
MEMORANDUM

To: **City of Palo Alto**
Honorable Mayor Lauing, Vice Mayor Veenker, Members of the City Council
Ed Shikada, City Manager
Molly Stump, City Attorney

From: **Townsend Public Affairs**
Niccolo De Luca, Vice President
Carlin Shelby, Senior Associate

Date: **March 19, 2025**

Subject: **SB 457 (Becker) – Housing Accountability Act Reforms**

The purpose of this memo is to provide an overview of recent changes to state law governing the timing, approval, and processing of ‘Builder’s Remedy’ applications provided within the Housing Accountability Act (HAA), and a legislative proposal from Senator Becker designed to close certain loopholes.

BACKGROUND

During the 2024 Legislative Session, the Legislature passed several bills modifying the Housing Accountability Act (HAA), particularly regarding the Builder’s Remedy provision. The HAA, first enacted in 1982, aims to prevent local jurisdictions from arbitrarily denying or unduly restricting housing development projects that contribute to meeting their housing needs. The law limits a city’s ability to disapprove or reduce density in residential projects while still allowing the enforcement of objective standards and developer fees.

A key focus of recent legislative reforms has been the Builder’s Remedy, which prohibits local governments from denying housing developments that include at least 20% lower-income housing, even if they do not conform to local zoning—provided the jurisdiction lacks a compliant Housing Element. Recent legal interpretations and implementation have highlighted loopholes and inconsistencies, prompting legislative action.

Key Legislative Action in 2024:

- AB 1886 (Alvarez, 2024) clarified that a Housing Element is only compliant after both:
 1. The local jurisdiction adopts it; and
 2. The California Department of Housing and Community Development (HCD) certifies it as compliant.
- This measure was intended to address “self-certification,” preventing cities from arguing that a Housing Element could be compliant without first receiving HCD approval.
- However, this change could create discrepancies among cities based on the timeline for HCD review. It also extended the window for Builder’s Remedy applications to be

submitted until HCD review was complete, even if a Housing Element was substantively unchanged from the date of agency adoption.

In Palo Alto, the City Council adopted its revised Housing Element on April 15, 2024 and the final staff changes to the Housing Element were submitted to HCD on July 26, 2024. HCD completed its review and certified the Housing Element on August 20, 2024. In the time between Council adoption and HCD certification, the City received two SB-330 Preliminary Applications for Builder's Remedy projects (680 University Avenue and 2300 Geng Road). In addition, the City received a number of formal applications for Builder's Remedy projects (762 San Antonio Road, 3606 El Camino Real, 3781 El Camino Real, 3400 El Camino Real) and deemed two formal applications complete (762 San Antonio Road and 156 California Avenue).

As these projects exceed the density of development anticipated in the City's Comprehensive Plan, some projects may not be adequately served by critical infrastructure such as the water utility supply needed for firefighting as well as domestic needs, sewer capacity to prevent backups or the necessity of major upgrades to mainline and treatment capacity, and storm drain capacity.

Financing these infrastructure improvements can be particularly complex when existing systems are already strained, as not all costs can be attributed to a single developer. Local jurisdictions rely on long-term capital improvement plans and bond measures to fund upgrades in a strategic and fiscally responsible manner. However, Builder's Remedy projects, which exceed growth projections, can necessitate immediate and costly infrastructure investments, disrupting this careful planning. Assigning a fair share cost to developers is challenging when upgrades – such as increased water supply, sewer capacity, or storm drainage – require large-scale improvements ahead of schedule.

In Palo Alto, several Builder's Remedy projects will require both on-site and off-site improvements to increase fire flow capacity. One project alone demands a 3,000-gallon-per-minute increase, far exceeding current fire flow capacity. These unexpected infrastructure demands – whether for water supply, fire safety, sewer, or stormwater management – undermine well-planned municipal land use and financing strategies, placing an undue burden on local governments and taxpayers.

BILL PROPOSAL

In discussions with the office of Senator Becker, the City has worked to craft bill language to refine the Builder's Remedy framework and restore a more balanced approach that aligns compliance timelines with the procedural realities of local government adoption and state certification.

SB 457 (Becker) proposes that a jurisdiction's Housing Element be considered compliant upon local adoption, provided that HCD ultimately certifies the adopted element as compliant. By making this distinction, SB 457 aims to eliminate the current window of uncertainty wherein developers can exploit the delay between adoption and HCD approval by submitting applications under the Builder's Remedy provision.

