



Item No. 11 Town of Atherton

CITY COUNCIL STAFF REPORT – REGULAR AGENDA

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

**FROM: GEOFF BRADLEY, AICP, PRINCIPAL-IN-CHARGE, M-GROUP
BRITTANY BENDIX, TOWN PLANNER AND HOUSING ELEMENT
PROJECT MANAGER, M-GROUP**

DATE: JULY 19, 2023

**SUBJECT: REVIEW AND RECOMMEND POTENTIAL MULTI-FAMILY HOUSING
SITES AND LAND USE STRATEGIES TO INCLUDE IN THE PROJECT
DESCRIPTION FOR THE ENVIRONMENTAL REVIEW OF THE 6TH
CYCLE HOUSING ELEMENT.**

RECOMMENDATION

Staff recommends that the City Council review and recommend potential multi-family housing sites and land use strategies to include in the 6th Cycle Housing Element and comply with State law. Recommended sites and strategies will then be included in the project description, which is a necessary step in commencing environmental review pursuant to the California Environmental Quality Act (CEQA).

BACKGROUND

On April 4, 2023, the Town received a letter (Attachment 1) from the Department of Housing and Community Development (HCD) that found that while Atherton's adopted 2023-2031 Housing Element addresses many statutory requirements, additional revisions are necessary to substantially comply with California housing element law (Article 10.6 of the Government Code). Furthermore, because the Town did not adopt an HCD certified housing element within 120 days of the statutory deadline (January 31, 2023), any rezoning required to enact the element's housing programs and achieve its regional housing needs allocation must be completed by January 31, 2024.

At the City Council meeting on May 17, 2023, the Council received a summary of HCD's comments, a discussion of actions necessary to achieve compliance, and an explanation of the CEQA review process necessary to complete the housing element and related changes to the Town's Zoning Ordinance. The Staff Report for the May 17, 2023, City Council meeting is available at Attachment 2.

Establishing a stable project description is an important component of the CEQA process because it establishes a baseline for all subsequent analysis and studies of the project. Substantial changes to the project description occurring later in the CEQA process can result in potential delays, especially if those changes expand the project scope. For the purpose of initiating the CEQA review process of the housing element and meeting the State's January 31, 2024, deadline, the housing element project team has emphasized the importance of refining a project description with the City Council at their regularly scheduled meeting on July 19, 2023.

Because the State has indicated that the Town's Housing Element should include a multi-family program to address Affirmatively Furthering Fair Housing (AFFH) requirements, it is recommended that the project description also identify potential multi-family housing sites and programs to be considered during the CEQA review process. At the May 17, 2023 City Council meeting, the Council requested that staff provide additional information relating to AFFH that has been requested from HCD, as to inform the Council prior to selecting any sites for multi-family housing.

This report provides a summary of the additional AFFH analysis, a summary of public feedback received from a public meeting on June 19, 2023, and a recommendation to the City Council of which sites and programs to include in the CEQA review, including the methodology used for site selection.

FINDINGS | ANALYSIS

Affirmatively Furthering Fair Housing (AFFH) & Needs Analysis

AFFH is a policy that derives from the nation's Fair Housing Act (FHA) adopted in 1968. The FHA prohibits discrimination in the sale, rental and financing of housing based on race, religion, national origin, color, sex, disability and familial status. The FHA also directs the federal government, through the Department of Housing and Urban Development (HUD) to ensure that the agency and its programs' participants "*will proactively take meaningful actions to overcome patterns of segregation, promote fair housing choice, eliminate disparities in housing-related opportunities, and foster inclusive communities that are free from discrimination.*" This commitment is referred to as "affirmatively furthering fair housing" or AFFH.

In 2018, the State of California adopted AB 686 and integrated the federal policies into the housing element process by requiring jurisdictions to identify AFFH issues. As a result, the California Government Code Section 8899.50 defines "affirmatively furthering fair housing" as follows:

"taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development."

At the May 17, 2023 City Council meeting, members of the Council indicated a desire to have the additional AFFH information requested by HCD, prior to selecting sites for study as multi-family development. Specifically, this additional information relates to the comments in the April 4, 2023 letter from HCD requesting that the Town provide an analysis of how past and recently adopted programs in the Housing Element support housing opportunities for extremely low-income (ELI) households and special needs populations (elderly, persons with disabilities, large households, female-headed households, farmworkers and persons experiencing homelessness). HCD also requested that this analysis provide a comparison between the Town and the region, and then identify gaps in resources and constraints on the Town's ability to provide housing for these populations. The housing element must then address how its programs mitigate any identified (AFFH or special needs) issues.

