



Friends of Los Altos, Inc. (FOLA)

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

BUILDER'S REMEDY – THE BOGEYMAN THAT ISN'T

“Builder’s Remedy” has been raised as one of the “horrors” that will occur if Measure D passes. We’d like to provide some facts that show it is a false “bogeyman” intended to scare voters.

Will Los Altos be subject to Builder’s Remedy if Measure D passes?

According to the City’s own website, passing Measure D will not trigger Builder’s Remedy. This assertion is based on a letter from the controlling state agency, the Housing and Community Development department (HCD), in response to a City-initiated query and says the City would have to assess whether Measure D presents a “constraint” that would require an amendment to the Housing Element. The city would have 180 days to do so.

While we talk about the possibility of Builders Remedy happening, the probability of it happening is small Why? First, there is a difference between identified housing sites and committed housing sites. Identified sites are not a commitment to build, they show where housing might be built. The downtown parking plazas have 124 units of housing identified that could fulfill part of the overall Housing Element target. If the City Council were to remove all the parking plaza sites, it would eliminate 124 possible housing units, but Los Altos would still have a surplus of housing identified. Many of the projects that get built have more housing units than in the City’s plans as state mandated density bonuses add more units to a project. In the unlikely event additional capacity was required, the City would amend the plan and then take the necessary re-zoning actions, such as increasing density allowed on certain downtown parcels or add downtown parcels to increase the number of opportunity locations in the downtown core. There is no need to upzone single family neighborhoods nor any of the housing planned for the other business districts.

Parking plazas 7 & 8 are the only two plazas that have been called out in the Housing Element as a specific development goal. As part of the housing process, the City declared the two plazas as “surplus land” and solicited proposals for development.

Importantly, Measure D specifically EXEMPTS Plazas 7 and 8, allowing the City to proceed with plans for housing development as specified in Section 1 H without a voter approval requirement. Section 1 H commits to housing on only one of the two plazas – either 15 or 16 Housing units. Opponents are erroneously suggesting that Measure D mandates housing and thereby removes the parking from Plazas 7 and 8 units. Measure D does not mandate housing and it does

not remove parking. Measure D is a voter-approval requirement only. And Measure D respects the existing housing plan in place by the City.

The threat to rezone single-family residential neighborhoods is specious and the intent is clearly to dissuade voters from approving Measure D. City Council member rants about rezoning single family residential neighborhoods already been debunked by the City Manager numerous times.

What about Lots 1, 2, and 3 – the proposed Theater and Park development?

The opponents of Measure D have not mentioned the impact on housing commitments with the development proposals for a parking garage, park and performing arts center on Plazas 1, 2 and 3. If City needs to review and analyze all of the parking plazas for Measure D, it will be also be required to do so for any development projects that are not housing. Same rules apply according to the State.

The silence of the NO on D opponents about Plazas 1, 2, and 3 further reinforces that Builder's Remedy and upzoning are not a realistic concern, but rather another specious threat to scare voters.

What is "Builder's Remedy" anyway?

Builder's Remedy allows developers to ignore or bypass certain planning and land-use rules under certain conditions.

It is a law in California (amended several times) that allows a developer to develop a qualifying project that provides a specific share of units to lower-income households or offers 100% moderate-income or lower-income units. Small projects of 10 or fewer units on sites under an acre usually cannot assert Builder's Remedy. A city cannot deny the developer's project if it is at least two-thirds residential just because it conflicts with local zoning rules (such as height or density) or general plan land-use designations. Builder's Remedy is only invoked when a City does not have a certified Housing Element. Los Altos is certified

When is a city subject to Builder's Remedy?

Many California cities came under Builder's Remedy during the most recent Housing Element planning cycle because their plans were either submitted late or were stalled during the state's review process. The Builder's Remedy door was opened during the lapse between submission and certification.

Los Altos 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. 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. In fact, more than 90% of Bay Area cities did not have an approved plan by the January 2023 deadline.

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.

However, the Los Altos plan is now certified and, in fact, has “excess capacity” – that is, the plan shows zoning capacity for more than the required units, even beyond the extra required by HCD. For this ultra-compliance, Los Altos received recognition as a Pro Housing Designated city.

Do we have “Builder’s Remedy” Projects in Los Altos?

Yes. The building at 40 Main Street was approved under an older version of the law. It was allowed after a City official failed to file an HCD report by the deadline. Two others, one in Sherwood Triangle and the other on First Street at Whitney in downtown, were submitted during the time between the deadline for certifying the Housing Element and when it was approved. There were developers who anticipated this and prepared applications. In Los Altos, as well as many other cities, developers filed those applications using Builder’s Remedy during that short window.

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

The Bottom Line

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 it will not be if Measure D passes. There will be no vulnerability window. Rather, the City Council and staff will take the required steps to review and, if needed, make minor amendments to the Housing Element—a routine process conducted by many cities

Yes, we have 3 awful Builder’s Remedy projects in town. Two because there was a window when Los Altos did not have an approved Housing Element and because a City staff person failed to file an HCD report on time. The opponents of Measure D have made a good bogeyman of Builder’s Remedy to create fear, doubt and uncertainty, but their misleading story relies on fiction and not on facts.

And that is the way we see it.

Friends of Los Altos Board of Directors

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