

Atherton Housing Coalition

January 30, 2023

Dean Mayor Widmer and Members of the City Council,

Atherton Housing Coalition is a group of Atherton residents who are concerned about making sure that the Town of Atherton fulfills its RHNA obligations in a thoughtful manner to maintain the character of our town. We are submitting this letter to outline Atherton Housing Coalition's proposal for alternative housing inventory sites and zoning options that will not only meet, but exceed, the Town's RHNA obligations and provide for planning and development consistent with the goals and objectives of the Town and the existing character of our community. We hope that the City Council seriously considers this proposal as part of the Town's 6th cycle Housing Element.

Members of the community have been involved in discussions about the Housing Element for over a year and have reviewed several different properties for potential inclusion in the Housing Element so that Atherton achieves its goal of planning for 348 housing units allocated among the four income levels in Atherton's RHNA allocation.

Atherton Housing Coalition's proposal for the Housing Element complies with HCD requirements and incorporates ideas that have a higher likelihood of coming to fruition than what is in the current draft of the Housing Element. Furthermore, this proposal will create *more* lower income housing units than the proposed rezoning of eighteen properties along El Camino Real. Furthermore, the residents of the properties proposed for rezoning have made it clear that none of them will sell their houses to a developer during the 2023-2031 planning period, so the rezoning plan is unlikely to produce any new housing units.

We recognize that the City Council wants to submit what it hopes to be the final draft of the Housing Element to HCD on January 31, 2023. We appreciate that the City Council is limited in its ability to conduct Town-wide deliberations at this juncture, given the existing time constraints to adopt and self-certify the Housing Element as of January 31, 2023. However, we implore you to consider directing staff to submit a revised Housing Element, without the El Camino Real and Valparaiso rezonings or any changes to the Senate Bill 9 ordinance. Instead, Atherton Housing Coalition urges you to consider Atherton Housing Coalition's proposal for the Housing Element, which is compliant with state law, exceeds the RHNA requirement of 348 new housing units, and meets the requirements for all income categories. Our proposal for the Housing Element is in contrast to the latest version of the Housing Element posted on January 20th and amended as of January 23rd, which we believe contains ideas that are not acceptable to either Atherton residents or HCD.

We request that the City Council incorporate our proposal into the Housing Element after making the required public noticing requirements, by voting to adopt a revised version of the

Housing Element. Since the City Council is not able to add our recommendations to the Housing Element on January 31st, it is our hope that you will adopt a revised Housing Element at the earliest possible date in February and thereafter submit it to HCD for final review and certification. In order to consider the ideas and revisions proposed by the Atherton Housing Coalition's proposal and incorporate them into the Town's Housing Element, we recommend that the City Council take the following actions:

- a. Adopt the Housing Element on January 31, 2023, without making the changes recommended by the Town's Planning Commission (for the reasons stated below in this letter), and submit said Housing Element to HCD for review and certification. The Town may also want to inform HCD that the Town is also considering incorporating additional points from the Atherton Housing Coalition's proposal and intends to submit an updated Housing Element for review as soon as possible after proper noticing requirements and approval by the City Council.
- b. Provide the proper noticing requirements for hearings before the Planning Commission and the City Council (most likely in February, and potentially early March 2023) to consider the incorporation of Atherton Housing Coalition's proposal into the Housing Element. Simultaneously, Town staff will need to analyze and incorporate Atherton Housing Coalition's proposal into the updated Housing Element.
- c. Hold the required public hearings before the Planning Commission and subsequently the City Council on the adoption of the updated Housing Element that includes Atherton Housing Coalition's proposal.¹ Then the Town should provide the updated Housing Element to HCD for review and certification.²

A. Planning Commission Recommendations and Draft Housing Element dated January 23, 2023

On January 19, 2023, the Planning Commission reviewed the revised draft Housing Element and made three main recommendations for the City Council to consider as part of the final draft Housing Element. Atherton Housing Coalition recommends that the City Council reject all three recommendations for the following reasons:

1. El Camino Real:

Atherton Housing Coalition opposes the creation of a new multi-family "overlay zone" for eighty-eight (88) properties along both sides of El Camino Real (one property deep) that would allow for developments of up to twenty (20) units per acre. Residents were not properly notified about such a significant change to their neighborhood, and nobody has had time to study the consequences of such an action. Residents will undoubtedly

¹ The Town is authorized to update its General Plan, including its Housing Element, up to four (4) times per year, under Government Code Section 65358.

