
Assistant City Attorney Lona Laymon
Associate Planner Guillot
Recording Secretary Stuart

I. CALL TO ORDER

II. PUBLIC COMMENT

None came forward.

III. PRESENTATION

The Director of Public Works, Duane Burk, provided a presentation on the proposed Water Recycling Center. The PowerPoint is attached hereto by reference.

IV. CONSENT CALENDAR ITEMS

1. Minutes of March 7, 2012

ACTION (BRIANT/ HAWKINS): A motion was moved, seconded and carried that item 1 be approved as presented.
(Motion carried 3-0) (Commissioner Arterberry abstained and Commissioner Siva was excused)

2. Minutes of April 4, 2012

ACTION (HAWKINS / BRIANT): A motion was moved, seconded and carried that item 2 be approved as presented.

(Motion carried 4-0) (Commissioner Siva was excused)

3. Minutes of May 2, 2012

ACTION (HAWKINS / BRIANT): A motion was moved, seconded and carried that item 3 be approved as presented.

(Motion carried 3-0) (Commissioner Arterberry abstained and Commissioner Siva was excused)

V. PUBLIC HEARINGS

1. CONDITIONAL USE PERMIT (CUP) #12-802
VERIZON WIRLES TELECOMMUNICATIONS ANTENNAE
2010 E. WESTWARD AVEUNE (APN 532-180-044)

Associate Planner Guillot presented the staff report requesting a Conditional Use Permit for a wireless telecommunications facility. This facility consists of an antenna tower with equipment for the microwave antennas. The site is partially already improved and has an existing fibrotic booster station at the location. Planner Guillot continued to describe the project and surrounding area and stated that staff recommends approval of the CUP as it is proposed since it is consistent with our zoning ordinance while not significantly affecting the environment. The design of the antennae tower along with the proposed landscaping in all probability will not draw attention to those passing by.

The public hearing was declared opened.

Steve Laub, Land Solutions 7593 El Paseo St, La Mesa, CA 91942v – Mr. Laub stated he was representing the applicant, Sitemaster, and that they are in concurrence with the staff report and staff's recommendation. He made himself available to answer any questions. Correspondence took place regarding how site locations are determined. Mr. Laub stated that the proposed location was selected because it is where the existing fibrotic system is located. Fibroptic cable is extremely expensive to run therefore they like to place it as close to the station as possible.

Seeing that there were no other comments from the public the public hearing was closed. Chairman Barsh opened the floor for the Commissioners to come to their decision.
ACTION (HAWKINS/ ARTERBERRY): A motion was moved, seconded and carried that the Planning Commission take the following action:

1. ADOPT A CLASS 32 CATEGORICAL EXEMPTION IN COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES SECTION 15332 (IN-FILL DEVELOPMENT PROJECTS); AND

2. ADOPT PC RESOLUTION NO 2012-11 APPROVING CONDITIONAL USE PERMIT #12-802 SUBJECT TO CONDITIONS OF APPROVAL.

(Motion Carried 4 – 0) (Commissioner Siva was excused)

2. CONDITIONAL USE PERMIT (CUP) #12-803 COUNTY OF RIVERSIDE DEPARTMENT OF MENTAL HEALTH 1330 W. RAMSEY STREET (APN 540-180-004)

Associate Planner Guillot presented the staff report requesting an approval of a Conditional Use Permit to expand the use of an existing 14,600 square foot building located at 1330 W. Ramsey Street as a government office to be used as a mental health facility. Planner Guillot identified that the County currently occupied the back 2/3 portion of the building and with the expansion they would occupy the remaining 1/3 front of the building. Planner Guillot reviewed the project, surrounding area and landscape improvements. Planner Guillot continued by stating that staff recommends approval of the subject CUP since the project is consistent with the requirements of our Zoning Ordinance and will not significantly affect the environment. Also staff requests that the changes to proposed Resolution No. 2012-12 be included in the project approval by Planning Commission.

Discussion proceeded regarding parking concerns. Under the current code the facility would be short on parking which is why staff requested the applicant to justify the existing parking. In response, the applicant submitted an Engineer’s report which is allowable under the present code. As a result, the County was able to count what the necessary parking spaces would be which is 29 spaces. Currently, the facility has 34 spaces which is adequate for the use as it is currently proposed. Under the “Conditions of Approval” which is incorporated within the resolution, if there are two complaints received by the Planning Department within a six month period, at the discretion of the director, she can bring this project back to the Planning Commission for further discussion regarding parking. Although there is a provision for this, staff does not anticipate that it will be necessary. Further discussion continued regarding parking and existing and proposed needs related to the facility.

The public hearing was declared opened. Seeing that there were no public comments the public hearing was closed. Chairman Barsh opened the floor for the Commissioners to come to their decision.
ACTION (ARTERBERRY/ BRIANT: A motion was moved, seconded and carried that the Planning Commission take the following action:

1. ADOPT A CLASS I CATEGORICAL EXEMPTION IN COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES SECTION 15301 (EXISTING FACILITIES); AND
2. ADOPT PC RESOLUTION NO 2012-12 APPROVING CONDITIONAL USE PERMIT #12-803 SUBJECT TO CONDITIONS OF APPROVAL INCLUDING THE ADDITION TO FINDINGS #2.

(Motion Carried 4 – 0) (Commissioner Siva was excused)

VI. STAFF REPORT/INFORMATION ITEM

1. MANUAL OF PROCEDURAL GUIDELINES FOR THE CONDUCT OF CITY COUNCIL AND CONSTITUENT BODY/COMMISSION MEETINGS FOR THE CITY OF BANNING ADOPTED OCTOBER 23, 2012

Assistant City Attorney Lona Laymon briefly reviewed the Manual of Procedural Guidelines highlighting certain areas that may require more particular attention and informing the Commission that these guidelines directly apply to the Commissioners. Upon completion of the review, the Assistant City Attorney encouraged the Commissioners to further review the guidelines.

VII. PLANNING COMMISSIONER COMMENTS

None.

VIII. COMMUNITY DEVELOPMENT DIRECTOR’S REPORT

None.

IX. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 8:23 p.m. to the Planning Commission meeting on November 7, 2012 at 6:30 p.m.

Respectfully submitted,

Holly Stuart
Recording Secretary
March 8, 2012
Sun Lakes DelEgare Assembly

Water Recycling Center
City of Banning
APPROVED THIS PROJECT

CITY COUNCIL HAS NOT

construction and operating costs

Alternative locations are being considered in order to reduce

City Wastewater Treatment Plant located on the east side of the

The initial design focused on the expansion of the existing

Background
Prospective Locations
For Banning.

plant located in Corona that is similar to the plant that is proposed

- On July 27, 2012 City staff provided a tour of a water reclamation

Optimizatiation, Westward Water Recycling Facility.

Council Regarding "An Approach for Reycled Water Use

- On December 14, 2010 City staff provided a presentation to City

Optimizatiation, Westward Water Recycling Facility.

developers Regarding "An Approach for Reycled Water Use

- On October 25, 2010 City staff provided a presentation for

Community Outreach
Community Outreach

Staff compiled a list of questions and concerns from these meetings.

- On January 18, 2012 City staff met with Serreno Del Vista residents
- On October 12, 2011 City staff met with Sun Lakes residents
Can this plant be expanded in the future if necessary?

Is this a stand-alone plant?

Stage to the sewage reclamation plant near the airport?

What is the difference between this plant and adding a third

Parsons background?

Questions
Questions

- Is this water going to be diverted to our lawns?
- Is there a City ordinance that prevents utilizing this water on the golf course?
- How does Beaumont's system play a role if any?
- Will this plant receive the output from the existing plant?
Questions

- Is this water safe for residents with compromised immune systems?
- Will the 10% of the bacteria be spread on the golf course?
- Will this water be used to water surrounding areas?
- What happens to the 10% of the bacteria that is not able to be treated by the plant?
Is there an environmental impact report?

What happens to the waste that waste management handels?

Is only liquid going to be processed and not sludge?

What happens to the sludge generated by this plant?
What are the safety features of the plant?

What does the filter on the brochure represent?

What is the life span of the plant?

Do drains need to be replaced more often when using recycled water?
provided during a shortage?

With this Water Recycling Center will water be able to be

Will Santa Ana winds affect the odor in the air?

to Santa Ana?

How much excess water will there be and will it be delivered

Will this project include any solar energy methods?

Questions
Questions

- Is the Water Recycling Center less expensive to build and operate?
- What happened to the bonds that were supposed to be used for this plant? Were they used instead for the police station?
- Is this the same Reclamation plant that we voted to fund with bonds?
- How is this project funded and does the City have the funds?
Questions

- What are the annual operating costs?
- Will this water cost more than what is being used now?
- Has a cost benefit analysis been performed?
- Do we have an engineering estimate?
• Are there any credits that can be applied to utility bills?

• How does the 2% impact residual utility bills?

• What is the return on investment?

• What will be the payment method?

Questions
Questions

Once approved by the City, then does it have to be approved forward?

Does the City have to accept this project before it moves?

What effect will this plant have on home values?

Plant is not built?

Will water bills increase due to the cost per acre foot if this...
Questions

• What if Pardee decides not to build?

• Is this plant going to be built by an American company?

