

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

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April 4, 2023

George Rodericks, Town Manager
Town of Atherton
80 Fair Oaks Lane
Atherton, CA, 94027

Dear George Rodericks:

RE: Town of Atherton's 6th Cycle (2023-2031) Adopted Housing Element

Thank you for submitting the Town of Atherton's (Town) housing element adopted January 31, 2023 and received for review on February 3, 2023. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from Kevin Burke, Housing Action Coalition, and Housing Leadership Council of San Mateo County pursuant to Government Code section 65585, subdivision (c).

The adopted housing element addresses many statutory requirements described in HCD's October 31, 2022 review; however, additional revisions are necessary to substantially comply with State Housing Element Law (Article 10.6 of the Gov. Code), see enclosed Appendix. The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation shall be completed no later than one year from the statutory deadline pursuant to Government Code sections 65583, subdivision (c) and 65583.2, subdivision (c). Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Please be aware, if the Town fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until these rezones are completed.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. During the housing element revision process, the Town must continue to engage the community, including organizations that

represent lower-income and special needs households, by making information regularly available while considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

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 Town will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the Town 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: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

HCD is committed to assisting the Town in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Connor Finney, of our staff, at Connor.Finney@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX TOWN OF ATHERTON

The following changes are necessary to bring the Town's 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 <https://www.hcd.ca.gov/planning-and-community-development/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks> 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).)

As part of the review of programs in the past cycle, the element must analyze the effectiveness of goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers, and persons experiencing homelessness). While the element was revised to add information on Accessory Dwelling Units (ADUs) and a summary of needs for special needs groups, it did not analyze the cumulative effectiveness of goals, policies, and programs on special needs populations.

B. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing 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))*

Fair Housing Enforcement and Capacity: The element must still describe the Town's process to refer fair housing complaints.

Integration and Segregation: The element should analyze concentrations of race and familial status geographically within the Town as well as analyze the differences between the town and the surrounding region. In addition, the element must provide a regional analysis on disability as well as analyze concentrations of higher incomes within the Town compared to broader surrounding areas.

Affirmatively Furthering Fair Housing (AFFH) and Sites Inventory: The element was not revised to address this finding. Please see HCD's prior review for additional information.

Local Data and Knowledge and Other Relevant Factors: The element must include local data, knowledge, and other relevant factors to discuss and analyze any unique attributes about the Town related to fair housing issues. This analysis should complement state and federal data to better understand the patterns of socio-economic concentrations and formulate appropriate policies and programs. For example, the analysis should address the history of zoning and land use and impacts on fair housing issues. Please see HCD's prior review for additional information.

Contributing Factors to Fair Housing Issues: Based on the outcomes of a complete analysis, The element must re-assess and prioritize contributing factors to fair housing issues and formulate appropriate policies and programs.

2. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

Extremely Low-Income (ELI) Households: While the element was revised to quantify the total number of existing ELI households, it must still analyze their housing needs such as examining tenure (i.e., renter and owner). Please see HCD's prior review for additional information.

3. *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).)*

Overpayment: While the element was revised to quantify the total number of households overpaying by tenure, it must quantify and analyze the number of lower-income households overpaying by tenure (i.e., renter and owner).

Housing Cost: This element did not address this finding, please see HCD's prior review for additional information.

4. *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).)*

Sites Inventory: The element was not revised to address this finding. Please see HCD's prior review for additional information.

Realistic Capacity: While the element states the number of units assumed to develop on each site, it must describe assumptions for the calculation of residential capacity on identified sites included in the inventory and must also provide support for these assumptions. For example, the element should demonstrate what specific trends, factors, and other evidence led to the assumptions. The estimate of the number of units

for each site must be adjusted as necessary, based on the land use controls and site improvements, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities.