The underlying concern asserted in HCD's letter is that the current suite of programs in the Town's housing element, without a multi-family housing component, would not likely contribute to the improvement of AFFH issues that will become evident through further comparative analysis between the Town of Atherton and the region. This concern is most clearly expressed on page 9 of HCD's Letter:

"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... Based on this evaluation, the Town should consider appropriate and additional action (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."

The concerns raised by HCD are consistent with the Department's *Guidance for All Public Entities and for Housing Elements* (Attachment 3) and supported by four critical fair housing issues¹ in the Town, as compared to the region, that limit fair housing choice.² The first issue is that the Town is a racially concentrated area of affluence that deviates from regional trends as demonstrated by Figures 1 and 2. The second issue is that the Town, which reflects a racially concentrated area of affluence is predominately zoned for, and developed with, single family

¹ HCD defines a 'Fair Housing Issue' as a condition in a geographic area of analysis that restricts fair housing choice or access to opportunity, and includes such conditions as ongoing local or regional segregation or lack of integration, racially or ethnically concentrated areas of poverty and affluence, significant disparities in access to opportunity, disproportionate housing needs, and evidence of discrimination or violations of civil rights law or regulations related to housing. (Attachment 3: HCD's Guidance for All Public Entities and for Housing Elements)

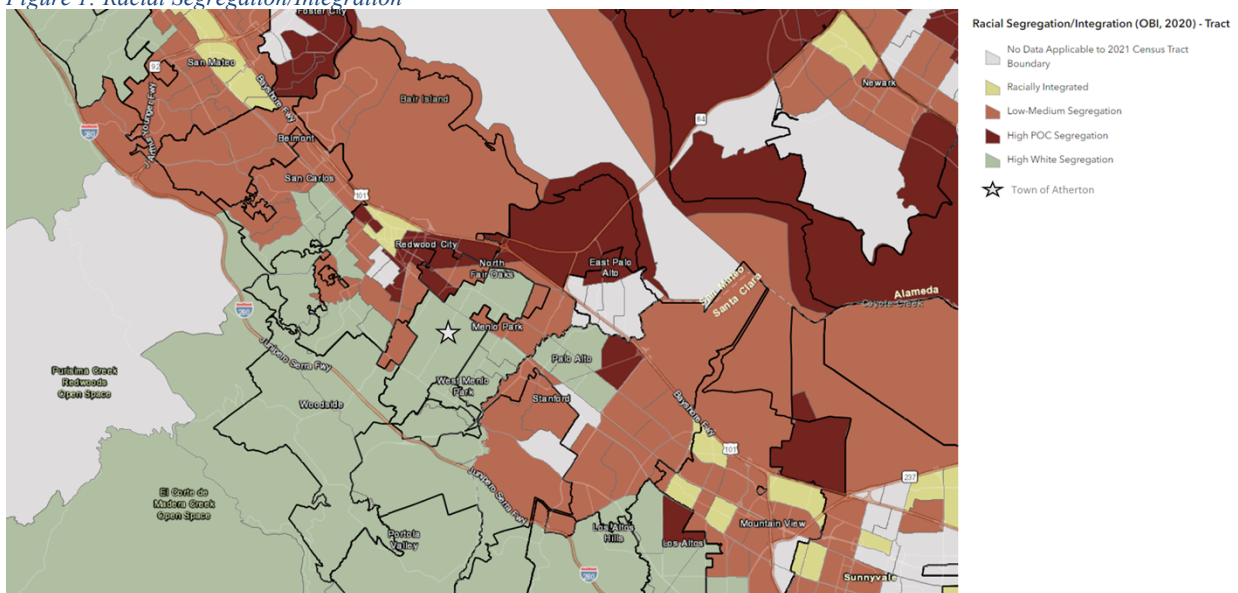
² HCD defines "Fair Housing Choice" as requiring that individuals and families have the information, opportunity, and options to live where they choose without unlawful discrimination and other barriers related to race, color, religion, sex, familial status, national origin, disability or other protected characteristics. (Attachment 3: HCD's Guidance for All Public Entities and for Housing Elements)

homes(Figure 3). Fair Housing policies seek to break down residential segregation based on race and income.