• Center would be in operation? If approved today how long would it be until the Water Recycling
Additional questions or concerns?
CITY OF BANNING
PLANNING COMMISSION REPORT

DATE: February 6, 2013
TO: Planning Commission
FROM: Zai Abu Bakar, Community Development Director
SUBJECT: ORDINANCE NO. 1461 – DENSITY BONUS

STAFF RECOMMENDATION: That the Planning Commission adopt PC Resolution No. 2013-02 recommending to the City Council the adoption of an ordinance repealing Chapter 15.60 in its entirety and replacing it with a new Chapter 15.60 to the Banning Municipal Code and Amending Section 17.08.070 of the Banning Zoning Code regarding density bonus.

BACKGROUND AND ANALYSIS: Government Code Section 65915 requires that cities provide certain incentives, concessions, or density bonuses to an applicant constructing housing units which a portion of the units are restricted as affordable units or units restricted for senior citizens. The density bonus provisions in the Banning Municipal and Zoning Codes are out-of-compliance with the State laws. The proposed Ordinance No. 1461 once adopted will bring the City into compliance.

FACT FINDINGS: Section 17.116.50 of the Banning Zoning Ordinance requires that the findings be made prior to adopting the proposed amendment. The Planning Commission recommends that the City Council make the following findings for the adoption of Ordinance No. 1461.

1. The proposed amendment is consistent with the goals and policies of the General Plan.

   The proposed Zoning Ordinance Amendment (Ordinance No. 1461) is consistent with the General Plan in that the proposed Ordinance will implement the overall goal of the City’s General plan to “preserve the quality of life” for its resident and “to promote housing opportunities for all segments of the community.”

2. The proposed amendment is internally consistent with the Zoning Ordinance.

---

1 City of Banning General Plan, January 31, 2006, page II-1
2 City of Banning, proposed Housing Element, October 2009, page III-107
The proposed amendment has been reviewed and evaluated against all of the Chapters of the Banning Zoning Ordinance and is determined that there is no internal conflicts and; thus the Ordinance is internally consistent with the current Zoning Ordinance.

3. That the City has independently reviewed and considered the requirements of the California Environmental Quality Act.

City staff has reviewed the requirements of the California Environmental Quality Act. This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) (the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and because the density bonus ordinance is a general policy and procedure formulation it is not considered a project pursuant to Section 15378(b)2 of the CEQA Guidelines.

PUBLIC COMMUNICATION:

The proposed project was advertised in the Record Gazette newspaper January 25, 2013. As of the date of this report, staff has not received any comments.

PREPARED BY:

[Signature]
Zai Abu Bakar
Community Development Director

PC Attachments:

1. Resolution No. 2013-02
2. Ordinance No. 1461
Attachment 1

(PC Resolution No. 2013-02 )
RESOLUTION NO. 2013-02

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA RECOMMENDING APPROVAL TO THE CITY COUNCIL THE ADOPTION OF ORDINANCE NO. 1461, REPEALING CHAPTER 15.60 OF THE BANNING MUNICIPAL CODE IN ITS ENTIRETY AND REPLACING IT WITH A NEW CHAPTER 15.60 AND AMENDING SECTION 17.08.070 OF THE BANNING ZONING CODE TO ESTABLISH DENSITY BONUS STANDARDS FOR AFFORDABLE RESIDENTIAL UNITS

WHEREAS, Government Code Section 65915 requires that cities provide certain incentives, concessions, or density bonuses to an applicant constructing housing units which a portion of the units are restricted as affordable units or units restricted for senior citizens; and

WHEREAS, the density bonus provisions in the Banning Municipal and Zoning Codes are out-of-compliance with State laws; and

WHEREAS, the proposed Ordinance No. 1461 once adopted will bring the City into compliance with the State laws; and

WHEREAS, on January 25, 2013, the City provided a public hearing notice in Record Gazette regarding the proposed Ordinance No. 1461; and

WHEREAS, on February 6, 2013, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, Ordinance No. 1461; and

WHEREAS, City staff has reviewed the requirements of the California Environmental Quality Act. This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) (the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and because the density bonus ordinance is a general policy and procedure formulation it is not considered a project pursuant to Section 15378(b)(2) of the CEQA Guidelines.

NOW THEREFORE, the Planning Commission of the City of Banning does hereby recommend that the City Council adopt Ordinance No. 1461.

PASSED, APPROVED AND ADOPTED this 6th day of February, 2013.

Harold Barsh, Chairman
Banning Planning Commission
APPROVED AS TO FORM AND LEGAL CONTENT:

Lona N. Laymon
Aleshire & Wynder, LLP
Assistant City Attorney
City of Banning, California

ATTEST:

Holly Stuart, Recording Secretary
City of Banning, California

CERTIFICATION:

I, Holly Stuart, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2013-02, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 6th day of February 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Holly Stuart, Recording Secretary
City of Banning, California
Attachment 2

(Ordinance 1461)
ORDINANCE NO. 1461

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, REPEALING CHAPTER 15.60 IN ITS ENTIRETY AND ADDING CHAPTER 15.60 TO THE BANNING MUNICIPAL CODE AND AMENDING SECTION 17.08.070 OF THE BANNING ZONING CODE TO ESTABLISH DENSITY BONUS STANDARDS CONSISTENT WITH STATE LAW FOR AFFORDABLE RESIDENTIAL UNITS

SUMMARY: This ordinance establishes standards for awarding density bonuses.

WHEREAS, Government Code Section 65915 requires cities to provide certain incentives, concessions or density bonuses to an applicant constructing housing units, a portion of which are restricted as affordable units or units restricted for senior citizens. Banning’s current density bonus ordinance is out-of-compliance with these State laws; and

WHEREAS, the City Council of the City of Banning would like to establish density bonus regulations as required by State law.

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

SECTION 1. The current Chapter 15.60 of the Banning Municipal Code is hereby repealed and replaced in its entirety with a new Chapter 15.60, entitled Density Bonus Provisions for Residential Units, to read as follows:

<table>
<thead>
<tr>
<th>Chapter 15.60</th>
<th>DENSITY BONUS PROVISIONS FOR RESIDENTIAL UNITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 15.60.010</td>
<td>Purpose.</td>
</tr>
<tr>
<td>Section 15.60.020</td>
<td>Definitions.</td>
</tr>
<tr>
<td>Section 15.60.030</td>
<td>Density bonuses for affordable and senior citizen housing.</td>
</tr>
<tr>
<td>Section 15.60.040</td>
<td>Additional density bonus for donations of land.</td>
</tr>
<tr>
<td>Section 15.60.050</td>
<td>Density bonus and incentives for condominium conversions.</td>
</tr>
<tr>
<td>Section 15.60.060</td>
<td>Density bonus &amp; concessions/incentive for child care facilities.</td>
</tr>
<tr>
<td>Section 15.60.070</td>
<td>General provisions governing density bonus calculations.</td>
</tr>
<tr>
<td>Section 15.60.080</td>
<td>Incentives and concessions.</td>
</tr>
<tr>
<td>Section 15.60.090</td>
<td>Waivers &amp; modifications of development standards.</td>
</tr>
<tr>
<td>Section 15.60.100</td>
<td>Parking incentives.</td>
</tr>
<tr>
<td>Section 15.60.110</td>
<td>Standards for density bonus housing developments.</td>
</tr>
</tbody>
</table>
Section 15.60.120 Application requirements.
Section 15.60.130 Density bonus housing agreements.
Section 15.60.140 Administrative fee.
Section 15.60.150 Violations of affordable housing requirements.
Section 15.60.160 State law amendments.

Section 15.60.010 - Purpose.

This chapter is being enacted: (1) to provide incentives for the production of housing for very low income, low income, moderate income and senior citizen households; (2) to provide incentives for the creation of rental housing serving lower and moderate income households; (3) to provide incentives for the construction of childcare facilities serving very low, lower and moderate income households; and (4) to implement Sections 65915, 65915.5, and 65917 of the California Government Code as required by Section 65915(a). In enacting this chapter, the City also intends to implement the goals, objectives, and policies of the City's General Plan Housing Element to encourage the construction of affordable housing in the City. It is also the City's intent to encourage the development of rental housing to serve an economically diverse community. Accordingly, the City desires to provide a density bonus upon the request of an applicant when the applicant is not otherwise required to include affordable or senior citizen restricted units in a project.

Section 15.60.020 - Definitions.

For purposes of this chapter, the following definitions shall apply. Unless specifically defined below, words or phrases shall be interpreted as to give this chapter its most reasonable interpretation.

"Affordable ownership costs" means average annual housing costs, including mortgage payments, property taxes, homeowners’ insurance, and homeowners’ association dues, if any, which do not exceed the following:

i. Very low income households: 50% of area median income, adjusted for assumed household size based on unit size, multiplied by 30%.

ii. Lower income households: 70% of area median income, adjusted for assumed household size based on unit size, multiplied by 30%.

iii. Moderate income households: 110% of area median income, adjusted for assumed household size based on unit size, multiplied by 35%.

On an annual basis, the City shall make available copies of the U.S. Department of Housing and Urban Development household income limits applicable to owner-occupied affordable units subject to this chapter and may determine an inflation factor to establish the affordable ownership cost limits applicable to an affordable unit.
"Affordable rent" means annual rent, including utilities and all fees for housing services, which does not exceed the following:

i. Very low income households: 50% of area median income, adjusted for assumed household size based on unit size, multiplied by 30%.

ii. Lower income households: 60% of area median income, adjusted for assumed household size based on unit size, multiplied by 30%.

On an annual basis, the City shall make available copies of the U.S. Department of Housing and Urban Development household income limits applicable to tenant-occupied affordable units subject to this chapter and may determine an inflation factor to establish the affordable rent limits applicable to an affordable unit.