² If HCD has not completed its 60-day review of the Town's January 31, 2023 Housing Element, HCD will simply begin reviewing the subsequently adopted Housing Element from February/March 2023 without having to complete the review of the January 31, 2023 Housing Element. HCD will then have an additional 60 days from the date it receives the February/March 2023 Housing Element to certify said Housing Element.

voice their opposition to this proposal. We oppose the creation of the RM 20 zone for this area.

As you are aware, Government Code Section 65583.2(c)(2) requires the Town to demonstrate the projected residential development capacity of the sites identified in the Housing Element can realistically be achieved. Based on the opposition of existing residents of the subject properties, market demand, land costs, future development, and past production trends, it is clear that the proposed overlay zone *fails to meet the statutory realistic development capacity requirement*.

Also, we support the Planning Commission's recommendation to remove the rezoning of eighteen (18) properties because residents are prepared to send letters to HCD to object, since none of them expect or want to move out of their houses.

2. Valparaiso Avenue:

Atherton Housing Coalition opposes the creation of a new "overlay zone" which would allow up to ten (10) units per acre on the twenty-two (22) lots on the Atherton side of Valparaiso Avenue. The neighbors were not properly notified of this proposal, and there has been insufficient time to properly analyze the consequences and adverse impacts of such an action. Furthermore, many residents on Valparaiso Avenue have voiced their opposition to this idea. We oppose the creation of the RM 10 zone for this area. Similar to the proposed overlay zone on El Camino Real, the opposition of existing residents of the subject properties, market demand, land costs, future development, and past production trends demonstrate that the Valparaiso Avenue overlay zone *fails to meet the realistic development capacity requirement under Government Code Section 65583.2(c)(2)*.

3. Senate Bill 9 (SB9) Residency Requirement:

Atherton Housing Coalition strongly opposes the Town making any changes to its SB9 ordinance, which was adopted shortly after the State approved the bill in 2021, particularly to remove the owner residency requirement for lot splits. State legislation has a residency requirement specifically stating: "A local agency *shall require* an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split." (Gov. Code § 66411.7(g)(1) [emphasis added].)

Therefore, the Town is *legally mandated* to require the owner residency requirement for any and all lot sizes, and any amendment to the Town's SB 9 ordinance that eliminates such a requirement, or a lack of enforcement of such a requirement, is in violation of State law. Accordingly, the Town should not make any local modifications to its SB9 ordinance as part of the Housing Element that is contrary to State law; *doing so exposes the Town to legal liability*.

Additionally, the draft Housing Element dated January 23, 2023 includes the following ideas and proposals that Atherton Housing Coalition considers detrimental to the Town and unnecessary in achieving the required 348 housing units in the appropriate income categories required under the RHNA obligations:

New RM10 and RM20 Zones

The draft Housing Element dated January 23, 2023 mentions the creation of two new residential zones that permit multi-family housing by right, RM10 (up to ten (10) dwelling units per acre) and RM20 (up to twenty (20) dwelling units per acre). The proposed RM10 and RM20 zones will be rezoned on nineteen (19) private residential properties, plus the Planning Commission recommends the inclusion of an additional one hundred and ten (110) single family residences. The purpose of this is to provide for a variety of housing types and purportedly to affirmatively further fair housing.