The third issue relates to the multi-family housing sites in the adopted housing element that are on private school sites, as these programs limit residential eligibility to institutional affiliates (i.e faculty, staff or students of Menlo College and Menlo School). While this program provides low-income units that satisfy the Town's RHNA, the program is not a fair housing choice for individuals and families that are non-affiliates.

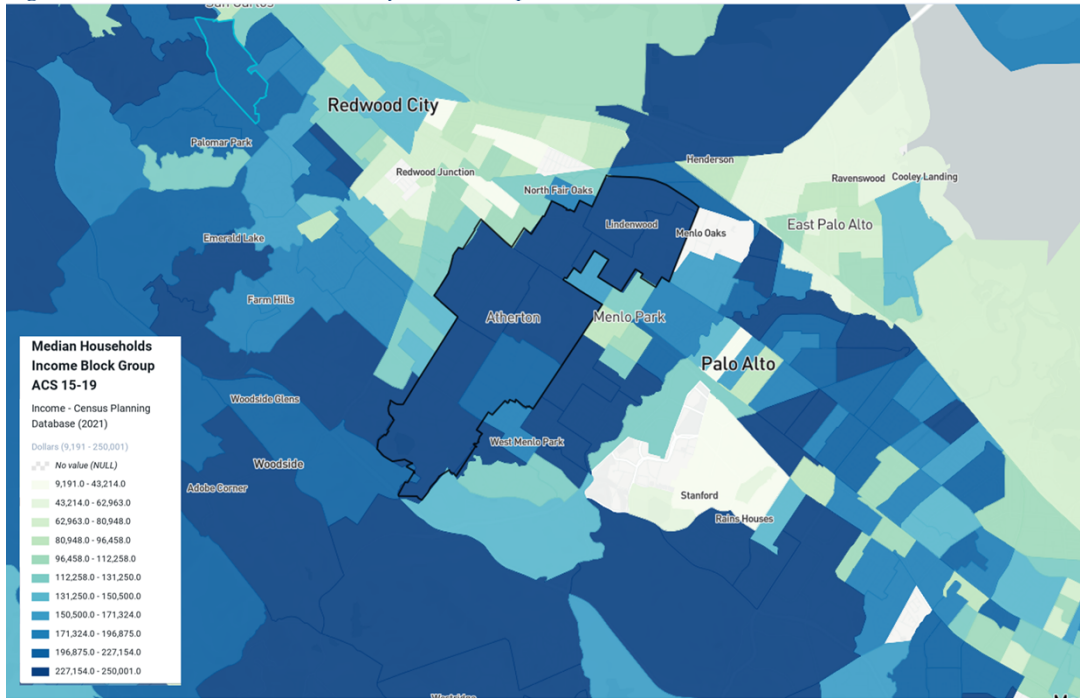
The fourth issue relates to the ADU programs provided in the adopted housing element because ADUs are limited in size and generally not as accessible to rent as multi-family rental properties. Fair housing concerns about ADUs are well documented in the recent San Mateo Civil Grand Jury report (Attachment 4). Therefore, ADUs, as the Town's primary low-income housing program may not provide adequate fair housing choices for low-income households, Black households, and other people of color, and large families, which consists of five or more individuals.