"Affordable units" are dwelling units which are affordable to very low, lower, or moderate income households as defined by this chapter or by any federal or state housing program and are subject to rental, sale, or resale provisions to maintain affordability.

"Applicant" means a developer or applicant for a density bonus who seeks and agrees to construct a qualified housing development on or after the effective date of this chapter pursuant to Section 65915, subdivision (b), of the California Government Code.

"Area median income" means area median income for Riverside County as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, or a successor provision.

"Assumed household size based on unit size" means a household of one person in a studio apartment, two persons in a one bedroom unit, three persons in a two bedroom unit, and one additional person for each additional bedroom thereafter.

"Childcare facility" means a child day care facility other than a family day care home including, but not limited to, infant centers, preschools, extended day care facilities, and school age childcare centers.

"City" means the City of Banning, California, including the City’s Redevelopment Successor Agency and/or the City’s Housing Authority acting on behalf of the City.

"Common interest development" bears the same meaning as defined in Section 1351 of the California Civil Code.

"Density bonus" means a density increase over the otherwise allowable zoning maximum residential density on a site as of the date of application by the applicant to the City, granted pursuant to this chapter.
"Density bonus units" means residential units granted pursuant to this chapter which exceed the otherwise allowable zoning maximum residential density for a housing development.

"Density bonus housing agreement" means an agreement governing affordable and density bonus units as a condition of granting any density bonus, as further described in Section 15.60.130 of this chapter.

"Development standard" means any site or construction condition including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a housing development pursuant to any ordinance, general plan element, specific plan, or other local condition, law, policy, or regulation. A "site and construction condition" is a development condition or law that provides a specification for the physical development of a site and buildings on the site in a housing development.

"First approval" means the first of the following approvals to occur with respect to a housing development: specific plan, development agreement, planned development permit, tentative map, minor land division, use permit, design permit, building permit, or any other development entitlement permit listed in Titles 15, 16 and/or 17 of this code.

"Household income" means the combined adjusted gross household income for all adult persons living in a residential unit as calculated for the purpose of the Section 8 program under the United States Housing Act of 1937, as amended, or its successor provision.

"Very Low Income Household" shall have the same meaning as provided in California Health & Safety Code Section 50105.

"Lower Income Household" shall have the same meaning as provided in California Health & Safety Code Section 50079.5.

"Moderate Income Household" shall have the same meaning as provided in California Health & Safety Code Section 50093.

"Housing development" means one or more groups of projects for residential units in the planned development of the City. "Housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the California Civil Code, approved by the City and consisting of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4 of the Government Code, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. For purposes of this chapter,
"housing development" does not include projects for less than five (5) dwelling units.
"Incentives and concessions" are regulatory concessions as listed in Section 15.60.080 of this chapter.

"Market-rate unit" means a dwelling unit which is not an affordable unit or an inclusionary unit.

"Maximum residential density" means the maximum number of dwelling units permitted by the zoning ordinance and land use element of the General Plan or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the General Plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the General Plan, the General Plan density shall prevail. The maximum allowable density is based on the date an application for a housing development is deemed complete. This definition is used to calculate a density bonus pursuant to this chapter.

"Senior citizen housing development" means senior citizen housing as defined in Section 51.3 (a housing development developed, substantially rehabilitated, or substantially renovated for senior citizens that has at least 35 dwelling units) and Section 51.12 of the California Civil Code, or a mobile home park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

"Specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identifiable, written public health or safety standards, policies, or conditions as they existed on the date that the application for the housing development was deemed complete. Mere inconsistency with the zoning ordinance or General Plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

Section 15.60.030 - Density Bonuses for Affordable and Senior Citizen Housing.

A. Very Low and Lower Income Housing and Senior Citizen Housing. Upon written request to the City, an applicant for a housing development is eligible for one density bonus of twenty percent (20%) over the maximum residential density (except in the case of senior citizen housing, as provided below), provided that the applicant agrees to construct the housing development in accordance with one of the following criteria:

1. Five percent (5%) of the total dwelling units, excluding any units permitted by the density bonus, are provided at affordable rent or ownership costs to very low income households; or
2. Ten percent (10%) of the total dwelling units, excluding any units permitted by the density bonus, are provided at affordable rent or ownership costs to lower income households; or

3. A senior citizen housing development. For senior citizen housing developments, the density bonus shall be twenty percent (20%) of the number of senior housing units provided.

B. Moderate Income Housing. Upon written request to the City, an applicant for a housing development is eligible for one density bonus of five percent (5%) over the maximum residential density if the applicant agrees to construct the housing development in accordance with all of the following criteria:

1. At least ten percent (10%) of the total dwelling units, excluding any units permitted by the density bonus, are provided at affordable ownership costs to moderate income households; and

2. The housing development is a common interest project as defined by Section 1351 of the California Civil Code; and

3. All of the dwelling units in the housing development are offered for sale to the public.

C. Higher Density Bonus for Greater Contribution of Affordable Units. Upon written request to the City, an applicant for a housing development that is eligible for a density bonus based upon the contribution of affordable units, may receive a higher amount of density bonus if the percentage of very low, lower, and moderate income housing units exceeds the base percentage established in subsections (A) or (B) above, as follows:

1. Very low income units - For each one percent (1%) increase above five percent (5%) in affordable units for very low income households, the density bonus shall be increased by two and one-half percent (2.5%) up to a maximum of thirty-five percent (35%), as follows:

<table>
<thead>
<tr>
<th>Percentage Very Low Income Units</th>
<th>Percentage Density Bonus</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>6</td>
<td>22.5</td>
</tr>
<tr>
<td>7</td>
<td>25</td>
</tr>
<tr>
<td>8</td>
<td>27.5</td>
</tr>
<tr>
<td>9</td>
<td>30</td>
</tr>
<tr>
<td>10</td>
<td>32.5</td>
</tr>
<tr>
<td>11</td>
<td>35</td>
</tr>
</tbody>
</table>

2. Lower income units - For each one percent (1%) increase above ten percent (10%) in affordable units for lower income households, the
density bonus shall be increased by one and one-half percent (1.5%) up to a maximum of thirty-five percent (35%), as follows:

<table>
<thead>
<tr>
<th>Percentage Low Income Units</th>
<th>Percentage Density Bonus</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>11</td>
<td>21.5</td>
</tr>
<tr>
<td>12</td>
<td>23</td>
</tr>
<tr>
<td>13</td>
<td>24.5</td>
</tr>
<tr>
<td>14</td>
<td>26</td>
</tr>
<tr>
<td>15</td>
<td>27.5</td>
</tr>
<tr>
<td>17</td>
<td>30.5</td>
</tr>
<tr>
<td>18</td>
<td>32</td>
</tr>
<tr>
<td>19</td>
<td>33.5</td>
</tr>
<tr>
<td>20</td>
<td>35</td>
</tr>
</tbody>
</table>

3. Moderate income ownership units - For each one percent (1%) increase above ten percent (10%) in affordable units offered for sale to moderate income households, the density bonus shall be increased by one percent (1%) up to a maximum of thirty-five percent (35%), as follows:

<table>
<thead>
<tr>
<th>Percentage Moderate Income Units</th>
<th>Percentage Density Bonus</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td>12</td>
<td>7</td>
</tr>
<tr>
<td>13</td>
<td>8</td>
</tr>
<tr>
<td>14</td>
<td>9</td>
</tr>
<tr>
<td>15</td>
<td>10</td>
</tr>
<tr>
<td>16</td>
<td>11</td>
</tr>
<tr>
<td>17</td>
<td>12</td>
</tr>
<tr>
<td>18</td>
<td>13</td>
</tr>
<tr>
<td>19</td>
<td>14</td>
</tr>
<tr>
<td>20</td>
<td>15</td>
</tr>
<tr>
<td>21</td>
<td>16</td>
</tr>
<tr>
<td>22</td>
<td>17</td>
</tr>
<tr>
<td>23</td>
<td>18</td>
</tr>
<tr>
<td>24</td>
<td>19</td>
</tr>
<tr>
<td>25</td>
<td>20</td>
</tr>
<tr>
<td>26</td>
<td>21</td>
</tr>
<tr>
<td>27</td>
<td>22</td>
</tr>
<tr>
<td>28</td>
<td>23</td>
</tr>
<tr>
<td>29</td>
<td>24</td>
</tr>
<tr>
<td>30</td>
<td>25</td>
</tr>
<tr>
<td>31</td>
<td>26</td>
</tr>
<tr>
<td>32</td>
<td>27</td>
</tr>
<tr>
<td>33</td>
<td>28</td>
</tr>
</tbody>
</table>
D. Continued Affordability. Affordable units qualifying a housing development for a density bonus shall remain affordable as follows:

1. Very low income and lower income household units shall remain affordable to the designated income group for a minimum of thirty (30) years, or for a longer period of time if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program applicable to the dwelling units.

2. An applicant shall agree to, and the City shall ensure, that the initial occupant of moderate-income units that are directly related to the receipt of the density bonus in a common interest development, are persons and families of moderate income and that the units are offered at an affordable housing cost. The local government shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following shall apply to the equity-sharing agreement:

   a. Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller’s proportionate share of appreciation. The City shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes that promote homeownership as described in subdivision (e) of Section 33334.2 of the California Health and Safety Code that promote homeownership.

   b. For purposes of this subdivision, the City’s initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

   c. For purposes of this subdivision, the City’s proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

3. The resale price of any owner-occupied affordable unit shall not exceed the affordable ownership costs with the following exceptions: (i)
customary closing costs and costs of sale; or (ii) costs of real estate commissions paid by the seller if a licensed real estate salesperson is employed; or (iii) consideration of permanent capital improvements installed by the seller.