Small and Large Sites: Sites smaller than a half-acre and larger than ten acres in size are deemed inadequate to accommodate housing for lower-income housing unless it is demonstrated that sites of equivalent size and affordability were successfully developed during the prior planning period or unless the housing element describes other evidence to HCD that the site is adequate to accommodate lower-income housing (Gov. Code, § 65583.2, subd. (c)(2)(A).). The element lists small and large sites but also should evaluate whether those sites are suitable to accommodate housing for lower-income households and add or modify programs as appropriate. For example, the element could list past consolidations by the number of parcels, number of owners, zone, number of units, affordability and circumstances leading to consolidation and then relate those trends to the identified sites or could explain the potential for consolidation on a site-by-site basis.

Zoning for Lower-Income Households: While some school sites were revised to state they will be rezoned to allow 20 dwelling units per acre, it is also assumed affordable units will be developed on a site that will be rezoned for up to 10 dwelling units per acre. The element must demonstrate zoning appropriate to accommodate housing for lower-income households. For sites with zoning meeting specified densities or default densities (20 units per acre in Atherton), no analysis is required. Otherwise, the element must include analysis based on statutory factors, including but not limited to financial feasibility and experience within the zone.

Suitability of Nonvacant Sites: While the element was revised to remove the CalWater site, the element must still demonstrate the potential for redevelopment on nonvacant sites listed in the inventory. The element must include an analysis demonstrating the potential for additional development on nonvacant sites. Specifically on the school sites and the 23 Oakwood site. The description of existing uses should be sufficiently detailed to facilitate an analysis demonstrating the potential for additional development in the planning period. In addition, the element should analyze the extent that existing uses may impede additional residential development. For example, the element includes sites identified as a private college, a school site, and existing single-family homes, but little analysis was provided to demonstrate whether these existing uses would impede development of these sites within the planning period. The element can summarize past experiences converting existing uses to higher density residential development, include current market demand for the existing use, provide analysis of existing leases or contracts that would perpetuate the existing use or prevent additional residential development and include current information on development trends and market conditions in the Town and relate those trends to the sites identified. The element could also consider indicators such as age and condition of the existing structure expressed developer interest, existing versus allowable floor area, low improvement to land value ratio, and other factors.

SB 9 Sites: The element identifies SB 9 as a strategy to accommodate the part of the Town's Regional Housing Needs Allocation (RHNA). To support these assumptions, the analysis must include experience, trends and market conditions that allow lot splits and missing middle uses. The analysis must list the potential SB 9 sites and demonstrate the likelihood of redevelopment, including whether existing uses constitute as an impediment for additional residential use. The analysis should describe how the Town determined eligible properties, whether the assumed lots will have turnover, if the properties are easy to subdivide, and the condition of the existing structures. The analysis should also describe interest from property owners as well as experience. The element must also clarify whether the SB 9 sites listed in Table HE-13 are included in the projections for the planning period. If they are included as part of the sites inventory, it must describe the status of the projects beyond pending or project approval to demonstrate feasibility during the planning period. The analysis should provide support for the units being developed within the planning period. Based on the outcomes of this analysis, the element should add or modify to establish zoning and development standards early in the planning period and implement incentives to encourage and facilitate development as well as monitor development every two years with and identify additional sites within six months if assumptions are not being met.

Publicly Owned Sites: The element was not revised to address this finding. Please see HCD's prior review for additional information.

Accessory Dwelling Units (ADU): While the element was revised to add a program to monitor ADU development in Section 3.845, it must commit to timing earlier in the planning period for additional incentives or sites to accommodate RHNA will be identified (i.e., within six months of monitoring). In addition, the ADU trends must still be reconciled with HCD records and projections should be rescaled based on recent trends. Please see HCD's prior review for additional information.

Infrastructure: While the element was revised to provide additional information on water capacity, it must demonstrate sufficient sewer capacity beyond stating analysis is on a case-by-case basis or add programs to address the constraint. In addition, the element must analyze sufficient existing or planned dry utilities supply capacity.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* While the element was revised to add program 3.853, it must discuss available sites, acreage, including typical parcel sizes and the presence of reuse opportunities, and any conditions inappropriate for human habitability.

