



## AB 1886 (Alvarez) Builder's Remedy

### Bill Summary

AB 1886 will provide certainty and clarification to the Builder's Remedy by clarifying when housing projects become eligible for the builder's remedy.

### Problem

In 1990, the so called "Builder's Remedy" was added to the Housing Accountability Act to incentive cities to meet housing needs in there cities. Specifically, the statute prohibits local agencies from denying housing projects that contain at least 20% low-income units or 100% moderate income units based on its zoning code or general plan if the following conditions are met:

- The city does not have a compliant housing element;
- The project will not have an adverse impact on health and safety, violate state or federal law;
- The project is not proposed on agricultural land;
- The proposed project is inconsistent with the city's zoning ordinance or general plan land use designation AND the city has a substantially compliant housing element.

Despite this powerful tool, it went unused for about thirty years. According to some reports, the Builder's Remedy was attempted once between 1990 and 2021 by a homeowner who wanted to exempt a second unit on his property from the on-street parking requirement and the city declined the request because they found it would have an adverse impact on health and safety.

Partially, this underutilization can be explained by the power imbalance between cities and developers who feared threatening relations with local officials. However, a more illuminating explanation is the

lack of clarity in the code, which has provided little practical guidance.

Still, given the shift in support for more housing we have experienced in the last seven years, which has shifted the power dynamic between local governments and developers, we have seen a significant uptick in Builder's Remedy projects and are beginning to see Builder's Remedy related lawsuits after cities erroneously reject the project using self-certification arguments, necessitating certainty be added to the code.

### Solution

To provide certainty, AB 1886 will clarify that HCD or a court determines whether the housing element substantially complies with the law, therefore when the Builder's Remedy may be utilized, and that if a project is submitted during this period of non-compliance, the project is eligible for the Builder's Remedy regardless of if the city reaches compliance before it is approved.

Additionally, it clarifies that the "development standards" cited in Gov't Code 65589.5(f)(1) and (f)(2) only apply to cities in compliance.

### Support

- SPUR (Sponsor)
- CBIA (Sponsor)

### For More Information

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