5. These provisions for continued affordability shall be a provision of the density bonus housing agreement required by Section 15.60.130 hereof.

E. Specification of Basis for Density Bonus. Each applicant who requests a density bonus pursuant to this section, shall elect whether the bonus will be awarded on the basis of subsection (A)(1), (A)(2), (A)(3) or subsection (B) of this section. Each housing development is entitled to only one density bonus, which may be selected based on the percentage of either very low income affordable housing units, lower-income affordable housing units or moderate-income affordable housing units, or the development’s status as a senior citizen housing development. Density bonuses from more than one of these categories may not be combined.

Section 15.60.040 - Additional Density Bonus for Donations of Land.

A. Upon written request, when an applicant for a tentative map, subdivision map, parcel map, or other residential development approval qualified for a density bonus pursuant to Section 15.60.030 also donates land to the City in accordance with this section, the applicant shall be entitled to an additional density bonus. Applicants donating land to the City shall be eligible for an additional fifteen percent (15%) density bonus at the site of the housing development if the donated land is suitable for the construction of very low income units equaling at least ten percent (10%) of the market-rate units being constructed for the project. The density bonus provided pursuant to this section shall be in addition to any density bonus granted pursuant to Section 15.60.030, up to a maximum combined density bonus of thirty-five percent (35%).

B. To qualify for the additional density bonus described in subsection (A) of this section, the donation of land must meet all of the following criteria:

1. The tentative map, subdivision map, parcel map, or other residential development must otherwise be subject to a density bonus pursuant to Section 15.60.030; and

2. The land must be transferred no later than the date of the approval of the final subdivision map, parcel map, or housing development application; and

3. The developable acreage and zoning classification of the land being transferred must be sufficient to permit construction of dwelling units affordable to very low income households in an amount not less than ten percent (10%) of the total number of market rate dwelling units in the proposed
development (i.e., the proposed development before the addition of any density bonus); and

4. The donated land is at least one acre in size or is large enough to permit development of at least forty (40) units, has the appropriate General Plan land use designation, has the appropriate zoning and development standards for affordable housing and, at the time of project approval is, or at the time of construction will be, served by adequate public facilities and infrastructure; and

5. No later than the date of approval of the final map, parcel map, or other development application for the housing development, the donated land must have all of the applicable permits and approvals (other than building permits) necessary for the development of the very low income housing units on the donated land, except that the City may subject the proposed housing development to subsequent design review to the extent authorized by California Government Code Section 65583.2 subsection (i) if the design is not reviewed by the City prior to the time of transfer; and

6. The donated land is subject to a deed restriction ensuring continued affordability of the very low income units consistent with Section 15.60.030(D), which deed restriction shall be recorded upon the donated property at the time of its transfer; and

7. The land will be transferred to the City or to a housing developer approved by the City. The City reserves the right to require the applicant to identify a developer and to require that the land be transferred to that developer; and

8. The land is within the boundary of the proposed housing development or within one-quarter mile of the boundary of the proposed housing development; and

9. No later than the date of approval of the final map, parcel map, or other development application for the housing development, a proposed source of funding for the construction of the very low income units shall be identified.

C. Additional Density Bonus Based on Greater Suitability of Land for Very Low Income Housing. For each one percent (1%) increase above the minimum ten percent (10%) in the number of very low income housing units that can be accommodated on the donated land, the maximum density bonus shall be increased by one percent (1%), up to a maximum of thirty-five percent (35%), as follows:
### Table

<table>
<thead>
<tr>
<th>Percentage of Very Low Income Units That Can Be Accommodated on Donated Land</th>
<th>Percentage of Additional Density Bonus</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>11</td>
<td>16</td>
</tr>
<tr>
<td>12</td>
<td>17</td>
</tr>
<tr>
<td>13</td>
<td>18</td>
</tr>
<tr>
<td>14</td>
<td>19</td>
</tr>
<tr>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>16</td>
<td>21</td>
</tr>
<tr>
<td>17</td>
<td>22</td>
</tr>
<tr>
<td>18</td>
<td>23</td>
</tr>
<tr>
<td>19</td>
<td>24</td>
</tr>
<tr>
<td>20</td>
<td>25</td>
</tr>
<tr>
<td>21</td>
<td>26</td>
</tr>
<tr>
<td>22</td>
<td>27</td>
</tr>
<tr>
<td>23</td>
<td>28</td>
</tr>
<tr>
<td>24</td>
<td>29</td>
</tr>
<tr>
<td>25</td>
<td>30</td>
</tr>
<tr>
<td>26</td>
<td>31</td>
</tr>
<tr>
<td>27</td>
<td>32</td>
</tr>
<tr>
<td>28</td>
<td>33</td>
</tr>
<tr>
<td>29</td>
<td>34</td>
</tr>
<tr>
<td>30</td>
<td>35</td>
</tr>
</tbody>
</table>

### Section 15.60.050 - Density Bonus & Incentives for Condominium Conversions.

A. An applicant for a conversion of existing rental apartments to condominiums is eligible for either a density bonus or other incentives of equivalent financial value, at the option of the City, if the applicant agrees to provide: (i) at least thirty-three percent (33%) of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or (ii) at least fifteen percent (15%) of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and (iii) the applicant agrees to pay for the reasonably necessary administrative costs incurred by the City pursuant to this section.

B. Condominium conversions qualified under subsection (A), above, may receive one of the following, at the City’s option:

1. A flat density bonus of twenty-five percent (25%) to be provided within the existing structure or structures proposed for conversion, excepting that a condominium conversion is ineligible for this bonus if the apartments to be converted originally received a density bonus or incentives
pursuant to any other provisions of this chapter or pursuant to California Government Code Section 65915. Qualified applicants may choose to implement a lower density bonus.

2. Incentives of equivalent financial value in the form of a reduction or waiver of requirements or fees which the City might otherwise apply as conditions of conversion approval. "Other incentives of equivalent financial value" shall not be construed to require the City to provide cash transfer payments or other monetary compensation to the condominium conversion project or its applicant.

C. The City reserves the right to place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value pursuant to this section as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

D. Condominium conversions are eligible only for the granting of a density bonus or incentive of equivalent value pursuant to this section, which bonus or incentive may not be granted in addition to, or combined with, any other incentives, concessions, density bonuses or waivers and reductions of development standards pursuant other sections of this chapter. Nothing in this section shall be construed to require the City to approve a proposal to convert rental apartments into condominiums.

Section 15.60.060 - Density Bonus & Concessions/Incentives for Childcare Facilities.

A. A housing development that is eligible for a density bonus pursuant to Section 15.60.030 which includes a childcare facility qualified under this section is also eligible for either of the following, at the option of the City, if requested in writing by the applicant:

1. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility; or

2. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

B. A childcare facility will only qualify the housing development for an additional density bonus or incentive or concession if it is (i) located on the premises of, as part of, or adjacent to the housing development, and (ii) the housing development is eligible for a density bonus pursuant to Section
15.60.030. As a condition of approving the additional density bonus for the housing development, the childcare facility must meet all of the following criteria:

1. The childcare facility shall be used exclusively for childcare for a period of time that is as long as or longer than the period of time during which the affordable units are required to remain affordable as stated in deed restrictions and pursuant to Section 15.60.030(D); and

2. Of the children who attend the child care facility, the percentage of children of very low income households, lower income households, or moderate income households shall be equal to or greater than the percentage of dwelling units in that housing development that are proposed to be affordable to very low income households, lower income households, or moderate income households pursuant to Section 15.60.030.

C. Notwithstanding any requirement of this section, the City shall not be required to provide a density bonus or concession or incentive for a childcare facility if it makes a written finding, based upon substantial evidence, that the community already has adequate childcare facilities.

Section 15.60.070 - General Provisions Governing Density Bonus Calculations.

A. For the purposes of any provisions in this chapter, an applicant may elect to accept a lesser percentage of density bonus than that to which the housing development is eligible.

B. When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded up to the next larger whole number.

C. For the purpose of calculating a density bonus, the dwelling units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the affordable units are located.

D. For the purposes of this chapter, the term "total units" or "total dwelling units" in a housing development does not include those units added by any density bonus.

E. Regardless of the number or extent of affordable units, senior housing, land dedication, childcare facilities or other qualifications for a density bonus provided in any single housing development, no housing development may be entitled to a total density bonus of more than thirty-five percent (35%).
TABLE 1: Density Bonus Summary

<table>
<thead>
<tr>
<th>Types of Affordable Units Providing Eligibility for a Density Bonus</th>
<th>Minimum %</th>
<th>Bonus Granted</th>
<th>Additional Bonus for Each 1% Increase in Affordable Units</th>
<th>% Affordable Units Required for Maximum 35% Bonus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affordable Housing</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Very low income</td>
<td>5%</td>
<td>20%</td>
<td>2.5%</td>
<td>11%</td>
</tr>
<tr>
<td>- Lower income</td>
<td>10%</td>
<td>20%</td>
<td>1.5%</td>
<td>20%</td>
</tr>
<tr>
<td>- Moderate income (ownership units only)</td>
<td>10%</td>
<td>5%</td>
<td>1%</td>
<td>40%</td>
</tr>
<tr>
<td>Senior citizen housing</td>
<td>Qualified senior citizen housing development</td>
<td>20% of the senior citizen housing units</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Land donation for very low income housing</td>
<td>Land donated can accommodate 10% of market rate units, plus housing development qualifies for density bonus as an affordable or senior project.</td>
<td>15%</td>
<td>1%</td>
<td>30% of market-rate units (assuming housing development provides 5% very low income units)</td>
</tr>
<tr>
<td>Condominium Conversion</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Lower income</td>
<td>15%</td>
<td>25%(1)</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>- Low/Mod income</td>
<td>33%</td>
<td>25%(1)</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Child care facility</td>
<td>Housing development qualifies for density bonus as an affordable or senior project.</td>
<td>Sq. ft. in child care facility (1)</td>
<td>--</td>
<td>--</td>
</tr>
</tbody>
</table>

Notes:
(1) Maximum of 25% bonus for condominium conversions, or an incentive of equal value, at the city’s option.

