

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

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



October 31, 2022

George Rodericks, Town Manager  
Town of Atherton  
80 Fair Oaks Lane, 1st Floor  
Atherton, CA 94027

Dear George Rodericks

**RE: Town of Atherton's 6<sup>th</sup> Cycle (2023-2031) Draft Housing Element**

Thank you for submitting the Town of Atherton (Town) draft housing element update received for review on August 2, 2022. 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 conversation on October 14, 2022 with yourself and consultant Lisa Costa Sanders. In addition, HCD considered comments from Wesley Arrington, YIMBY Law, Greenbelt Alliance, Campaign for Fair Housing Elements, and Housing Leadership Council, pursuant to Government Code section 65585, subdivision (c).

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 the revisions needed to comply with State Housing Element Law.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the Town 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. 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.

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 (RHNA), including for lower-income households, shall be completed no later than one year from the statutory

George Rodericks, Town Manager  
Page 2

deadline. 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 rezones to accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c) (1) (A) and Government Code section 65583.2, subdivision (c) are completed.

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.

We are 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](mailto: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/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/building-blocks> and includes the Government Code addressing State Housing Element Law and other resources.

### **A. Review and Revise**

*Government Code (GC) Section 65588 requires: "Each local government shall review its housing element as frequently as appropriate to evaluate all of the following: (1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal. (2) The effectiveness of the housing element in attainment of the community's housing goals and objectives. (3) The progress of the city, county, or city and county in implementation of the housing element." (4) The effectiveness of goals, policies, and related actions to meet the community's special housing needs. GC 65583(a)(7)."*

A thorough program-by-program review is necessary to evaluate Town's performance in addressing housing goals. While the element describes actual results of the prior element's programs, it must provide a description of how the objectives and programs of the updated element incorporate changes resulting from the evaluation.

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). Programs should be revised as appropriate to reflect the results of this evaluation.

### **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: While the housing element includes a summary of fair housing enforcement and outreach capacity, it should describe any fair housing lawsuits and related enforcement actions. In addition, this section should address how outreach will occur throughout planning period.

Local Data and Knowledge: 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. The element should complement federal, state, and regional data with local data and knowledge where appropriate to capture emerging trends and issues, including utilizing knowledge from local and regional advocates and service providers, Town staff and related local and county planning documents and should include an analysis of the history of exclusionary zoning in the Town.

Integration and Segregation: The element provided some data regarding segregation and integration, but it should also describe concentrations of race both locally and regionally (i.e., geographically within the Town, as well as comparing the Town to the region). In addition, the element must discuss and analyze data on persons with disabilities regionally and over time. The element must describe and analyze concentrations of familial status both locally and regionally. Lastly, the element must describe what contributes to the high incomes geographically within the Town and provide a regional analysis.

Racial/Ethnic Areas of Concentration of Poverty (R/ECAP) and Affluence (RCAA): The element must also address concentrated areas of affluence both locally and regionally. The analysis should evaluate the patterns and changes over time at a local (e.g., neighborhood to neighborhood) and regional level (e.g., Town to region) and include programs as appropriate (not limited to the regional housing need allocation (RHNA)).

Disparities in Access to Opportunity: While the element included some data, it should discuss what contributes to the lower education score in the Town west of El Camino Real. In addition, the element must analyze the disparities in access to jobs by protected classes and analyze what contributes to the varied access to jobs within the Town. The element must also provide a regional analysis for access to opportunity for employment and environment. Lastly, while the element describes a 2018 transit study, it must describe and analyze access to transit both locally and regionally.

Disproportionate Housing Needs, Including Displacement Risk: While the element includes some discussion on disproportionate housing needs, this discussion should also address the patterns within the Town and evaluate any similarities with other components of the assessment of fair housing. In addition, the analysis should include both local and regional discussions of cost burden by tenure. In addition, the element must include a regional analysis for overcrowding and substandard housing. The element should also analyze any demographic data available for persons experiencing homelessness. The analysis on displacement risk should be expanded beyond units at-risk of losing subsidy and also describe the high risk of residents experiencing exclusion. Lastly, the element must describe and analyze areas sensitive to displacement risk due to disaster (e.g., earthquake, fire, and flood).