Please be aware Chapter 654, Statutes of 2022 (AB 2339), adds specificity on how cities and counties plan for emergency shelters and ensure sufficient and suitable capacity. Future submittals of the housing element may need to address these statutory requirements. For additional information and timing requirements, please see HCD's memo at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf>.

- *Multifamily Housing*: While the element includes a program to create a new zone to allow ten dwelling units per acre, HCD understands that the zone only applies to one site and is limited to accommodating fewer units than the RHNA. The element should consider applying the new zone to additional areas to better promote a variety of housing types, specifically multifamily and supportive housing. In addition, the PFS zone requires a conditional use permit (CUP) and a master plan. The element must analyze and demonstrate realistic opportunities for multifamily and analyze the CUP requirement for multifamily as a potential constraint on housing supply, cost, feasibility and approval certainty. The analysis should identify findings of approval for the CUP and their potential impact on development approval certainty, timing, feasibility and cost.

5. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

Land Use Controls: While the element was revised to state four stories will be allowed in the PFS zone, the element did not address HCD's findings on 34-foot height restrictions, setbacks, and lot coverage, as well as parking. Please see HCD's prior review for additional information.

Fees and Exaction: While the element provides a cumulative analysis of fees for single family developments, it should also provide this analysis for multifamily developments. In addition, the element should list all the various planning and impact fees associated with development, including but not limited to general plan amendments, zone changes, site plan or master plans, specific plans, environmental fees, and water/sewer fees.

Local Processing and Permit Procedures: While the element was revised to state design review is not required, the analysis must evaluate the processing and permit procedures' impacts as potential constraints on housing supply and affordability. For example, the element must describe the CUP findings and procedures as well as describe master plan review requirements for multifamily development and analyze these as constraints on housing development. Based on the outcomes of the analysis, the element should add or modify programs to streamline approval of multifamily housing and promote approval certainty.

Local Ordinances: The element was not revised to address this finding, please see HCD's prior review for additional information.

Streamlining Provisions: The element was not revised to address this finding, please see HCD's prior review for additional information.

Constraints on Housing for Persons with Disabilities: While the element states that the Town has a reasonable accommodation procedure, it must describe and analyze the findings and approval procedure.

6. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... 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... (Gov. Code, § 65583, subd. (a)(6).)*

Approval Time and Requests for Lesser Densities: The element was not revised to address this finding, please see HCD's prior review for additional information.

7. *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).)*

Special Needs: While the element was revised to add some data on the Town's special needs populations, it must include an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps. In addition, the element must quantify and analyze the number of persons experiencing homelessness in the Town.

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... (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 Town's specific role in implementation; (2) definitive implementation timelines; (3) objectives, quantified where appropriate; and (4) identification of responsible agencies and officials. For example, programs should include timelines by a specified date instead of benchmarking to uncertain dates such as housing element compliance. Programs to be revised include the following:

- *Program 3.814 (Adoption of an Inclusionary Zoning Ordinance):* While the program commits to create an inclusionary ordinance, it should also commit to ensure the requirement is not a constraint. In addition, the program should be

revised to analyze the ADU and Junior ADU (JADU) requirements and make adjustments as appropriate. Lastly, the program should include proactive outreach.

- *Program 3.815 (Conservation and Rehabilitation of Existing Units)*: The program should clarify whether the Town will provide incentives and commit to proactive outreach.
- *Program 3.823 (Equal Housing Opportunity)*: The program should be revised to include a specific implementation date as well as how the program will be structured and provide measurable outcomes.
- *Program 3.824 (Emergency Shelters, Transitional and Supportive Housing)*: The program must include clear actions for implementation as well as specific timing.
- *Program 3.841 (Shared Housing)*: The program should include proactive outreach and describe how the Town will provide support. This program is important to promote housing choice and opportunity in highest resource areas.

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 B4, 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 Town 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 3.813 (Multifamily Housing Development on School and Other Properties): This program should be revised to include specific incentives for implementation. In addition, since rezoning was not completed prior to the start of the planning period (January 31, 2023), any rezoning necessary to accommodate the lower-income RHNA must address all by right requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i).