Section 15.60.080 - Incentives and Concessions.

A. Definition of a Qualified Concession or Incentive. An applicant for a density bonus pursuant to Section 15.60.030 may also submit to the City a written proposal for specific incentives or concessions as provided in this section. The applicant may also request a meeting with the City’s city manager or his/her designee to discuss such proposal. For purposes of this chapter, concessions and incentives include any of the following:

1. Reductions in site development standards or modifications of zoning requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health & Safety Code. These include, without
limitation, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required. In order to qualify as a "concession or incentive," the City must be able to find that the requested reductions in site development standards result in identifiable, financially sufficient, and actual cost reductions; or

2. Approval of mixed use zoning in conjunction with the housing development if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial or other land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located; or

3. Other regulatory incentives or concessions proposed by the applicant or the City, so long as the City can find that such proposals result in identifiable, financially sufficient, and actual cost reductions.

B. Findings to Deny Concession or Incentive. The City shall grant the concession or incentive requested by the applicant unless the City makes a written finding, based upon substantial evidence, of any of the following:

1. The concession or incentive is not required in order to provide for affordable housing costs or for affordable rents for the targeted units to be set as specified in Section 15.60.030(D); or

2. The concession or incentive would have a specific adverse impact; or

3. The concession or incentive would be contrary to State or Federal law.

C. Number of Concessions or Incentives. If all other provisions of this section are satisfied, an applicant will be eligible for the following number of incentives and concessions:

1. One incentive or concession for housing developments where at least five percent (5%) of the total units are for very low income households, at least ten percent (10%) of the total units are for lower income households, or at least ten percent (10%) of the total units in a common interest development are sold to moderate income households; or

2. Two incentives or concessions for housing developments where at least ten percent (10%) of the total units are for very low income households, at least twenty percent (20%) of the total units are for lower income households, or at least twenty percent (20%) of the total units in a common interest development are sold to moderate income households.
3. Three incentives or concessions for housing developments where at least fifteen percent (15%) of the total units are for very low income households, at least thirty percent (30%) of the total units are for lower income households, or at least thirty percent (30%) of the total units in a common interest development are sold to moderate income households.

<table>
<thead>
<tr>
<th>TABLE 2: Incentives and Concessions Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pursuant to State Density Bonus</strong></td>
</tr>
<tr>
<td><strong>Affordable Housing</strong></td>
</tr>
<tr>
<td>- Very low income</td>
</tr>
<tr>
<td>- Lower income</td>
</tr>
<tr>
<td>- Moderate income (ownership units only)</td>
</tr>
<tr>
<td><strong>Childcare Facility</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>Maximum Incentive(s)/Concession(s)</strong></td>
</tr>
<tr>
<td><strong>(1)(2)(3)</strong></td>
</tr>
<tr>
<td>1</td>
</tr>
</tbody>
</table>

Notes:
(1) An incentive or concession may be requested only if an application is also made for a density bonus.
(2) Incentives or concessions may be selected from only one category (very low, lower, or moderate).
(3) No incentives or concessions are available for land donation.

D. This section does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly-owned land, by the City or the waiver of fees or dedication requirements. Nor does any provision of this section require the City to grant an incentive or concession found to have a specific adverse impact.

E. The granting of a concession or incentive shall not be interpreted, in and of itself, to require a General Plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

**Section 15.60.090 - Waivers & Modifications of Development Standards.**

A. Applicants granted a density bonus pursuant to Section 15.60.030 may, by written proposal, seek a waiver, modification or reduction of development standards that would otherwise have the effect of physically precluding the construction of the housing development at the densities or with the concessions or incentives permitted pursuant to this chapter. The applicant may also request a meeting with the City to discuss such request for waivers and modifications.

B. To obtain a waiver or modification of development standards, the applicant shall show that the development standards will have the effect of
physically precluding the construction of a housing development meeting the criteria of Section 15.60.030(A) and (B) at the densities or with the concessions or incentives permitted by this chapter.

C. A proposal for the waiver or reduction of development standards pursuant to this section shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to Section 15.60.080.

D. The City may deny a request for any waiver, modification or reduction of development standards if the waiver, modification or reduction would have a specific adverse impact.

Section 15.60.100 - Parking Incentives.

Upon the written request of the applicant for a housing development meeting the criteria for a density bonus under Section 15.60.030, the City shall not require a vehicular parking ratio that exceeds the following:

1. Zero to one-bedroom units: one on-site parking space.
2. Two to three-bedroom units: two on-site parking spaces.
3. Four and more bedroom units: two and one-half parking spaces.

Guest parking and handicapped parking shall be included within the maximum number of spaces that may be required. If the total number of parking spaces required for a housing development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this section, a housing development may provide on-site parking through tandem parking or uncovered parking, but not through on-street parking. For purposes of this chapter, the parking ratios set forth in this section shall be deemed a concession or incentive available to the applicant under Section 15.60.080.

Section 15.60.110 - Standards for Density Bonus Housing Developments.

A. Affordable units qualifying a housing development for a density bonus shall be reasonably dispersed throughout the housing development and compatible with the design of market-rate units in terms of appearance, materials, and finished quality. The applicant may reduce the interior amenities and square footage of inclusionary units, provided all units conform to all other requirements of this code.

B. For developments with multiple market-rate units containing differing numbers of bedrooms, affordable units qualifying as a housing development for a density bonus shall be representative of the market-rate unit mix.
C. All building permits for affordable units qualifying a housing development for a density bonus shall be issued concurrently with, or prior to, issuance of building permits for the market rate units, and the affordable units shall be constructed concurrently with, or prior to, construction of the market rate units. Occupancy permits and final inspections for affordable units qualifying a housing development for a density bonus shall be approved concurrently with, or prior to, approval of occupancy permits and final inspections for the market rate units.

Section 15.60.120 - Application Requirements.

A. A written application for a density bonus, incentive, concession, waiver, or modification pursuant to this chapter shall be submitted with the first application for approval of a housing development and processed concurrently with all other applications required for the housing development. The application shall be submitted on the form prescribed by the City’s Director of Community Development pursuant to Chapter 17.48 of this code and shall additionally include at least the following information:

1. Site plan showing total number of units, number and location of affordable units, and number and location of proposed density bonus units. The site plan shall describe the size, in square footage, of all affordable units and density bonus units.

2. A marketing plan that describes how the applicant will inform the public and those within the appropriate income groups of the availability of affordable units.

3. The location, structure (attached, semi-attached, or detached), proposed tenure (for sale or rental), and size of the proposed market-rate units, any commercial space, density bonus units, and/or affordable units.

4. Level of affordability proposed for each affordable housing unit and proposals for ensuring affordability.

5. Description of any requested incentives, concessions, waivers or modifications of development standards, or modified parking standards. The application shall include evidence that the requested incentives and concessions are required for the provision of affordable housing costs and/or affordable rents, as well as, evidence relating to any other factual findings required under Section 15.60.050.

6. If a density bonus or concession is requested in connection with a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings included in Section 15.60.080 can be made.
7. If a density bonus or concession/incentive is requested for a childcare facility, the application shall show the location and square footage of the childcare facilities and provide evidence that each of the findings included Section 15.60.090 can be made.

8. For phased projects, a phasing plan that provides for the timely development of the number of affordable units proportionate to each proposed phase of development.

9. Any other information reasonably requested by the Planning Commission to assist with evaluation of the application.

B. An application for a density bonus, incentive or concession pursuant to this chapter shall be considered by and acted upon by the approval body with authority to approve the housing development (generally the City’s Planning Commission) and subject to the same administrative appeal procedure, if any, as more particularly described in Chapter 17.68 of this zoning code. In accordance with State law, neither the granting of a concession, incentive, waiver, or modification nor the granting of a density bonus shall be interpreted, in and of itself, to require a General Plan amendment, zoning change, variance, or other discretionary approval. Provisions of this code governing standards of design review and/or special use permits that are more restrictive than, or contrary to, the provisions of this chapter shall be inapplicable to an application for density bonus.

C. For housing developments requesting a waiver, modification or reduction of a development standard, an application pursuant to this subsection shall be heard in conjunction with the application for density bonus in accordance with Chapter 17.68 of this zoning code. A public hearing shall be held by the Planning Commission and the Commission shall issue a determination. Pursuant to Government Code Section 65915, the Planning Commission shall approve the requested waiver/modification or reduction of development standards, unless one of the following conditions applies:

1. The development standards subject to the waiver/modification do not have the effect of physically precluding the construction of the housing development at the densities or with the concessions or incentives permitted pursuant to this chapter.

2. The waiver/modification will have a specific adverse impact.

D. The decision of the City Planning Commission may be appealed to the City Council in accordance with Chapter 17.68. Notice of any City determination pursuant to this section shall be provided to the same extent as required for the underlying development approval.