Affirmatively Furthering Fair Housing (AFFH) and Sites Inventory: While the element includes a summary of fair housing related to the sites inventory, it must analyze how the identified sites contribute to or mitigate fair housing issues. An analysis should

address all of the income categories of identified sites with respect to location, the number of units by all income groups and how that affects the existing patterns for all components of the assessment of fair housing (e.g., segregation and integration, access to opportunity). This analysis should specifically address whether the ADU strategy to accommodate lower-income households contributes to continued exclusion and disparities in access to opportunity. If sites exacerbate conditions or isolates the RHNA by income group, the element should identify further program actions (not limited to the RHNA) that will be taken to promote equitable quality of life throughout the community (e.g., housing mobility and new opportunities in higher resource areas).

Contributing Factors to Fair Housing Issues: Based on the outcomes of a complete analysis, the element should re-assess contributing factors and particularly prioritize those factors then formulate appropriate policies and programs. Currently the element only includes one contributing factor. The element should address potential contributing factors such as barriers like exclusionary zoning or a lack of state and federally funded developments. Once additional factors are identified, they should then be prioritized.

Goals and Actions: The element must be revised to add or modify goals and actions based on the outcomes of a complete analysis. Goals and actions must specifically respond to the analysis and 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, discrete timing or milestones, geographic targeting and metrics or numerical targets. As appropriate, actions must address housing mobility, new housing choices and affordability in higher resource or higher income areas, place-based strategies for community preservation and revitalization and displacement protection.

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: The element must quantify the number of existing and projected ELI households, and also analyze their housing needs. The analysis of ELI housing needs should also evaluate ELI households by tenure.

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: The element must quantify and analyze overpayment by tenure (i.e., renter and owner), for both the overall population and lower-income households.

Housing Conditions: The element includes the number of substandard housing units from Census data. However, the element must include an estimate of the number of units in need of rehabilitation and replacement. For example, the analysis could include estimates from a recent windshield survey or sampling, estimates from the code

enforcement agency, or information from knowledgeable builders/developers, including non-profit housing developers or organizations.

Housing Costs: While the element includes estimated rents for residents, it utilizes American Community Survey (ACS) data. The element should supplement census data with other sources (e.g., local knowledge).

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: While the sites inventory includes many requirements, it must include the general plan designation. Additionally, there are some discrepancies between cited sites and the inventory. For example, two of the school sites do not list any units in the inventory and the numbers in the inventory do not match what is stated in the analysis. Additional sites will likely need to be identified to accommodate the RHNA.

Realistic Capacity: The element must provide 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.

Suitability of Nonvacant Sites: While the element includes a description of the identified sites, it must include an analysis demonstrating the potential for additional development on nonvacant sites. Specifically additional details on the school sites and Cal Water 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 a reservoir site, 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.

Zoning for Lower-Income Households: 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.

SB 9 Sites: The element identifies SB 9 as a strategy to accommodate the part of the Town's 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 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. The element should support this analysis with local information such as local developer or owner interest to utilize zoning and incentives established through SB 9.

Publicly Owned Sites: The element identifies multiple publicly-owned sites including the Public Facilities and Schools District, the Menlo School, and Cal Water Bear Gulch Reservoir sites. The element must include additional discussion on each of the publicly-owned sites identified to accommodate the RHNA. Specifically, the analysis should address general plan designations, allowable densities, support for residential capacity assumptions, existing uses and any known conditions that preclude development in the planning period and the potential schedule for development. If zoning does not currently allow residential uses at appropriate densities, then the element must include programs to rezone sites pursuant to Government Code section 65583.2, subdivisions (h) and (i). In addition, the housing element, where appropriate, must include a description of

whether there are any plans to sell the property during the planning period and how the jurisdiction will comply with the Surplus Land Act Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5.

Previously Identified Nonvacant and Vacant Sites: If nonvacant sites identified in a prior adopted housing element or vacant sites identified in two or more consecutive planning periods, the sites are inadequate to accommodate housing for lower-income households unless:

- The site's current zoning is appropriate for the development of housing affordable to lower-income households by either including analysis or meeting the appropriate density and
- The site is subject to a housing element program that requires rezoning within three years of the beginning of the planning period to allow residential use by-right for housing developments in which at least 20 percent of the units are affordable to lower-income households. (Gov. Code, § 65583.2, subd. (c).)

Infrastructure: The element must demonstrate sufficient existing or planned water, sewer, and other dry utilities supply capacity, including the availability and access to distribution facilities, to accommodate the RHNA.

For your information, water and sewer service providers must establish specific procedures to grant priority water and sewer service to developments with units affordable to lower-income households. (Gov. Code, § 65589.7.) Local governments are required to immediately deliver the housing element to water and sewer service providers.