Atherton Housing Coalition strongly opposes the new zones because the existing zoning code already allows multifamily housing to be developed in the PFS zone. Furthermore, the draft Housing Element will amend the zoning code to allow multifamily developments in the PFS zone by right up to 20 units per acre with a possible forty (40) units per acre at Menlo College. The removal of a required master plan, environmental review, and use permit, along with the increased density of up to twenty (20) units per acre, will already increase and improve the variety of housing types within the Town. It will also affirmatively further fair housing to provide a diverse type of housing options on all properties that are zoned PFS. Under this proposal, where property is owned and controlled by the Town or other public agencies, multi-family housing has a more realistic chance of being developed and constructed, without having to rezone private property with existing single-family homes, whose residents have already firmly stated that they will not sell or subdivide their properties for multi-family developments during this planning period.

Goal: Facilitate Development of Faculty and Student Housing On or Near Campus

One of the goals listed under Section 3.370 includes facilitating development of faculty and student housing on *or near* campuses. Atherton Housing Coalition opposes the multifamily housing “near” campus, as we believe adequate multi-family faculty and student housing can be located wholly *on* campus, rather than off campus near the schools. Atherton Housing Coalition believes the goal has been and should continue to be the provision of housing on campus within the PFS zone. There is abundant and underutilized land suitable for multi-family faculty and student housing in the PFS zone, and as stated above and in previous sections, utilizing the PFS zone provides a greater and more realistic likelihood of property being developed for multi-family developments. Accordingly, “or near” should be stricken to provide for on-campus housing only.

Goal: Development of Multi-Family Housing On Private Property

As previously stated, the Atherton Housing Coalition strongly opposes the development of multi-family housing on private property. As already provided for in the existing Housing Element or the draft Housing Element dated January 23, 2023, there is abundant property located in the PFS zone owned by public agencies that can provide for multi-family developments without having the need to re-zone private property with existing single-family homes. There is no justification for this proposal, as multi-family developments are already permitted or will soon be permitted by right. Furthermore, the Atherton Housing Coalition proposal demonstrates that more than the required housing units under the RHNA allocation, including all within the appropriate income category, can be developed without the inclusion of multi-family developments on existing single family residential lots. Doing so would add nothing to increasing variety in housing types, diversity in households within the Town, or affirmatively furthering fair housing. In addition, such multi-family developments do not have a realistic development capacity requirement under Government Code Section 65583.2(c)(2), since the residents have already objected and will continue to assert that they will continue using the property as a single-family residential development.

B. Atherton's Regional Housing Needs Allocation

HCD is requiring Atherton to plan for 348 new housing units as part of the Town's RHNA obligations. The breakdown of the housing units by income levels is:

<u>Income level</u>	<u>#</u>	<u>Percentage of total</u>
Very Low Income	94	27.01%
Low Income	54	15.52%
Moderate Income	56	16.09%
Above Moderate Income	144	41.38%
Total	348	100.00%

The tables below present summaries of the number of proposed dwelling units projected to be constructed in Atherton, according to the Atherton Housing Coalition Proposal. The Atherton Housing Coalition Proposal contains 434 dwelling units, which represents a buffer of 86 units more than the required 348 units.

Atherton Housing Coalition - Summary of Projected Dwelling Units

ADUs and JADUs	280	35 housing units per year
SB 9 lot splits	48	6 housing units per year
Vacant sites	12	1.5 housing units per year
Multi-Family:		
Menlo College	60	
Menlo School	20	
Gilmore House	6	
Corporation Yard	4	
Menlo Park Fire District	4	28 Almendral Avenue

Total	434	
RHNA allocation	348	
Buffer	86	buffer is 25% of Atherton's RHNA allocation

Atherton Housing Coalition - Summary of Projected Dwelling Units by income categories

	<u>Very low to low</u>	<u>Moderate</u>	<u>Above Moderate</u>	<u>Total</u>
ADUs and JADUs	112	76	92	280
SB 9	0	0	48	48
Vacant sites	0	0	12	12
Multi-family:				
PFS – Private Schools	40	34	6	80
Gilmore House	3	1	2	6
Corporation Yard	2	1	1	4
Menlo Park Fire	1	0	3	4
Total	158	112	164	434
RHNA Allocation	148	56	144	348
Excess over RHNA	10	56	20	86

