



Memorandum Development Services

Date: October 12, 2023
To: City Council
From: Jennifer Carman, Development Services Director
Subject: Builder's Remedy Update

Summary: This memorandum is in response to a City Council request for information about recently submitted housing applications using Builder's Remedy.

Background:

Builder's Remedy is a provision of the Housing Accountability Act (HAA) that allows developers to bypass local zoning laws and build certain housing projects, even if those projects do not comply with the City Zoning Ordinance or General Plan. Builder's Remedy is only available to developers of projects that include at least 20% affordable housing units. If a city or county fails to update its housing element or if its housing element is not found to be in compliance with state law, then the Builder's Remedy is triggered. The City completed and adopted the 2023-2031 Housing Element within the required timeline and we believe we have an Element that is in substantial compliance with State Law and therefore not subject to Builder's Remedy. However, we are awaiting official certification from the State's Department of Housing and Community Development (HCD) and until then, we are required to accept an application filed under Builder's Remedy.

Many cities in Santa Clara County are currently processing Builder's Remedy applications. As of September 28, 2023, of the 16 jurisdictions in Santa Clara County (including the County), 10 may be subject to Builder's Remedy. Of the 109 jurisdictions in the Bay Area, 66 are currently subject to Builder's Remedy.

To qualify for the Builder's Remedy, a developer must submit a proposal for a housing project that includes at least 20% affordable housing units. The developer must also demonstrate that the project is consistent with Housing Element Law and that it is feasible to build.

If the city or county denies the project or imposes conditions that would make it infeasible to build, the developer can appeal to HCD. If the HCD finds that the city or county has not met its obligations under the Housing Element Law, then the HCD can order the city or county to approve the project.

Builder’s Remedy Applications:

To date, the City has received the following SB330 Preliminary Applications using Builder’s Remedy as the method to apply below. The SB330 preliminary application locks regulations and fees at the time of application and provides for 180 days for the applicant to file a final Design Review application. Builder’s Remedy does not exempt applications from environmental review. Upon submission of a final Design Review application that conforms to SB330 requirements, an environmental review process will start parallel to application processing. Final Design Review applications will have a project page once they are complete applications. In the case of the Monterey - Glenrock project, an extension of the Urban Service Area will also be required. A list of all [SB330 Preliminary Applications received this year](#) is available on the City website.

#	Application No.	Name	Number of Units	Location	Current General Plan/Zoning Designation
1	PRE2023-0004	Monterey/Butterfield - DeNova	323	Monterey Road @ Butterfield	Industrial/Light Industrial (IL)
2	PRE2023-0006	Tennant- Ten South Acquisitions c/o Meyers Nave	265	Southeast Corner of Tennant and Butterfield	Commercial Industrial/Highway Commercial (CH)
3	PRE2023-0008	Monterey - Glenrock (Builders Remedy)	263	14900 Monterey Road	Residential Detached Medium & Residential Detached Low (GP Designation and Zoning is the same)
4	PRE2023-0010	Cochrane and DePaul – High Street No. Cal Development Inc.	151	Southern portion of the vacant North 30 acres at Cochrane/DePaul	Commercial/Administrative Office

2023-2031 Housing Element Status:

As noted at the Council Goal Setting on September 27, 2023, prior to submitting a revised Housing Element to HCD, the City must post the revision on its website and email a link to all individuals and organizations that have previously requested notices relating to the local government’s Housing Element at least seven days before submitting the revised Housing Element to HCD. The updated version of the Housing Element was posted on September 28, 2023 and will be submitted to HCD on October 6, 2023.

In a recent meeting with our HCD representative, staff was assured that while the review period is 60 days, we will hear initial feedback in the first 30 days of that 60-day period and be allowed to make minor modifications to the document (if needed) that would then allow HCD to issue a compliance letter.