Shortfall of Adequate Sites: The element does not identify adequate sites to accommodate the regional housing need for lower-income households and; therefore, must include a program(s) to identify sites with appropriate zoning to accommodate the regional housing need within the planning period. The program should identify the shortfall by income group, acreage, allowable densities, appropriate development standards and meet all by right requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i), including but not limited to permitting multifamily uses

by-right for developments in which 20 percent or more of the units are affordable to lower-income households.

Replacement Housing Requirements: While the element was revised to include Program 3.851, it must include a specific implementation date.

3. *The Housing Element shall contain programs which assist in the development of adequate housing to meet the needs of extremely low-, very low-, low- and moderate-income households. (Gov. Code, § 65583, subd. (c)(2).)*

The element must include a program(s) with specific actions and timelines to assist in the development of housing for ELI households. The program(s) could commit the Town to adopting priority processing, granting fee waivers or deferrals, modifying development standards, granting concessions and incentives for housing developments that include units affordable to ELI households; assisting, supporting or pursuing funding applications; and outreach and coordination with affordable housing developers.

In addition, the element must also include a program(s), as appropriate, to assist in the development of housing for all special needs households (e.g., elderly, homeless, farmworkers, persons with disabilities, female-headed households). While the element includes programs to assist seniors and persons with disabilities, it must include programs for all special needs households. Program actions could include proactive outreach and assistance to non-profit service providers and developers, prioritizing some funding for housing developments affordable to special needs households and offering financial incentives or regulatory concessions to encourage a variety of housing types.

4. *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 Findings B5 and B6, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the Town may need to revise or add programs and address and remove or mitigate any identified constraints. In addition, the element should be revised as follows:

Program 3.850: While the element was revised to allow group homes for seven or more residents in areas allowing residential uses, the program is limited to persons with disabilities. The program must be revised to allow all group homes for seven or more residents as well as commit to objectivity with approval certainty.

5. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding B1, the element must include a complete analysis of AFFH. The element must be revised to add goals and actions based on the outcomes of a complete analysis. Goals and actions must specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Actions must have specific commitment, milestones, geographic targeting and metrics or numeric objectives and, as appropriate, must address housing mobility enhancement, new housing choices and affordability throughout the Town.

Finally, among other factors, the Town is entirely the highest resource category in access to opportunity, wholly a concentrated area of affluence and predominantly consists of households with the highest median income, a stark contrast to the rest of the region. These conditions and circumstances warrant significant and robust actions (not limited to the RHNA) to promote housing mobility and increasing housing choices and affordability throughout and beyond the Town, including in lower-density neighborhoods. As part of implementation, HCD encourages the Town to aggressively pursue numeric targets and geographic targets throughout the Town, including lower-density neighborhoods. In addition, the Town must report on progress in implementation and should annually evaluate the effectiveness of programs in promoting inclusion throughout the Town. Based on this evaluation, the Town should consider appropriate and additional actions (e.g., missing middle housing types and targeted funding or other strategies to encourage affordability) to further promote housing choices and affordability in all areas of the Town, including lower-density neighborhoods.

6. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent... (Gov. Code, § 65583, subd. (c)(7).)*

Program 3.812 (New Construction of Affordable Accessory Dwelling Units): While the element was revised to include timing of each action, it is unclear how affordability will be established. The program should be revised to clarify actions to establish and track affordability.

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).)

The element must include quantified objectives to establish an estimate of housing units by income category that can be constructed, rehabilitated, and conserved over the planning period. While the element includes these objectives by income group for moderate- and above-moderate income, the element must also include objectives for extremely low-, very low-, and low-income households. In addition, the element should include quantified objectives for rehabilitation and conservation for all income categories.

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)(9).)

While the element includes a summary of public participation, the element should describe how public comments relating to feasibility, fair housing, and geographic equity were considered and incorporated into the element.