The bill further clarifies that Builder's Remedy protections apply only to projects with a completed formal application submitted before the jurisdiction adopts a Housing Element that is later deemed compliant by HCD or a court. This measure seeks to prevent instances where developers file preliminary applications with minimal substantive detail solely to establish eligibility for the Builder's Remedy, even after the jurisdiction has completed the necessary analyses, policies, and programs required by state law. By ensuring that Builder's Remedy protections are only available

when a jurisdiction is genuinely out of compliance, the legislation reinforces the original intent of the remedy while preventing misuse that circumvents legitimate land use planning processes.

The measure also ensures equitable treatment of local agencies by preventing jurisdictions from being subject to Builder's Remedy protections due to delays in HCD's administrative review process. Under current law, jurisdictions remain exposed to Builder's Remedy applications even after adopting a Housing Element that is later deemed compliant, simply because HCD has not yet completed its review. This bill eliminates this potential for inequity by recognizing a jurisdiction's good-faith adoption of a Housing Element as the operative date for compliance, contingent upon subsequent HCD approval.

Additionally, SB 457 proposes to limit the extraordinary benefits of the Builder's Remedy to developers who have demonstrated a serious intent to construct much-needed housing. Currently, a developer may establish eligibility for the Builder's Remedy simply filing a preliminary application with minimal detail. A preliminary application secures development rights even if the project changes, so long as density or floor area do not change by more than 20%. While this flexibility is not normally problematic, in combination with the Builder's Remedy, which allows a developer to bypass all zoning and general plan regulations, it means the project described in a preliminary application has very little meaning. . The bill instead requires that a developer must submit a complete formal application to utilize the Builder's Remedy. This ensures that only serious developers with real housing plans can proceed with a project that disregards local policies. It also means that other developers will be required to comply with local policies and programs that are ultimately found to satisfy the state's high standards for promoting both fair housing and housing production goals.

The proposed legislation will significantly improve clarity on the applicability of the Builder's Remedy in future RHNA cycles. The applicability of its provisions to applications already filed with the City of Palo Alto and other local jurisdictions will need to be reviewed on a case-by-case basis, including any phase-in provisions provided through the legislation.

LOOKING FORWARD

SB 457 will be amended to reflect the updated language during the week of March 24 and is scheduled for its first policy hearing in the Senate Housing Committee on April 1, 2025, at 3:00 PM. The measure has been double-referred and will also be considered by the Senate Local Government Committee. Stakeholder engagement efforts are ongoing, with continued discussions involving local jurisdictions, housing advocates, and the development community to refine the bill's provisions and ensure clarity in its implementation.

The City of Palo Alto and its advocates remain engaged in monitoring the legislative process and advocating for refinements that ensure a fair and balanced application of the Builder's Remedy. The intent of this measure is not to weaken existing housing laws but to provide a rational and predictable framework that aligns compliance determinations with actual adoption dates, thus eliminating opportunities for speculative development while maintaining strong incentives for timely Housing Element adoption.

As the bill progresses through the legislative process, Townsend Public Affairs will continue to provide updates on any amendments and strategic opportunities for the City to participate in shaping the final language of SB 457.

ACTION

Given the City's active engagement with Senator Becker's office in developing the legislative language for SB 457, it is recommended that the City take a formal and sponsorship position (which, in turn, indicates a "support" position). By doing so, the City would serve as the lead stakeholder in advancing the measure and advocating for its passage. If the City Council agrees to this course of action, the City will co-champion the bill alongside Senator Becker. This effort would necessitate a representative from the City providing testimony on the technical merits of the legislation, as well as its potential impacts on local land use planning and housing policy.

Given that this proposal originated from the City, it is common practice that Palo Alto serve as the bill "sponsor" which indicates to other members and stakeholders who the primary driver(s) of the measure are. Should the city only elect to "support" the bill, the measure would lack a sponsor, which would run contrary to the origination of the measure, which, in this case, is not a member sponsored bill.

The requested City Council actions therefore include:

- A. Approve a Sponsorship position on SB 457; and
- B. Designate a City Council representative to provide testimony in support of the Bill or authorize the City Manager or their designee to serve this role.