Figure 1: Racial Segregation/Integration



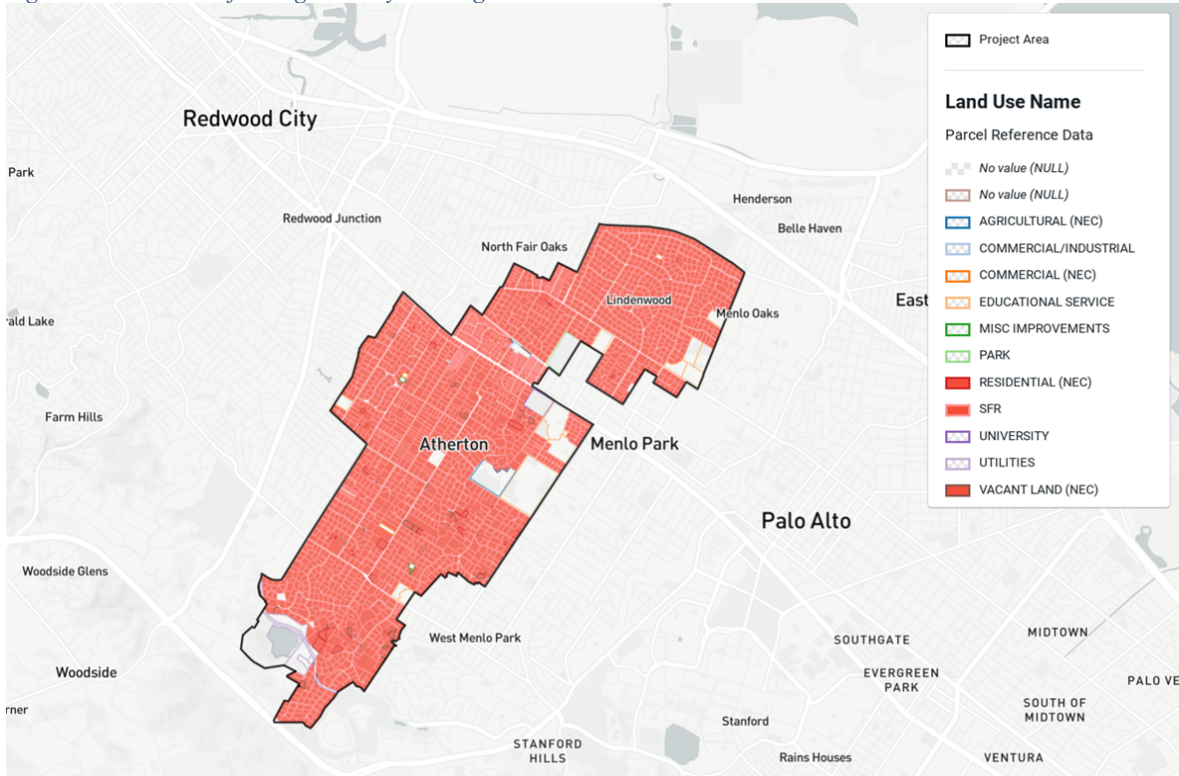
Source: AFFH 2.0 Data Viewer

Figure 2: Median Households Income by Block Group



Source: Urban Footprint (Mapping Software)

Figure 3: Areas Zoned for Single Family Housing



Source: Urban Footprint (Mapping Software)

June 19, 2023 Public Meeting

Based on the identified fair housing issues, staff recommends including multi-family sites in the project description to enable further analysis and the development of programs that facilitate remediation of the issues. Inclusion of the multi-family sites in the project description will allow for additional analysis that will assist the Council in determining whether to include the site(s) in the final Housing Element. To further inform the City Council, this recommendation and a preliminary assessment of AFFH was shared at a public meeting/community workshop on June 19, 2023. The publicly noticed meeting had approximately 85 attendees in-person and 10 to 15 attendees on-line. A recording of the meeting is linked to this report at Attachment 5 and draft minutes from the meeting are provided at Attachment 6. Additionally, staff requested that attendees provide feedback through an online survey that queried the general demographics of the attendees, their concerns relative to fair housing issues, and perceptions of multi-family housing. The survey also included a final write-in comment option. A summary of the survey is provided at Attachment 7.

The general sentiment of public comment at the meeting on June 19, 2023, reflected opposition to any type of multi-family housing strategy, with the exception to the potential for development of housing at local school sites. Concerns regarding multi-family development generally related to traffic congestion, perceived property value reduction and a change from Atherton's semi-rural nature. Another concern raised included the challenge that multi-family developers could face in realizing low-income housing opportunities, relaying a concern that a multi-family strategy may not be successful. Finally, a number of residents expressed support for challenging the State's requirements legally and indicated they that have retained attorneys to further investigate that option.

In response, Town staff and the Housing Element team acknowledged the continuity of community members' opposition to general multi-family housing throughout the Housing Element adoption process and asserted that the team actively monitors *all* legal challenges relating to California housing law. This includes not just the legal challenges brought against the State by jurisdictions; but challenges brought against local jurisdictions that have missed critical deadlines during the certification process.

Although the public comment at the June 19, 2023, meeting indicated opposition to multi-family housing as described above, responses to the survey suggest support among some town residents for multi-family housing and a desire for future housing options to fit within the existing character of the Town. A summary of the survey responses is provided at Attachment 7.

Accordingly, the current recommendation from staff and consultants is to continue towards compliance by January 31, 2024. To achieve that effort and complete the necessary CEQA review, the City Council should select sites for further analysis as potential locations for multi-family housing. Upon selection of additional sites, the Housing Element team will evaluate the potential impacts associated with the development of any multi-family sites and recommend programs that balance concerns from the public with the requirements of State law.

