



Friends of Los Altos, Inc. (FOLA)

A non-profit, non-partisan, volunteer-run organization

Everything You Ever Wanted to Know About Builders Remedy

Many residents were aghast when construction continued upward on the Sorenson project at 40 Main Street. A contentious project when first proposed, the five-story building sticks out like a very sore thumb at the “gateway” to Los Altos.

News of two additional Builder’s Remedy projects—one at Sherwood Triangle near Chef Chu’s and the other, a 65-foot, six-story, obelisk-like condo project just across the street from Draeger’s on First Street—has generated lots of talk, speculation, and finger-pointing.

Housing advocates would say the city stonewalled developers and that Builder’s Remedy is the punishment. Those concerned about how additional housing will affect Los Altos might instead point their fingers at the City or City Council.

And of course, Measure D has prompted lots of opinions, some informed, some not, on whether or not passage would trigger Builder’s Remedy.

The truth is a bit more nuanced. So, instead of adding to the rumors and hysteria, let’s look at the facts.

What is Builders Remedy?

The Builder's Remedy is a provision in California's Housing Accountability Act that strips a city or county of its power to deny qualifying housing projects when the municipality fails to adopt a legally compliant, state-certified housing element.

What a Developer Can Do Under Builder's Remedy?

When a local government falls out of compliance with state housing planning laws, eligible developers can take the following distinct actions that normally violate local land-use laws:

- Bypass Local Zoning and General Plans: Propose residential or mixed-use projects that ignore local height limits, density caps, and zoning
- Override Local Disapproval: Force non-compliant cities or counties to approve qualifying housing projects, as local agencies are legally prohibited from rejecting them unless they meet very narrow, hard-to-prove statutory criteria.
- Build Mixed-Use Developments: Include commercial spaces in a project as long as at least two-thirds of the total square footage is designated for residential use.
- Meet Affordability Thresholds to Qualify: Gain protection by dedicating at least 20% of total units to lower-income households or 100% of units to moderate-income households (or by building an emergency shelter).
- Skip Re-zoning and Extra Hearings: Submit projects through standard processing timelines without being forced into extra legislative re-zoning hearings or facing local voter-approval mandates.

Clearly Builder's Remedy is something the city and residents do not want to be triggered.

How we wound up with 3 Builder's Remedy Projects?

The two most recent Builder's Remedy projects are a result of the city not having an approved Housing Element before the deadline. But there are several things to consider.

First, the city did submit its plan in a timely manner, allowing time for the questions and revisions required by HCD, the state agency that oversees Housing Element submissions and compliance. And, like virtually every city in the Bay Area, the review process took more time than anyone could reasonably have imagined. In fact, something like 96% of Bay Area cities did not have an approved plan by the January 2023 deadline.

HCD asked for changes. Los Altos made those changes and resubmitted its plan. Then HCD came back with required changes on other issues that had not been previously raised. HCD was also slow in responding.

Was that intentional on the part of HCD? Many think so. Others give HCD the benefit of the doubt, saying it had new staff and trouble ramping up its review process. But the result was that most cities in the Bay Area did not have approved plans before the required deadline.

There were developers who anticipated this. In Los Altos, as well as many other cities, developers filed applications using Builder's Remedy during that short window.

In our opinion, HCD is to blame, but Los Altos gets stuck with two projects that are out of scale with neighboring projects. Talk about the punishment not fitting the crime.

The project at 40 Main is different

The Sorenson brothers submitted non-compliant project proposals for that site for nearly a decade. They had promised investors a project and economic return that required building a structure that was not allowed by our code—that is, a three-story building where two stories was

the maximum height. The project also did not provide enough on-site parking to meet the then-current code.

The project was rejected numerous times by the Planning Commission because the Sorensons kept submitting essentially the same project over and over again, never addressing the fundamental issues with their submittal.

The reason the project ultimately was able to proceed under Builder's Remedy was because the rules were different at the time. If a city didn't file its annual report to HCD by the required deadline, a developer could get a project approved via Builder's Remedy. And yes, the head of Community Development at the time failed to file the report on time.

The city thought it could win the case on appeal, but the cost of a required bond—and the possibility of losing with a very high penalty associated with that loss—led the City Council not to file an appeal. So, the project was allowed to proceed.

For those interested in the long machinations of the lawsuits that followed, we suggest you read the FOIA article written several years ago. It can be found here: <https://friendsoflosaltos.org/are-we-ready-for-a-5-story-building-on-main-street/>

Will Los Altos be subject to Builder's Remedy if Measure D Passes?

According to the City's own website, passage of Measure D will not automatically trigger Builder's Remedy. It will however, require the City evaluate the impact of Measure D on the housing goals and policies and as necessary, amend the Housing Element. The city has 180 days to do so. If it fails to amend it within that timeframe then it would result in the city not having an accepted plan and would likely result in Builder's Remedy being effective.

While we talk about the possibility of Builders Remedy happening, the probability of it happening are small and, in our opinion, extremely small. Why? The city already has an excess of identified sites to meet the housing element target numbers. There is one category where there is a small shortfall that could be met by making minor tweaks to already identified sites in the downtown. And if for any reason additional sites are required, there are sufficient number in the downtown that could be directly substituted for the parking plazas. And without the need to make changes to zoning in other business districts or single-family residential neighborhoods.

Even if Measure D does not pass, the City likely has to go through the same exercise of updating the housing element should Plazas 1, 2, and 3 be developed and therefore no longer be opportunity sites for affordable housing. Yet no one is wringing their hands over that possibility, which further reinforces our belief that Builders Remedy is not a realistic concern, regardless of the outcome of a vote on Measure D.

While there is much handwringing about Measure D and Builder's Remedy, in reality, it would only apply if the Housing Element were out of compliance—and it isn't, and would not be even if Measure D is passed.

There may be other reasons you decide to vote for or against Measure D. Builder's Remedy should not be among those considerations.

Friends of Los Altos Board of Directors

Friends of Los Altos

Los Altos, CA 94022 & 94024

<https://friendsoflosaltos.org>