Electronic Sites Inventory: Pursuant to Government Code section 65583.3, subdivision (b), upon adoption of the housing element, the Town must submit an electronic version of the sites inventory with its adopted housing element to [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov). HCD has not received a copy of the electronic inventory. Please note, the Town 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 Town can reach out to HCD at [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov) for technical assistance.

Accessory Dwelling Units (ADUs): The element projects approximately 35 ADUs per year over the eight-year planning period. This trend is inconsistent with HCD records of 19 ADUs per year. To support assumptions for ADUs in the planning period, the element should reduce the number of ADUs assumed per year and reconcile trends with HCD records, including additional information such as more recent permitted units and inquiries, resources and incentives, other relevant factors and modify policies and programs as appropriate. Further, programs should commit to additional incentives and strategies, frequent monitoring (every other year) and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time



(e.g., six months) if needed. The element must also address affordability assumptions for ADU projections.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* The element should clarify shelters are permitted without discretionary action and discuss available sites, acreage, including typical parcel sizes and the presence of reuse opportunities, proximity to transportation and services and any conditions inappropriate for human habitability. The analysis should also list and evaluate all development standards and address the constraints on spacing and shelter size with a program. Finally, the element should analyze whether parking requirements comply with AB139/Government Code section 65583, subdivision (a)(4)(A) or include a program to comply with this requirement.
- *Housing for Employees:* The Employee Housing Act permits housing under specific provisions. Section 17021.5 requires employee housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone. Section 17021.6 requires employee housing consisting of no more than 12 units or 36 beds to be permitted in the same manner as other agricultural uses in the same zone. The element must demonstrate compliance with these requirements and include programs as appropriate.
- *By-Right Permanent Supportive Housing:* Supportive housing shall be a use by-right in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65651. The element must demonstrate compliance with these requirements and include programs as appropriate.
- *Low Barrier Navigation Centers:* Low Barrier Navigation Centers shall be a use by-right in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65660. The element must demonstrate compliance with this requirement and include programs as appropriate.
- *Mobile Homes:* The element must clarify whether mobile homes on a permanent foundation in the PFS zone are approved in the same way as single-family homes, if not a program should be added as appropriate.
- *Multifamily Housing:* The element states that multifamily housing is allowed only in PFS zone with a Conditional Use Permit (CUP) and 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 and affordability. The analysis should identify findings of approval for the CUP and their potential impact on development approval certainty, timing, feasibility and cost. If constraints are identified, programs should be included to address and remove or modify these constraints.
- *Accessory Dwelling Units (ADUs):* The element indicates the Town modified its zoning code to ease barriers to the development of ADU's. However, after a cursory review of the Town's ordinance, HCD discovered several areas which

are not consistent with State ADU Law. HCD will provide a complete listing of ADU non-compliance issues under a separate cover. As a result, the element should include a program to update the Town's ADU ordinance to comply with state law. For more information, please consult HCD's ADU Guidebook, published in December 2020, which provides detailed information on new state requirements surrounding ADU development.

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: The element must identify and analyze all relevant land use controls impacts as potential constraints on a variety of housing types. The analysis should analyze land use controls independently and cumulatively with other land use controls. The analysis should specifically address requirements related to parking, heights, lot coverage and allowable density ranges. The analysis should address any impacts on cost, supply, housing choice, affordability, timing, approval certainty and ability to achieve maximum densities. For example, the element should describe allowed uses and typical densities in the PFS zone. In addition, the element notes that zones include a 34-foot height restriction, the element should clarify whether three stories are allowed in zones that allow multifamily or add a program to address the constraint. The required setbacks and maximum lot coverage requirements should also be analyzed as a constraint in the PFS zone. Lastly, the element states that low allowable densities are a constraint on housing; the element should include a program to mitigate the identified constraint.

Zoning Fees and Transparency: The element must list all fees and clarify its compliance with new transparency requirements for posting all zoning and development standards, and fees for each parcel on the jurisdiction's website pursuant to Government Code section 65940.1(a)(1).

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. Lastly, the element should analyze the proportion of total fees and the proportion to the development costs of both single family and multifamily housing.

Local Processing and Permit Procedures: While the element describes some of the use permit procedures, it must further describe and analyze the Town's permit processing and approval procedures by zone and housing type. The analysis must evaluate the processing and permit procedures' impacts as potential constraints on housing supply