Multi-Family Site Identification Process

HCD provides guidance for jurisdictions proceeding through the site selection process in its *Housing Element Sites Inventory Guidebook*. (Attachment 8) The guidance is grounded in state law and provides two key objectives for the housing element's site inventory: (1) accommodating the RHNA by income category and (2) affirmatively further fair housing through an evaluation process that assesses segregation and integration, racially and ethnically concentrated areas of poverty and affluence, access to opportunity and other factors. To achieve these objectives, the recommended site selection process includes identifying developable sites based on the following assessments:

1. Development potential: identify sites that are vacant, underdeveloped, residentially zoned, or owned by a local agency. HCD also encourages these sites to be at least 0.5 acres and no greater than 10 acres to accommodate lower income RHNA housing units. If the site is smaller or larger than the recommended acreage, then the housing element must demonstrate that the development of the site to accommodate lower income households is realistic and feasible. Evidence could include a comparison to similar successful sites, developer interest, potential for lot consolidation and appropriate zoning or zone overlays that facilitate the density necessary for feasibility.
2. Infrastructure availability: identify sites that have sufficient water, sewer, and dry utilities (energy, gas, phone, etc.) availability and accessibility necessary to support development.
3. AFFH: identify sites that distribute lower income RHNA housing units throughout a community, provide access to community resources (schools, jobs, parks, etc) and facilitate integration within the community.
4. RHNA Income Categories: identify the range of RHNA income categories supported by the site. HCD's Best Practices for selecting sites to accommodate lower income RHNA units include:
 - a. Proximity to transit
 - b. Access to high-performing schools and jobs
 - c. Access to amenities, such as parks and service
 - d. Access to health care facilities and grocery stores
 - e. Locational scoring criteria for Low-income Housing Tax Credit (TCAC) Program funding
 - f. Proximity to available infrastructure and utilities.
 - g. Sites that do not require environmental mitigation.
 - h. Presence of development streamlining processes, environmental exemptions and other development incentives.

Programs to Support AFFH

Throughout the guidance for site selection, the State acknowledges that to achieve the goals of this process, complementary programs and actions by jurisdictions may be necessary.

Accordingly, once selected for further analysis sites would undergo review for impacts related to potential future development and to determine their realistic feasibility to accommodate lower income units. The City Council would then receive recommendations for complementary programs and actions to include in the housing element. These programs could include any one or a combination of the following actions:

1. Re-zone Selected Sites to allow Multi-Family Zoning. This action would replace the site's existing single-family zoning with multi-family zoning at a specific density. Lower income units would then likely result through the Town's forthcoming inclusionary housing policy. The total number of lower income inclusionary units would depend on the maximum density. For example, a one-acre site developed at a density of 10 units per acre and a 20 percent inclusionary requirement could result in two lower income units. The exact income level of the affordable unit would be determined by the inclusionary housing policy, which is currently under development.
2. Establish a Multi-Family Housing Overlay. Rather than replace the base zoning, the overlay option retains the single-family zoning designation but provides development incentives in the Zoning Ordinance to encourage multi-family development within specific parameters. Overlay requirements could include the Town's inclusionary policy, or it could have distinct provisions to achieve goals specific to this effort.
3. Establish an SB-10 Program for the Town. Senate Bill 10 (SB 10) enables cities to zone any parcel at a density of up to 10 dwelling units *per parcel* consistent with a city's obligation to AFFH. Additionally, SB 10 allows for the creation of up to two ADUs and two Junior ADUs on a subject parcel. Although this approach retains single-family zoning, it could address the Town's AFFH issues by providing housing units at a scale and density not currently available in the Town, thereby broadening fair housing choices. With this approach, parcels smaller than 0.50 acres can be more easily considered.

Selecting Multi-Family Sites in Atherton

Based on the process described above, the range of complementary programs and the unique characteristics of Atherton, ten sites are included in Table 1 for consideration by the City Council. For each site, Table 1 includes the site address, size in acres, and the estimated maximum number of units based on the required density through an SB 10 program or changes to the maximum density, measured as dwelling units per acre (du/ac). Individual data sheets for each site are provided as Attachment 9. For all of the sites included in Table 1 owners and occupants within 500-feet have previously, as part of the Town's continuing discussions on the Housing Element, received public notice of the site's potential inclusion in the Town's housing element. At this time, the Housing Team recommends that all ten sites are included in the CEQA project description (Attachment 10) for further analysis and consideration. If the City Council wishes to remove specific sites from further consideration or include additional sites to the list, the Town will provide public notification for discussion of those properties at the next Council meeting. The Town's Gilmore House at the Park could be included without additional notice as notice has been previously provided.

