

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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September 17, 2021

Adam Rush, AICP
Community Development Director
City of Banning
99 E. Ramsey Street
Banning, CA 92220

Dear Adam Rush:

RE: Review of the City of Banning 6th Cycle (2021-2029) Draft Housing Element

Thank you for submitting the City Banning's (City) draft housing element received for review on July 22, 2021, along with revisions received on August 27, 2021. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a telephone conversation on August 20, 2021 with you, Mark De Manincor, and the City's consultant Emily Green.

The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes these revisions needed to comply with State Housing Element Law.

To remain on an eight-year planning cycle, the City must adopt its housing element within 120 calendar days from the statutory due date of October 15, 2021 for West Riverside Council of Governments (WRCOG) localities. If adopted after this date, Government Code section 65588, subdivision (e)(4), requires the housing element be revised every four years until adopting at least two consecutive revisions by the statutory deadline. For more information on housing element adoption requirements, please visit HCD's website at: http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb375_final100413.pdf.

Pursuant to Government Code section 65583.3, subdivision (b), the City must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance. Please note, upon adoption of the housing element, the City must submit an

electronic version of the sites inventory with its adopted housing element to sitesinventory@hcd.ca.gov.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: http://opr.ca.gov/docs/OPR_Appendix_C_final.pdf and http://opr.ca.gov/docs/Final_6.26.15.pdf.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City meets housing element requirements for these and other funding sources.

We are committed to assist the City of Banning in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Tristan Lanza, of our staff, at tristan.lanza@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" being more prominent than the last name "West".

Shannan West
Land Use & Planning Unit Chief

Enclosure

APPENDIX CITY OF BANNING

The following changes are necessary to bring the City of Banning housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml> and includes the Government Code addressing State Housing Element Law and other resources.

A. Review and Revision

Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)

The element must include an analysis of the cumulative effectiveness of programs in addressing the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female headed households, farmworkers, and persons experiencing homelessness).

B. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing (AFFH) in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction (Gov. Code, § 65583, subd. (c)(10)(A))*

Outreach: While the element included some information on public engagement and outreach efforts (Appx. C, pg. 2), to address outreach requirements of AB 686 (Chapter 958, Statutes of 2018), the element must describe meaningful, frequent, and ongoing public participation with the community including key stakeholders. The element should describe any specific outreach efforts to organizations that represent special needs populations or members of protected classes. The element could also describe targeted efforts to engage specific communities that are experiencing several fair housing issues.

Enforcement: While the element included a summary of fair housing complaints on a county-wide basis, the element needs to include information on fair housing complaints specific to the City and analyze those complaints for trends, patterns, and impact on protected classes. The element must also include an analysis of any findings, lawsuits, or judgements related to enforcement actions regarding fair housing. In addition, the element must discuss compliance with existing fair housing laws and regulations. For

more information and guidance on this analysis, please visit pages 28-30 of the HCD's AFFH guidance memo: [Affirmatively Furthering Fair Housing \(ca.gov\)](https://www.hcd.ca.gov/housing-element-guidance/AFFH-guidance-memo).

Access to Opportunity: The element provides analysis of patterns and trends related to access to economic, educational, and transportation opportunities. However, a complete analysis must include an analysis of access to environmental opportunity and identify local and regional trends and patterns. For guidance on this analysis, please refer to page 35 of the AFFH guidance memo.

Sites Inventory: The element must identify and analyze whether sites are located throughout the City affirmatively further fair housing. While the element does include an analysis on how sites improve or exacerbate segregation and integration and access to opportunity, sites must also be analyzed relative to disproportionate housing needs.

Local Data and Knowledge: The assessment of fair housing should include local data and knowledge that is included or reflected in regional, state, or nationwide data sources. Local data and knowledge is information obtained through community participation, consultation with stakeholders, and peoples lived experiences in your City and captures unique aspects about your community that is not usually reflective in state or federal data. For example, the City should review comments and feedback received from the public while updating the housing element and through other planning processes, including any formal comment letters.

Other Relevant Factors: The element must include information on other relevant factors. Other relevant factors include past changes in zoning and land use rules that have impacted segregation patterns; known past redlining activities; restrictive covenants; or any other discriminatory practices such as community opposition; lack of investment in certain communities; historical context and relevant demographics.