C. The Atherton Housing Coalition Proposal

Overall, the Atherton Housing Coalition proposal includes 86 more units than the Town's RHNA allocation of 348 units. Moreover, the proposal provides for the appropriate number of units across all income levels, as required by HCD. It is important to note that HCD requires the Town's Housing Element to address the required 348 housing units but leaves discretion to where the Town will plan for the development of these units and through what type of zoning. Nowhere in statutory law or HCD's guidelines is there a mandatory requirement to provide for these 348 housing units through multi-family housing. Likewise, there is no legal requirement to establish multifamily residential zones, if it can be shown that a city can meet its RHNA obligations through other types of residential zoning (e.g., single family residential zones, common interest development zones, etc.)

1. ADUs and JADUs:

The construction of 280 ADUs and JADUs during the 2023-2031 planning period is calculated at a total of 35 ADUs and JADUs per year, which should be achievable, given the number of ADU and JADU applications that have been approved within the past few years. For example, in 2020, thirty-four (34) ADUs were permitted, while in 2021, thirty three (33) ADUs were permitted. The construction of ADUs and JADUs has significantly increased in Atherton since the Town modified the rules in 2020 so that the square footage of both ADUs and JADUs are exempted from the calculation of the Floor Area Ratio (FAR) of eighteen (18%) percent. This allows residents to build more square footage on their properties than before the rule was changed in 2020. While it is too early to know the breakdown between new ADUs and JADUs, it is reasonable to assume,

based on historical data, that the Town can expect a total average of thirty-five (35) ADUs per year or more during the planning period, which could end up being twenty-five (25) to thirty-five (35) new ADUs and five (5) to ten (10) new JADUs per year.

The current draft of the Housing Element states that two (2) ADUs will be permitted on a property, but this was not discussed in public. There may have been a discussion at a City Council meeting of allowing two ADUs on a property, but only if the lot size is two acres or greater. The Atherton Housing Coalition supports two (2) ADU's per residential property if the parcel size is two (2) acres or greater. Otherwise, only one (1) ADU and one (1) JADU should be allowed per property.

Atherton will work with its residents to assist in the conversion of pool houses and garages to ADUs and JADUs. The rental rules for pool houses will be changed to permit the inclusion of these structures into the inventory of ADUs.

2. **Senate Bill 9:**
SB9 lot splits will contribute to forty-eight (48) new housing units, which is an average of six (6) new housing units per year from within the 2023-2031 planning period.
3. **Vacant sites:**
Vacant sites should contribute twelve (12) new housing units, which is an average of 1.5 new housing units per year.
4. **Multi-Family Development - Schools:**
Multi-family projects should be permitted at both public and private schools. The current draft of the Housing Element plans for eighty (80) new housing units at the schools. The plan is for Menlo College to build a faculty housing project of sixty (60) new housing units. Menlo School is planned to build twenty (20) new housing units.

Atherton should also provide Sacred Heart Schools and all the public schools in town with the same zoning rights in case any want to building housing on campus.

In addition, all school properties are zoned PFS, which allows multi-family residential uses that could accommodate housing for lower income households, when such uses are ancillary to the primary non-residential use of property on the same site. So providing for affordable, multi-family developments does not require additional re-zoning of single family residential zones, since multi-family residential housing is already permitted in all PFS zones through location and environmental reviews under the Town's existing zoning code.

5. **Multi-Family Development - Town-owned properties:**
Atherton has two Town-owned properties which have been discussed at public meetings but were not included in the January 18th and January 23rd versions of the

Housing Element. The Town should designate these two properties for residential development of housing units. These two developments should comply with the current height restrictions for residential buildings.

Gilmore House

Atherton owns a public park called Holbrook Palmer Park where there is a single-family residence called the Gilmore house. The residence is occupied by the Police Chief, but it is assumed that the residence will be available for development between 2023 and 2031. Atherton Housing Coalition proposes that Atherton plan for up to six (6) housing units on this property. Thirty-three (33%) percent of the new housing units should be deed restricted for low-income individuals.