For context, Table 2 provides the multi-family housing sites already identified in the adopted Housing Element. The greatest density is 40 du/ac, which applied to two sites at Menlo College. Although the Housing Team has not recommended densities up to 40 du/ac for any of the sites listed in Table 1, that could change pending any new sites added to the list.

Table 1: Multi-Family Sites at Varying Densities

Site No.	Address	Size (Acres)	Number of Units				
			SB-10*	10 du/ac	15 du/ac	20 du/ac	30 du/ac
1	2 Selby Lane	0.33	5	3	5	7	--
2	8 Selby Lane	0.37	5	4	6	7	--
3	89 Victoria Dr.	0.32	5	3	5	6	--
4	99 Victoria Dr.	0.30	5	3	5	6	--
5	97 Santiago Ave.	1.43	10	14	21	29	--
6	290 Polhemus Ave.	1.7	10	17	26	34	--
7	999 Ringwood Ave.	0.90	9	9	14	18	27
8	352 Bay Rd.	0.92	9	9	14	18	28
9	318 Bay Rd.	0.94	9	9	14	18	28
10	296 Bay Rd.	0.93	9	9	14	19	28

*For Atherton, SB-10 assumes 5 dwelling units for parcels that are between 0.30 and 0.50 acres, with one additional unit every tenth of an acre up to 0.99 acres, and 10 units for parcels of 1 acre or greater.

Table 2: Multi-Family Sites Identified in Adopted Housing Element (Section 3.400)

Address	Size (Acres)	Density (du/ac)	Number of Dwelling Units
23 Oakwood	1.62	10	16
Menlo College Site No. 1 (O'Brien Parking Lot)	1.7	40	60
Menlo College Site No. 2 (Existing Faculty Housing)	--	20	30
Menlo College Site No. 3 (Interior Administration Parking Lot)	--	40	40-60
Menlo School Site No. 1	1.28	20	25
Menlo School Site No. 2	1	20	20

CEQA REVIEW

Initial Study

The Town's previously adopted 2023-31 Housing Element received an exemption from environmental review pursuant to the California Environmental Quality Act (CEQA) sections 15061(b)(3)(Common Sense exemption), 15002, and 15283. At that time the housing element was exempt from environmental analysis because it would be speculative to analyze potential environmental impacts from future development when zoning code changes and development standards have yet to be approved. Instead, the Town would conduct a CEQA review when it brought forth any zoning code amendments or land use ordinance to effectuate the Housing Element or upon receipt of development applications, whichever occurred first.

However, the Town has not yet adopted a State-certified housing element. Therefore, any rezoning required to enact the element's housing programs that are necessary to achieve its regional needs allocation must be completed by January 31, 2024. To achieve this effort, the Town will now pursue certification of its housing element in tandem with zoning code modifications

and the adoption of objective design standards. Accordingly, the Town must now prepare an initial study to evaluate the potential environmental impacts from the revised 2023-31 Housing Element.

FISCAL IMPACT

The overall fiscal impact to the General Fund would be \$323,244 to complete the Housing Element and related CEQA review. Related work would be \$159,553 to complete Objective Design Standards and \$118,553 to complete Zoning Code modifications. Funds are incorporated as part of the Town's FY 2023-24 Budget.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

CEQA

This item is statutorily exempt from CEQA under Section 15262, Feasibility and Planning Studies.

ATTACHMENTS

Attachment 1:	HCD Letter dated April 4, 2023
Attachment 2:	May 17, 2023 City Council Meeting Staff Report
Attachment 3:	AFFH: Guidance for All Public Entities and for Housing Elements
Attachment 4:	San Mateo Civil Grand Jury report
Attachment 5:	Recording of June 19, 2023 Public Meeting
Attachment 6:	Draft Minutes June 19 th Housing workshop
Attachment 7:	Summary of June 19, 2023, Community Survey Response
Attachment 8:	HCD Memo, June 10, 2020: Housing Element Site Inventory Guidebook
Attachment 9:	Site Data Sheets
Attachment 10:	CEQA Project Description