Section 15.60.130 - Density Bonus Housing Agreements
A. In General. As a condition to approval of any density bonus pursuant to this chapter, the applicant shall agree to enter into a density bonus housing agreement with the City, which agreement shall be binding upon the applicant and all successors in interest. The form of the density bonus housing agreement will vary, depending on the manner in which the provisions of this chapter are satisfied for a particular development. The agreement shall be recorded as a restriction on the parcel or parcels on which the affordable units and the density bonus units will be constructed. The approval and recordation of the agreement shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The agreement must include, at minimum, all of the information required for the initial application as set forth in Section 15.60.120(A).

B. Density Bonus Housing Agreements for Ownership Units. In the case of housing developments consisting of ownership units, the density bonus housing agreement must provide the following additional conditions governing the sale and use of affordable units during the applicable affordability restriction period:

1. Affordable units shall be sold or resold only to very low income households, lower income households, or moderate income households in a common interest development, at an affordable ownership cost as defined by this chapter.

2. Affordable units shall be owner-occupied by very low or lower income households, or by moderate income households within a common interest development.

3. Any conditions as necessary or directed by the City Council (or other such governing body in the case of the Redevelopment Successor Agency or Housing Authority) for the subordination or prioritization of liens or mortgages upon the parcel underlying the owner-occupied affordable unit(s).

4. The purchaser of each affordable unit shall execute a deed instrument approved by the City, which instrument shall restrict the sale of the affordable unit in accordance with this chapter during the applicable affordability restriction period. Such instrument shall be recorded against the parcel containing the affordable unit and shall contain such provisions as the City may require to ensure continued compliance with this chapter and with Government Code Section 65915. With respect to moderate income affordable units, the instrument or agreement shall provide for equity-sharing as set forth in Government Code Section 65915. The deed restrictions required for affordable units shall specify that the title to the subject property shall only be transferred with prior written approval by the City.
5. Any additional obligations relevant to the compliance with this chapter.

C. Density Bonus Housing Agreements for Rental Units. In the case of housing developments consisting of rental units, the density bonus housing agreement must provide the following additional conditions governing the use of affordable units during the affordability restriction period:

1. Specific property management procedures for qualifying and documenting tenant income eligibility, establishing affordable rent and maintaining affordable units for qualified tenants.

2. Provisions requiring owners or managers of the housing development to verify household incomes for all tenants in affordable units and maintain books and records to demonstrate compliance with this chapter.

3. Provisions requiring owners or managers of the housing development to submit an annual report to the City, which includes the name(s), address, and income of each household occupying affordable units, and which identifies the bedroom size and monthly rent or cost of each affordable unit.

4. Provisions describing the amount of, and timing for payment of, administrative fees to be paid to the City for the on-going compliance monitoring of the provisions of this chapter pursuant to Section 15.60.140 below.

5. Any conditions as necessary or directed by the City Council (or other such governing body in the case of the Redevelopment Successor Agency or Housing Authority) for the subordination or prioritization of liens or mortgages upon the parcel underlying the tenant-occupied affordable units.

6. The property owner of each for-rent housing development containing affordable units shall execute a deed instrument approved by the City, which instrument shall restrict the leasing of the affordable unit in accordance with this chapter during the applicable affordability restriction period. Such instrument shall be recorded against the parcel containing the affordable units and shall include the provisions of this ordinance and shall provide, at a minimum, each of the following provisions: (a) The affordable units shall be leased to and occupied by eligible households; (b) The affordable units shall be leased at rent levels affordable to eligible households for the full duration of the affordability period; (c) Subleasing of affordable units shall not be permitted without the express written consent of the City; and (d) Title to the subject property shall only be transferred with prior written approval by the City.

7. Any additional obligations relevant to the compliance with this chapter.
Section 15.60.140 - Administrative Fee.

An administrative fee shall be charged to the applicant for City review of all materials submitted in accordance with this chapter and for on-going enforcement of the provisions of this chapter. The fee amount shall be established by City Council resolution. Fees will be charged for staff time and materials associated with the following activities: development review process, agreement drafting, project marketing and lease-up, and estimated City-incurred costs of monitoring long-term compliance of the affordable units.

Section 15.60.150 - Violations of Affordable Housing Requirements.

In the event it is determined that rents in excess of those allowed by operation of this chapter have been charged to a tenant residing in a rental affordable unit, the City may take the appropriate legal action to recover, and the rental unit owner shall be obligated to pay to the tenant (or to the City in the event the tenant cannot be located), any excess rent charges.

In the event it is determined that a sales price in excess of that allowed by operation of this chapter has been charged to a household purchasing an owner-occupied affordable unit, the City may take the appropriate legal action to recover, and the affordable unit seller shall be obligated to pay to the purchaser (or to the City in the event the purchaser cannot be located), any excess sales costs.

Nothing in this Section 15.60.150 limits or waives any other remedies the City may have available to it in law or equity.

Section 15.60.160 - State Law Amendments.

This chapter implements the laws for density bonuses and other incentive and concessions available to qualified applicants under Government Code Sections 65915 through 65918. In the event these Government Code sections are amended, those amended provisions shall be incorporated into this chapter as if fully set forth herein. Should any inconsistencies exist between the amended State law and the provisions set forth in this chapter, the amended state law shall prevail."

SECTION 2. Section 17.08.070 is amended as follows:

“Section 17.08.070 Density Bonus. Refer to Chapter 5.60 of the Banning Zoning Code.”

SECTION 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or
unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The City Clerk shall certify to the passage and adoption of this ordinance, and shall make a minute of the passage and adoption thereof in the records of and the proceedings of the City Council at which 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) days after its final passage, the City Clerk shall cause it to be published in a newspaper of general circulation.

PASSED, APPROVED, AND ADOPTED this ____ day of __________, 2013.

____________________________________
Deborah Franklin, Mayor
City of Banning

ATTEST:

____________________________________
Marie A. Calderon
City Clerk of the City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

____________________________________
David Aleshire, City Attorney
Aleshire & Wynder, LLP
CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance 1461 was duly adopted at a regular meeting of the City Council of the City of Banning, California on the _____ day of ___________ 2013 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

__________________________
Marie A. Calderon
City Clerk of the City of Banning
DATE: February 6, 2013

TO: Planning Commission

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: ORDINANCE NO. 1462 - ZONING ORDINANCE AMENDMENT ADDING CHAPTER 17.42 TO THE BANNING ZONING CODE REGARDING REASONABLE ACCOMMODATIONS FOR DISABLED INDIVIDUALS

STAFF RECOMMENDATION: That the Planning Commission takes the following actions:

1. Adopt Class 1 (Existing Facilities) and Class 3 (New Construction or Conversion of Small Structures) Categorical Exemption in compliance with California Environmental Quality Act (CEQA) Guidelines; and

2. Adopt PC Resolution No. 2013-01 recommending to the City Council the approval of an ordinance amending Title 17 of the Banning Zoning Code regarding Reasonable Accommodations for Disabled Individuals.

BACKGROUND AND ANALYSIS: The Federal Fair Employment and Housing Act of 1988 and California’s Fair Employment and Housing Act (the “Fair Housing Laws”) impose an affirmative duty on local governments to include reasonable accommodations in their land use and zoning regulations and practices when such accommodation is necessary to afford individuals with disabilities an equal opportunity to housing.

The proposed Ordinance establishes a reasonable accommodation process allowing zoning and development standards to be modified or waived so that individuals with disabilities may safely and conveniently occupy their homes. Request for reasonable accommodations would be processed administratively and would not require a public hearing or noticing. It is anticipated that most requests would be for temporary improvements, such as access ramps; however, permanent improvements, such as room additions, may also be approved.

Examples of requests for reasonable accommodation that have occurred in California cities include:
<table>
<thead>
<tr>
<th>Examples of requests for reasonable Accommodation</th>
<th>Reason for Request</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front Yard Fence Height</td>
<td>• Ensure safety of a disabled child residing at a home</td>
</tr>
<tr>
<td>Residential Height Limits</td>
<td>• Allow residential elevator</td>
</tr>
<tr>
<td>Parking Requirements</td>
<td>• Accommodate the conversion of enclosed parking spaces in a garage into a residential unit for a disabled family member needing special care.</td>
</tr>
<tr>
<td></td>
<td>• Allow encroachment into a garage parking space in order to construct a residential elevator in a townhome.</td>
</tr>
<tr>
<td>Front, Rear or Side Setbacks</td>
<td>• Accommodate a wheelchair access ramp</td>
</tr>
<tr>
<td></td>
<td>• Allow an oversize garage to accommodate a wheelchair accessible vehicle (such as a van)</td>
</tr>
<tr>
<td></td>
<td>• Accommodate a ground level bedroom or bathroom for a disabled family member.</td>
</tr>
</tbody>
</table>

The proposed Ordinance would codify requirements of fair housing laws, insuring fairness and consistency in the implementation of the laws. The proposed Ordinance also would fulfill one of the implementation actions that is included in the current City’s Housing Element.

**FACT FINDINGS:** Section 17.116.50 of the Banning Zoning Ordinance requires that the findings be made prior to adopting the proposed amendment. The Planning Commission recommends that the City Council make the following findings for the adoption of Ordinance No. 1462.

1. The proposed amendment is consistent with the goals and policies of the General Plan.

   The proposed Zoning Ordinance Amendment (Ordinance No. 1462) is consistent with the General Plan in that the proposed Ordinance will implement the overall goal of the City’s General plan to “preserve the quality of life” for its residents and “to promote housing opportunities for all segments of the community.”