Atherton Housing Coalition is familiar with the decree of distribution for the estate of Oliver H. Palmer filed in 1959. In accordance with the decree requirements, the Town of Atherton can continue maintaining the park in a manner that is appropriate for a high-class public recreation park. Any housing located on the premises will be built as a replacement for the Gilmore House and will be an incidental use featuring high quality architecture which will not interfere with the primary use and enjoyment of the park.

Atherton will not be violating the terms of the will or deed restrictions and will obtain appropriate legal assurances before any project is started. Thus, the Town will not be put in a position where it could be subject to liability or risk losing the park to Stanford University.

Land around the Town Center and the Corporation Yard

Atherton owns property around the Town Center which includes a parcel near the Atherton train tracks called the Corporation Yard.

Atherton Housing Coalition recommends that the Town study the entire property to come up with a parcel where it can plan for a building with four (4) housing units. Fifty (50%) of the new housing units should be deed-restricted for lower income individuals.

The Town-owned properties have the possibility of creating five (5) new affordable housing units which is greater than the four (4) new affordable housing units which are planned for in the proposed rezoning of El Camino Real. Under Atherton Housing Coalition's proposal, the Town creates more affordable housing units without the risks and uncertainties of a rezoning where neighbors will not sell their houses to a developer.

In addition, all Town-owned properties are zoned PFS, which allows multi-family residential uses that could accommodate housing for lower income households, when such uses are ancillary to the primary non-residential use of property on the same site. So providing for affordable, multi-family developments does not require additional rezoning of single family residential zones, since multi-family residential housing is

already permitted in all PFS zones through location and environmental reviews under the Town's existing zoning code.

6. Multi-Family Development – Menlo Park Fire Protection District

The Menlo Park Fire Protection District owns an L-shaped property at 28 Almendral Avenue, which is 39,843 square feet (0.91 acre). The property is improved with a small house that is being used as a gym and storage area. The size of this parcel is far greater than the Fire Station parcel of 13,068 square feet.

The property at 28 Almendral should be re-zoned to the PFS zone. The fire station at 32 Almendral is already in the PFS zone, so it is logical and reasonable to rezone all property owned by the Menlo Park Fire Protection District to PFS. PFS-zoned property already allows multi-family residential housing under the existing zoning code, as stated above.

In conjunction, Atherton Housing Coalition recommends that the Town work with the Menlo Park Fire Protection District to approve a plan for four (4) housing units located on this property. The units would be limited to employees of Menlo Park Fire Protection District who protect the safety of our community. There is demand for fire fighters to have housing near the fire station, since many of them drive several hours for their shifts and are already sleeping at the fire station.

7. Affordable Housing Fund:

Atherton's Housing Element indicates a plan to start charging an inclusionary fee on all new construction. The town will propose fees after a comparison with peer cities.

The Atherton Housing Coalition wants Atherton to commit to create an Affordable Housing Fund, which will receive the proceeds from the new inclusionary fees. The Affordable Housing Fund should also be available for charitable donations to increase the size and scope of the affordable housing effort. The Affordable Housing Fund will be used for the preservation, rehabilitation, and production of affordable housing in Atherton.

8. 23 Oakwood

Atherton Housing Coalition opposes the rezoning of 23 Oakwood for up to ten (10) units per acre. In addition, it is understood that the property owner desires to rezone this property for multi-family residential development, whereas the surrounding properties are all single-family residential development. The nearest multi-family residential zone is located beyond the Town's boundaries in Redwood City and is not adjacent to the subject property. All residential uses surrounding the subject property are single family residential uses.