Fair Housing Issues: The element listed the City's fair housing issues (Table 14) as enhancing mobility strategies, encouraging development of affordable housing, improving place-based strategies, and protecting existing residents from displacement. However, these are the required program areas that needs to be addressed. Examples of fair housing issues include high concentrations of lower-income households, minority populations, and special needs populations living in areas with low access to opportunity, or specific neighborhoods and populations at higher risk of displacement. The element should be revised to identify fair housing issues, as a result of the, analysis and are unique to Banning.

Goals, Priorities, Metrics, and Milestones: Goals and actions must significantly seek to overcome contributing factors to fair housing issues. Table 14 includes a list of actions the City will take to address fair housing issues; however, these actions need to be incorporated into programs in the element, include definitive timelines, and milestones and metrics for evaluating progress on programs. Additionally, as a result of a complete analysis as well as the identification of fair housing issues, programs should be revised to facilitate meaningful change and address AFFH requirements.

2. *Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)*

Households by Tenure and Overcrowding: The element must quantify the number of households by tenure (renter and owner households). Additionally, while the element identifies the percentage of person living in overcrowded units, the element must quantify and analyze the number of households experiencing overcrowding by tenure.

3. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

The City has a regional housing needs allocation (RHNA) of 1,673 housing units, of which 510 units are for lower-income households. To address this need, the element relies on nonvacant sites, specific plans, and completing a rezoning program to address a shortfall of 510 units for lower-income households. To demonstrate the adequacy of these sites and strategies to accommodate the City's RHNA, the element must include complete analyses:

Progress in Meeting the RHNA: The element indicates that 32 units affordable to moderate-income households and 1,384 units for above moderate-income households are planned or approved (p.62). However, to count these units as progress towards RHNA, for each project listed, the element should clarify whether the project is pending approvals, already approved or pending building permits. Additionally, for projects that have been approved and received entitlements, the element should specify when those projects were approved and analyze the likelihood that they will be built during the planning period. Lastly, the element must describe the City's methodology for determining affordability for each of the projects. This can be done through evaluating proposed or actual sales prices, rents, and or other mechanism requiring affordability.

Realistic Capacity: The element states that realistic capacity on nonvacant sites will be 75% of the maximum density (p. 67). This assumption was based on development patterns, past applications, conversation with landowners, and development standards. However, the analysis needs to include specific information on these factors to support this assumption. The element can include a list of examples for past projects on nonvacant sites that met or exceeded 75 percent of the maximum density, summary of conversations with landowners, and a more thorough analysis of development patterns. In addition, the element identified nonvacant sites where the existing use is commercial. As part of analyzing realistic capacity for nonvacant sites, the analysis should consider the likelihood for residential development. The analysis can include discussing whether the current zoning is for residential, mixed-use or commercial, any performance standards requiring residential or commercial, incentives for residential development, past production trends.

Suitability of Nonvacant Sites: The element identifies majority of its moderate-income RHNA on nonvacant sites. The element also states that it considered certain factors to determine the likelihood for redevelopment including improvement to land value ratio, zoning, existing uses, FAR, and ownership patterns. However, the element should include additional information and analysis to demonstrate redevelopment potential. For example, the element should quantify the factors used and list the actual values for each of the sites to better relate to the overall analysis. Currently, the element categorizes the existing uses into generalized descriptions such as “commercial” or “residential”, however, to strengthen the analysis the element could consider providing more detailed information on the existing uses. For example, what type of commercial uses exist on these sites (e.g., grocery stores, shopping centers, gas stations, etc.,). Additionally, the element should also discuss whether the existing uses are operating, marginal, or discontinued or will be discontinued and describe if there are is an interest in redeveloping by owners or interested builders.

For additional information and sample analysis, see the *Building Blocks* at:

<http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml#analysis>.

