

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

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December 30, 2024

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 that was adopted October 16, 2024 and received for review on November 4, 2024. Pursuant to Government Code section 65585, the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from Vickie Peng, Amir Motamedi, Jeff Bui, Zhanglin, Liang Li, Housing Leadership Council of San Mateo County, John E. Riddle, Jane Garratt and Carolyn Ordonez pursuant to Government Code section 65585, subdivision (c).

The adopted housing element addresses most statutory requirements described in HCD's April 4, 2023 review; however, additional revisions are necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq), as follows:

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).)

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...(Gov. Code, § 65583, subd. (c)(1).)

Suitability of Nonvacant Sites: While the element now discusses some recent development trends, it must still demonstrate the redevelopment potential of nonvacant sites, as follows:

- *Menlo and Sacred Heart Schools*: The element now discusses recent development trends on school sites in the region. However, the element should also discuss the circumstances and site conditions on the Menlo and Sacred heart School sites and how those circumstances and site conditions demonstrate the potential for redevelopment. For example, similar to development trends, the element should explain the available areas of the school sites that could be developed, potential site planning and any existing conditions that preclude additional development.
- *Development Trends and Redevelopment Indicators*: The element utilizes improvement to land value ratio, age of structure and existing floor area ratio (FAR) as redevelopment indicators but should also support the validity of these indicators utilizing development trends. For example, the element could list developments in Table HE-17 by these redevelopment indicators.

Electronic Sites Inventory: Pursuant to Government Code section 65583.3, subdivision (b), the Town must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory and submit an electronic version of the sites inventory. While the Town has submitted an electronic version of the sites inventory, if changes occur, any future re-adopted versions of the element must also submit the electronic version of the sites inventory.

Programs: As noted above, the element does not include a complete site analysis. Depending upon the results of that analysis, the Town may need to add or revise programs. In addition, the element and recent rezoning should be revised, as follows:

- *Programs 3.811 (New Multifamily Development) and 3.813 (CEQA on Multifamily Development)*: While the Town has recent adopted land use and zoning changes (Zoning Changes) to facilitate multifamily development and accommodate the regional housing need allocation (RHNA), these Zoning Changes do not appear to meet all by right requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i). For example, the Zoning Changes do not appear to permit housing developments with 20 percent affordability to lower-income households without discretionary action.

In addition, please be aware, the recent California appellate decision in *Martinez v. City of Clovis* found that while overlays can be used in a rezone, when the base zone allows residential development, both the base zone and the overlay zone must comply with the minimum density requirements of Government Code section 65583.2, subdivision (h). The Town should analyze how this decision may impact its current rezone strategy using overlays and may need to adjust accordingly. *Martinez v. City of Clovis (2023) 90 Cal.App.5th 193, 307 Cal.Rptr.3d 64.*

The Town should either provide documentation to demonstrate compliance with all the by right requirements, as noted above, or modify the Zoning Changes and submit the appropriate ordinances, resolutions and pertinent documents to HCD for review.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), as the Town did not adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), programs to address a shortfall of capacity to accommodate the regional housing needs allocation (RHNA) must be completed no later than one year from the statutory deadline, pursuant to Government Code sections 65583, subdivision (c)(1)(A). As this year has passed and all necessary rezonings have not been completed, the housing element is out of compliance and will remain out of compliance until the rezoning has been completed to meet all requirements.

- *Program 3.811(B) (New Single Family Housing Development from SB9 Implementation)*: While the Program commits to evaluate constraints on SB 9 lot splits, it should also commit to evaluate development trends and consistency with assumptions in the sites inventory (48 units) and, if necessary, identify alternative sites or strategies by a specified date.

The element will meet the statutory requirements of State Housing Element Law once rezoning has been completed to meet all requirements and the element has been revised, re-adopted (if needed), submitted to, and reviewed by HCD to comply with the above requirements pursuant to Government Code section 65585.

As a reminder, the Town's 6th cycle housing element was due January 31, 2023. As of today, the Town has not completed the housing element process for the 6th cycle. The Town's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the Town to revise the element as described above, adopt if needed, and submit to HCD to regain housing element compliance.

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 Affordable Housing and Sustainable Communities program, 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>.

George Rodericks, Town Manager
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HCD recognizes the significant efforts of the Town in the housing element update and rezoning. 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 Anthony Errichetto, of our staff, at Anthony.Errichetto@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall
Senior Program Manager