State law requires that city zoning regulations must be uniform within each class or kind of building, or land use within each zone. Under state law, the uniformity requirement means a city may not approve a use of property that is not allowed by applicable zoning rules without a formal amendment to the rule. Nor can a city get around the uniformity requirement by granting an exception from existing zoning by adopting a zone that is different from all other zones adjacent to the property (aka “spot zoning”.) Spot zoning occurs where a small parcel is restricted and given lesser rights or greater rights than surrounding properties, such as when a lot in the center of a single-family residential zone is allowed to develop multi-family units, thereby creating an island in the middle of a larger area devoted to other uses.

In this instance, the re-zoning of 23 Oakwood to multi-family residential development would likely be considered spot zoning. The neighbors and other interested parties of the affected parcel may challenge the zoning as unreasonable, and a court may agree and invalidate the zoning as applied to that parcel.

D. Housing Goals, Quantified Objectives and Policies

Atherton Housing Coalition supports the Town’s housing goals, quantified objectives, and policies outlined in the Housing Element, with the exception of goals 3.712, 3.730, 3.732, and 3.740 discussed above. We understand the need to address housing and affordable housing in the Town and the region.

Atherton’s Housing Element relies heavily upon ADUs, since the cost of land at approximately \$8,000,000 per acre makes the development of affordable housing extremely challenging. Development is further complicated with increased construction costs, high interest rates, and a weakening economy. There is not enough money available in the form of grant money and other sources of subsidies typically used by non-profit developers to construct affordable housing in California. The ADU and JADU plan under the Atherton Housing Coalition proposal takes advantage of residents’ willingness to construct these housing units either on land they already own or as part of a new construction project. We believe that overall, the Atherton Housing Coalition proposal furthers the Town’s housing goals, objectives, and policies and should be incorporated into the Housing Element.

E. Additional Legislative Relief

One additional approach regarding the Housing Element adoption process includes lobbying the State for emergency legislation to allow cities within ABAG a grace period of up to six months or one year to have a HCD-certified housing element, at least with respect to the three-year rezoning requirement. Under Government Code Section 65583(c)(1)(A), if HCD does not certify a housing element within 120 days of the statutory deadline, a city must complete the rezoning of various sites identified in its housing element, including adopting minimum density and development standards, within one year, while under normal circumstances that city would have three years to complete its rezoning.

Having a one-year rezoning requirement is very onerous task for a city to complete, since there are complicated analyses related to CEQA and noticing requirements that must be completed prior to rezoning. Since it is unlikely that more than a handful of cities within ABAG will have HCD-certified housing elements within 120 days of the January 31st deadline, most cities in the ABAG region will be subject to the one-year rezoning requirement. Thus, it will be beneficial for cities to seek emergency legislation applicable to ABAG jurisdictions to maintain their three-year rezoning requirement if cities have HCD-certified housing elements within six months of the January 31, 2023 deadline, which is July 31, 2023 (or up to a year, which is January 31, 2024), which is a much more realistic deadline for both cities (to submit their final adopted housing elements) and for HCD (to review and certify said housing elements).

This same issue was addressed through legislation under SB 197 for jurisdictions in the Southern California Association of Governments (SCAG) region. Because none of the 197 cities within the SCAG region had adopted and HCD-certified housing elements by the statutory deadline of October 15, 2021, SB 197 allowed those jurisdictions one additional year to get their housing elements adopted and certified, by October 15, 2022, to maintain the three-year rezoning requirement, provided that the participating jurisdictions met other requirements.

Although such proposed legislation to extend will not shield cities from Builder's Remedy project applications, it will greatly help cities to be in compliance without being exposed to additional penalties. ABAG has 109 member jurisdictions, and it is likely that fewer than 10 jurisdictions will have adopted and certified housing elements by the January 31, 2023 deadline. Therefore, it is likely that emergency legislation applicable to ABAG will have a lot of support from local cities in the area. We strongly urge that the City Council explore this potential legislation with other cities for the benefit of the Town and the entire ABAG region.

We recognize that this is a difficult time for everyone and gratefully appreciate your efforts on behalf of the Town to ensure the character of the community is maintained, while we plan to satisfy our RHNA allocation. It is our hope that you will discuss our plan at the City Council meeting on January 31, 2023.