Sites with Zoning for a Variety of Housing Types:

- **Emergency Shelters:** The element identifies the Airport Industrial (AI) zone for emergency shelters. However, the element must clarify if the AI zone permits emergency shelters without a conditional use permit or other discretionary action (Gov. Code, § 65583, subd. (a)(4).) In addition, the element stated that the AI zone does not have access to services or transportation and as a result is not suitable for an emergency shelter (p. 48). The element must include a program to identify new or additional zones that can permit emergency shelters without discretionary actions and are appropriate. For additional information, see the *Building Blocks* at http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb2_memo050708.pdf and the SB 2 Technical Assistance Memo at http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb2_memo050708.pdf.
 - **Manufactured Housing:** While the element allows manufactured homes in the Mobile Home Park (MHP) zoning designation by right and in the MDR and HDR zoning designations with a conditional use permit, the element must clarify whether manufactured homes that are built on a permanent foundation are allowed in the same manner and in the same zones as conventional or stick-built structures. Specifically, manufactured homes on a permanent structure should only be subject to the same development standards that a conventional single-family residential dwelling would be subject to.
4. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between*

receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584. The analysis shall also demonstrate local efforts to remove nongovernmental constraints that create a gap between the locality's planning for the development of housing for all income levels and the construction of that housing. (Gov. Code, § 65583, subd. (a)(6).)

Housing for Persons with Disabilities: The element currently details that residential care facilities serving seven or more persons are only permitted in the Medium-Density Residential (MDR) and High-Density Residential (HDR) zones with a conditional use permit (p. 44). This is a constraint, and the element should analyze the process as a potential constraint on housing for persons with disabilities and add or modify programs as appropriate to ensure zoning permits group homes objectively with approval certainty.

The element describes the County's procedure for requesting and granting reasonable accommodation to zoning and land use requirements for persons with disabilities and recognizes that the text of these findings may be subjective. The element must include a program to revise the procedure to remove constraints, including but not limited to findings that require determinations of neighborhood character and "sensitivity".

5. *Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)*

Persons with Developmental Disabilities: While the element contains a discussion on the importance of addressing person with developmental disabilities, the element must quantify the number of persons with developmental disabilities.

C. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (Gov. Code, § 65583, subd. (c).)*

To address the program requirements of Government Code section 65583, subdivision (c)(1-6), and to facilitate implementation, programs should include: (1) a description of the City's specific role in implementation; (2) definitive implementation timelines; (3)

objectives, quantified where appropriate; and (4) identification of responsible agencies and officials.

To have a beneficial impact in the planning period and address the goals of the housing element, all programs must be evaluated and revised with specific commitment and discrete timelines or specified dates. For example, many programs state “monitor”, “evaluate” and, “review” which may be appropriate for some actions but should also commit to completing an action that will have an actual impact on housing such as “amend”, “revise” or “establish”.

2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city’s or county’s share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding A3, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

Program 9 – Zoning Ordinance Monitoring: The element stated that the AI zone is not in proximity to services or transit and is therefore not appropriate zone to accommodate emergency shelters. This program commits to permit emergency shelters by-right in residential zones. However, this program should be revised to explicitly state that the City will amend its zoning code to identify a suitable zone that is in proximity to transit and services and emergency shelters can be permitted by-right. Additionally, the element stated that emergency shelters require a minimum spacing requirement of 300 feet (p. 100). However, this requirement should be a maximum of 300 feet, and the program should be revised to address this requirement.

3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Finding B4, the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the City may

need to revise or add programs and address and remove or mitigate any identified constraints.

D. Quantified Objectives

Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)

While the element does include quantified objectives (p. 114), the element must be revised to include quantified objectives for construction, rehabilitation and conservation/preservation for extremely low-income households.

E. Public Participation

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the Housing Element, and the element shall describe this effort. (Gov. Code, § 65583, subd.(c)(8).)

HCD understands the City made the housing element available to the public on July 14, 2021 without sufficient time for the public to comment prior to HCD submittal on July 22, 2021. By not providing an opportunity for the public to review and comment on a draft of the element in advance of submission, the City has not yet complied with statutory mandates to make a diligent effort to encourage the public participation in the development of the element and it reduces HCD's ability to consider public comments in its review. The availability of the document to the public and opportunity for public comment prior to submittal to HCD is essential to the public process and HCD's review. The City must proactively make future revisions available to the public, including any commenters, prior to submitting any revisions to HCD and diligently consider and address comments, including revising the document where appropriate. HCD's future review will consider the extent to which the revised element documents how the City solicited, considered, and addressed public comments in the element. The City's consideration of public comments must not be limited by HCD's findings in this review letter.