2. The proposed amendment is internally consistent with the Zoning Ordinance.

   The proposed amendment has been reviewed and evaluated against all of the Chapters of the Banning Zoning Ordinance and is determined that there is no internal conflicts and; thus the Ordinance is internally consistent with the current Zoning Ordinance.

3. That the City has independently reviewed and considered the requirements of the California Environmental Quality Act.

   City staff has reviewed the requirements of the California Environmental Quality Act. This Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) (the activity is covered by the general rule that CEQA

---

1 City of Banning General Plan, January 31, 2006, page II-1
2 City of Banning, proposed Housing Element, October 2009, page III-107
applies only to projects that have the potential for causing a significant effect on the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and because the ordinance is categorically exempt from CEQA in that any of the reasonable accommodations permitted under this Ordinance would fall within either the Class 1 (Existing Facilities) or Class 3 (New Construction or Conversion of Small Structures) exemptions provided under Sections 15301 and 15303 of the CEQA Guidelines.

PUBLIC COMMUNICATION:

The proposed project was advertised in the Record Gazette newspaper January 25, 2013. As of the date of this report, staff has not received any comments.

PREPARED BY:

Zai Abu Bakar
Community Development Director

PC Attachments:

1. Resolution No. 2013-01
2. Ordinance No. 1462
Attachment 1

(PC Resolution No. 2013-01)
RESOLUTION NO. 2013-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA RECOMMENDING APPROVAL TO THE CITY COUNCIL THE ADOPTION OF ORDINANCE NO. 1462, ZONING ORDINANCE AMENDMENT ADDING CHAPTER 17.42 TO THE BANNING ZONING CODE REGARDING REASONABLE ACCOMMODATIONS FOR DISABLED INDIVIDUALS

WHEREAS, The Federal Fair Employment and Housing Act of 1988 and California’s Fair Employment and Housing Act (the “Fair Housing Laws”) impose an affirmative duty on local governments to make reasonable accommodations in their land use and zoning regulations and practices when such accommodation is necessary to afford individuals with disabilities an equal opportunity to housing; and

WHEREAS, establishing a reasonable accommodation process will further the City’s compliance with the Fair Housing Laws and provide greater opportunities for the development of critically needed housing for individuals with disabilities; and

WHEREAS, establishing a reasonable accommodation process will further the City’s compliance with the Fair Housing Laws and provide greater opportunities for the development of critically needed housing for individuals with disabilities; and

WHEREAS, on February 6, 2013, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, Ordinance No. 1462; and,

WHEREAS, this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) (the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and because the Ordinance is categorically exempt from CEQA in that any of the reasonable accommodations permitted under this Ordinance would fall within either the Class 1 (Existing Facilities) or Class 3 (New Construction or Conversion of Small Structures) exemptions provided under Sections 15301 and 15303 of the CEQA Guidelines.

NOW THEREFORE, the Planning Commission of the City of Banning does hereby recommend that the City Council adopt Ordinance No. 1462.

PASSED, APPROVED AND ADOPTED this 6th day of February, 2013.

[Signature]
Harold Barsh, Chairman
Banning Planning Commission
CERTIFICATION:

I, Holly Stuart, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2013-01, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 6th day of February 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Holly Stuart, Recording Secretary
City of Banning, California
Attachment 2

(Ordinance 1462)
ORDINANCE NO. 1462

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADDING CHAPTER 17.42 TO THE BANNING ZONING CODE REGARDING REASONABLE ACCOMMODATIONS FOR DISABLED INDIVIDUALS

A. The Federal Fair Employment and Housing Act of 1988 and California’s Fair Employment and Housing Act (the “Fair Housing Laws”) impose an affirmative duty on local governments to make reasonable accommodations in their land use and zoning regulations and practices when such accommodation is necessary to afford individuals with disabilities an equal opportunity to housing.

B. Establishing a reasonable accommodation process will further the City’s compliance with the Fair Housing Laws and provide greater opportunities for the development of critically needed housing for individuals with disabilities.

C. Establishing a reasonable accommodation process will further the City’s compliance with the Fair Housing Laws and provide greater opportunities for the development of critically needed housing for individuals with disabilities.

D. This Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) (the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and because the Ordinance is categorically exempt from CEQA in that any of the reasonable accommodations permitted under this Ordinance would fall within either the Class 1 (Existing Facilities) or Class 3 (New Construction or Conversion of Small Structures) exemptions provided under Sections 15301 and 15303 of the CEQA Guidelines.

E. The proposed project was advertised in the Record Gazette newspaper January 25, 2013. As of the date of this report, staff has not received any comments.

F. The Planning Commission did, on the 6th of February 2013, hold a duly noticed public hearing as prescribed by law to consider the proposed addition of Chapter 17.42 to the Banning Zoning Code and voted to recommend the City Council approval of said request.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA:

SECTION 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

SECTION 2. Addition of Chapter 17.42 to Title 17 of the Zoning Code. Chapter 17.42 is hereby added to Title 17 of the Banning Zoning Code to read as follows:
Chapter 17.42 - REASONABLE ACCOMMODATIONS IN CITY HOUSING REGULATIONS AND DEVELOPMENT FOR DISABLED OR HANDICAPPED INDIVIDUALS

Sections:
17.42.010 - Purpose.
17.42.020 - Definitions.
17.42.030 - Requesting reasonable accommodation.
17.42.040 - Decision on application.
17.42.050 - Required findings.
17.42.060 - Appeals.
17.42.070 - Waiver of time periods.

17.42.010 - Purpose.

It is the purpose of this chapter, pursuant to Fair Housing Laws, to provide individuals with disabilities reasonable accommodation in the application of the City's land use, zoning, and building standards, regulations, policies, and procedures and to establish relevant criteria to be used to ensure equal access to housing. The purpose of this chapter is to provide a process for individuals with disabilities to make requests for, and be provided, reasonable accommodation, when reasonable accommodation is warranted based upon sufficient evidence, from the various city laws, rules, policies, practices and/or procedures of the City, including land use and zoning regulations.

17.42.020 – Applicability.

A. Any individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities may seek relief from any land use, zoning or building standard, regulation, policy or procedure found in Titles 15 or Title 17 of this code to ensure equal access to housing and to facilitate the development of housing for individuals with disabilities by requesting a reasonable accommodation in the manner prescribed in following Section 17.42.40.

B. The City shall waive land use, zoning, and building standards, regulations, policies, and procedural requirements when such waiver is necessary to eliminate barriers to housing opportunities. Such waivers for reasonable accommodation may include, without limitation, a household’s reasonable waiver of residential fence or structural height restrictions to accommodate specific disabilities, reasonable waivers of building size or set-back restrictions to accommodate necessary disability accommodations such as wheelchair ramps or expanded parking spaces.

C. The reasonable accommodation rules set forth in this chapter apply to proposals to modify existing structures as well as new development, as when a household
applies to the City in order to modify their existing residence as necessary to reasonably accommodate a specific disability, subject to the findings and requirements of this chapter. Proposals to modify structures, especially single-family homes, should respect existing development patterns if reasonably possible.

17.42.030 - Definitions.

A. "Applicant" means a person, business, or organization making a written request to the City for reasonable accommodation.

B. "City" means the City of Banning.


D. "Department" means the Community Development Department.

E. "Director" means the Director of Community Development.

F. "Disabled or Handicapped Person" means an individual with a qualifying disability under the Fair Housing Laws. Generally, any person with any mental or physical impairment, disorder or condition, which substantially limits one or more major life activities, including physical, mental and social activities and working. "Disabled or handicapped person" does not include impairments, disorders or conditions resulting from the current, illegal use of or addiction to a controlled substance, sexual behavior disorders, compulsive gambling, kleptomania, or pyromania.

G. "Fair Housing Laws" means the "Fair Housing Amendments Act of 1988" (42 U.S.C. § 3601, et seq.), including reasonable accommodation required by 42 U.S.C. § 3604 (f)(3)(B), and the "California Fair Employment and Housing Act" (California Government Code Section 12900, et seq.), including reasonable accommodation required specifically by California Government Code Sections 12927 (c)(1) and 12955 (l), and Civil Code § 54, as any of these statutory provisions now exist or may be amended from time to time by either legislative act or published judicial decisions.

H. "Reasonable Accommodation" means a modification or exception to the standards, regulations, policies and procedures contained in Title 15 or Title 17 of this code for the siting, development and use of housing or housing-related facilities, that would eliminate regulatory barriers and provide an individual with a disability equal opportunity for the use and enjoyment of housing of their choice, and that does not impose undue financial or administrative burdens on the City or require a fundamental or substantial alteration of the City’s planning and zoning program.

17.42.040 - Requesting reasonable accommodation.

A. In order to make specific housing available to an individual with a disability, a
disabled person or representative may request reasonable accommodation, pursuant to this chapter, relating to the application of various land use, zoning, or building laws, rules, policies, practices and/or procedures of the City.

B. If an individual or representative needs assistance in making a request for reasonable accommodation, or appealing a determination regarding reasonable accommodation, the department will endeavor to provide the assistance necessary to ensure that the process is accessible to the applicant or representative. The applicant may be represented at all stages of the proceeding by a person designated by the applicant as his or her representative.

C. A request for reasonable accommodation in laws, rules, policies, practices and/or procedures must be filed on an application form provided by the department, shall be signed by the owner of the property and submitted to the director, and shall include the following information:

1. The name, address and telephone number of the applicant;

2. The name, address and telephone number of the individual with a disability for whom the reasonable accommodation is being requested;

3. The name, address, and telephone number of the owner of the property for which the reasonable accommodation request is being made. If the applicant is someone other than the property owner, a letter of agency or authorization signed by the property owner consenting to the application being made is required;

4. The address and current use of the property for which the reasonable accommodation request is being made;

5. A description of how the subject property will be used by the disabled individual(s);

6. A description of the reasonable accommodation request and the specific land use, zoning or building standard, regulation, policy or procedure to be modified or waived;

7. The basis for the claim that the Fair Housing Laws applies to the individual(s) and evidence satisfactory to the City supporting the claim, which may include a letter from a medical doctor or other licensed health care professional, a handicapped license, or other appropriate evidence which establishes that the individual(s) needing the reasonable accommodation is disabled/handicapped pursuant to the Fair Housing Laws;

8. The specific reason the requested accommodation is necessary to make the particular housing unit reasonably accessible and available to the disabled individual(s);

9. Verification by the applicant that the property is the primary residence of the
person for whom reasonable accommodation is requested; and

10. A filing fee in an amount as determined from time to time by resolution of the City Council, but not to exceed the reasonable estimated costs to the City in processing the application.

17.42.050 - Decision on application.

A. The director may approve, conditionally approve, or deny an application for a reasonable accommodation for an existing use or a proposed new use that only requires a ministerial permit or approval. The director shall issue a written determination within thirty (30) days of the date of receipt of a completed application. The director may (1) grant the accommodation request in full, (2) grant the accommodation request subject to specified nondiscriminatory conditions that are consistent with the requested reasonable accommodation, or (3) deny the request. Notice of the director's determination shall be mailed first class to the applicant and adjacent property owners within three hundred (300) feet of the project boundary. The notice of the director's decision shall state the facts and evidence upon which the director's decision was based in connection with the findings stated in Section 17.42.060.

B. If the project for which the request for a reasonable accommodation is made requires a discretionary permit or approval, then the application for a reasonable accommodation will be heard at the same time as, and in conjunction with, the applicable discretionary permit or approval. The Planning Commission shall consider an application at the next reasonably available regular Planning Commission meeting that occurs after the application for reasonable accommodation is complete. The application for reasonable accommodation shall be heard as a public hearing item. At the conclusion of the public hearing and determination thereon by the Planning Commission, the director shall issue a written statement of the Planning Commission's determination within thirty (30) days. The Planning Commission may (1) grant the accommodation request, (2) grant the accommodation request subject to specified nondiscriminatory conditions that are consistent with the requested reasonable accommodation, or (3) deny the request. Notice of the Planning Commission's determination (which may be in the form of a resolution adopted by the commission) shall be mailed first class to the applicant and adjacent property owners within three hundred (300) feet of the project boundary. The notice of the Planning Commission's decision shall state the facts and evidence upon which the commission's decision was based in connection with the findings stated in Section 17.42.060.

C. If necessary to reach a determination on any request for reasonable accommodation, the director may request further information from the applicant after the applicant has submitted its initial application. Such request for additional information shall:

1. Be consistent with this chapter; and
2. Specify in detail what information is required; and

3. Request additional information only to the extent such information is reasonably necessary to render the findings required by this chapter.

In the event that a request for further information is made, the application will not be deemed “complete” until the applicant reasonably responds to the request with responsive information.

D. A reasonable accommodation that is granted pursuant to this chapter shall not require the approval of any variance as to the reasonable accommodation.

17.42.060 - Required findings.

The following findings must be made in order to approve any request for reasonable accommodation:

A. The housing, which is the subject of the request for reasonable accommodation, will be occupied as the primary residence by an individual protected under the fair housing laws.

B. The request for reasonable accommodation is necessary to make specific housing available to one or more disabled individuals protected under the Fair Housing Laws.

C. The requested reasonable accommodation will not impose an undue financial or administrative burden on the City. “Undue financial or administrative burden” is defined in the Fair Housing Laws.

D. The requested accommodation will not require a fundamental alteration of the zoning or building laws, policies and/or procedures of the City. “Fundamental alteration” is defined in the Fair Housing Laws.

E. The requested reasonable accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

17.42.070 - Conditions of Approval.

In granting a request for a reasonable accommodation, the director or Planning Commission, as applicable, may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required by Section 14.44.060, the Fair Housing Laws and the intent of this chapter. Such conditions may generally include, but are not limited to, the following restrictions:

A. The City’s general/standard conditions of approval applicable to all projects;

B. That the reasonable accommodation shall only be applicable to particular disabled individual(s); and/or
C. That the reasonable accommodation shall only be applicable to the specific use for which application is made.

17.42.080 - Appeals.

A. Director Decision. Any applicant who is dissatisfied by the decision made by the director on an application for a reasonable accommodation may appeal the director’s decision to the Planning Commission. The appeal must be filed via written notice detailing the grounds for appeal, such notice must be received by the director within fifteen (15) days of the mailing of the director’s decision. Upon the filing of a notice of appeal, the director will set the matter for a public hearing before the Planning Commission to occur not later than sixty (60) days from the date of filing. Notice of the appeal hearing will be given to the applicant by mail at least ten (10) days prior to the hearing. Any person who is dissatisfied by the decision of the Planning Commission may make a further appeal to the City Council in accordance with applicable procedures of Section 17.68.090 et seq. of this code. The Planning Commission’s decision will be final absent a timely appeal to the City council.

B. Planning Commission Decision. A decision of the Planning Commission on an application for a reasonable accommodation considered concurrently with another application for a discretionary approval is subject to the same appeal rights and procedures that apply to the other discretionary approval or pursuant to Section 17.68.090 et seq., as applicable.

17.42090 - Expiration, Revocation, Termination.

A. Expiration. Any reasonable accommodation approved under this chapter will expire within 12 months from the effective date of approval or at such alternative time specified as a condition of approval unless:

1. A building permit has been issued and construction has commenced;

2. A certificate of occupancy has been issued;

3. The use is established; or

4. A time extension has been granted.

B. Revocation.

1. Director Decisions. If the director was the last reviewing authority to grant a reasonable accommodation application, the director may revoke or modify such reasonable accommodation permit if the findings required in this section can be made with the support of substantial evidence.

2. Planning Commission and/or City Council Decisions. If the Planning Commission or City Council was the last reviewing authority to grant a reasonable accommodation application, the Planning Commission may revoke or modify such reasonable accommodation permit if the findings
required in this section can be made with the support of substantial evidence. The Commission shall hold a public hearing to revoke or modify a reasonable accommodation granted pursuant to the provisions of this chapter. At least ten (10) days prior to the hearing, notice shall be delivered in writing to the applicant and/or owner of the property for which the reasonable accommodation was granted. Notice shall be deemed delivered two (2) days after being mailed, first class postage paid, to the owner as shown on the current tax rolls of the County of Riverside, and/or the project applicant.

3. Required Findings. Any decision to modify or revoke a reasonable accommodation can be made only if at least one (1) of the following findings can be made with the support of substantial evidence:

   a) Circumstances have changed so that one or more of the findings contained in Section 17.42.060 can no longer be made;

   b) The reasonable accommodation was obtained by misinformation, misrepresentation or fraud; or

   c) One or more of the conditions of the reasonable accommodation have not been met.

4. Notice and Appeal. Written notice of any decision to revoke or modify a reasonable accommodation permit shall be mailed by first class mail to the owner as shown on the current tax rolls of the County of Riverside and/or the applicant. The determination may be appealed in accordance with Section 17.42.080.

C. Termination. If the individual with a disability who initially occupied the applicable dwelling ceases to reside at the premises, the reasonable accommodation will remain in effect only if the director determines that: (1) the modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with this code, or (2) the accommodation is necessary to give another disabled individual an equal opportunity to enjoy the dwelling. The director may request that any successor-in-interest to the property provide documentation that subsequent occupants are persons with disabilities. Failure to provide such documentation within ten (10) days of the date of a written request by the director will result in the termination of a previously-approved reasonable accommodation and the applicable premises must subsequently be made to conform to code.

17.42.100 - Waiver of time periods.

Notwithstanding any provisions in this chapter regarding the occurrence of any action within a specified period of time, the applicant may request additional time beyond that provided for in this chapter or may request a continuance regarding any decision or consideration by the City of the pending appeal. Extensions of time sought by applicants shall not be considered delay on the part of the City, shall not
constitute failure by the City to provide for prompt decisions on applications and
shall not be a violation of any required time period set forth in this chapter.”

SECTION 3. That, if any provision, section, subsection, sentence, clause, or phrase of this
Ordinance, or the application of same to any person or set of circumstances, is for any reason
held to be unconstitutional, void or invalid, the validity of the remaining portions of this
Ordinance or their application to other persons or sets of circumstances shall not be affected
thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof
or provision or regulation contained herein shall become inoperative or fail by reason of any
unconstitutionality, voidance or invalidity of any other portion hereof, and all provisions of this
Ordinance are declared to be severable for that purpose.

SECTION 4. The City Clerk is directed to cause this Ordinance to be published within 15 days
of its passage in a newspaper of general circulation published and circulated within the City of
Banning.

PASSED, APPROVED, AND ADOPTED this ___ day of __________, 2013.

______________________________
Deborah Franklin, Mayor
City of Banning

ATTEST:

______________________________
Marie A. Calderon
City Clerk of the City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:

______________________________
David Aleshire, City Attorney
Aleshire & Wynder, LLP
CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance 1462 was duly adopted at a regular meeting of the City Council of the City of Banning, California on the _____ day of __________ 2013 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

______________________________
Marie A. Calderon
City Clerk of the City of Banning