



# City of Huntington Beach

File #: 23-226

MEETING DATE: 3/7/2023

## REQUEST FOR CITY COUNCIL ACTION

**SUBMITTED TO:** Honorable Mayor and City Council Members

**SUBMITTED BY:** Michael E. Gates, City Attorney

**PREPARED BY:** Michael E. Gates, City Attorney

**Subject:**

**Builder's Remedy Ordinance No. 4285**

**Statement of Issue:**

At the December 20, 2022, City Council Meeting, the City Council provided direction to the City Attorney's Office to prepare an ordinance prohibiting Builder's Remedy applications.

**Financial Impact:**

N/A

**Recommended Action:**

- A) Find that the Zoning Text Amendment (ZTA) No. 23-001 is exempt from the California Environmental Quality Act, pursuant to Section 15061(b), the general rule that CEQA only applies to projects which have the potential for a significant effect on the environment; and,
- B) Approve Zoning Text Amendment No. 23-001 with findings by approving Ordinance No. 4285.

**Alternative Action(s):**

- A) Do not find that the Zoning Text Amendment (ZTA) No. 23-001 is exempt from the California Environmental Quality Act, pursuant to Section 15061(b), the general rule that CEQA only applies to projects which have the potential for a significant effect on the environment;
- B) Do not approve Zoning Text Amendment No. 23-001.

**Analysis:**

Health and Safety, and protecting the environment, is of paramount concern to the City of Huntington Beach. The concept of a "Builder's Remedy" is derived from the Housing Accountability Act (HAA) (Government Code Section 65589.5). Builder's Remedy provides that certain high density, affordable housing development projects cannot be denied by a City unless the City makes written findings. More specifically, Builder's Remedy in the HAA allows a developer to build a project without any City oversight or approval, thereby completely sidestepping City zoning, if the City is deemed by the State to be out of compliance with other State housing laws.

The City of Huntington Beach (like most cities in the U.S.) uses zoning as the legal mechanism to control development on land within their jurisdiction, primarily by designating land for certain uses or categories of uses (zones). As such, this “self-help” opportunity of Builder’s Remedy violates a body of the City’s decade old zoning code. The City’s Euclidean zoning accelerated in the 1920s and 1930s after the United States Supreme Court affirmed municipalities’ constitutional authority to regulate property through zoning ordinances in the landmark case of Village of Euclid v. Ambler Realty Co. “Euclidean zoning” allows cities to define parcels based on distinct residential or industrial/commercial use. Euclidean zoning began as a way to mitigate negative effects of industrial and urban development (light and air pollution) on residences by separating those uses and another tool or alternative to nuisance tort law.

Builder’s Remedy under the HAA however allows a developer to sidestep all of this wisdom and place a project in any zoning district in the City, which would recreate and perpetuate the nuisance problems zoning was set up to prevent. And, once a project is built, the nuisance problems and inconsistencies with surrounding properties would be permanent. Under Builder’s Remedy, housing projects could be built near environmentally sensitive areas (pitting CEQA against the HAA) or next to industrial sites where residents will be subject to diminished air, light and sound quality because of being next to large industrial complexes. Allowing developers to bypass the City’s discretion and process to request a rezone of a parcel, and allow the developer instead the unilateral control over where he or she can develop a housing project will eviscerate zoning in the City and allow housing to be built in areas that would compromise the health, and safety of the residents or compromise the environment.

While the HAA contains no exemptions from the California Environmental Quality Act, (the HAA states specifically that nothing relieves the local agency from making the required CEQA findings and otherwise complying with CEQA); the HAA would force the City to make CEQA findings for approval or face the consequences of failing to comply with the HAA; thus, pitting the two State laws against each other.

**Environmental Status:**

This item is exempt from California Environmental Quality Act (CEQA), pursuant to Section 15061(b), the general rule that CEQA only applies to projects which have the potential for a significant effect on the environment. While this amendment will clarify existing zoning regulations, it does not authorize any development that will result in direct physical changes to the environment.

**Strategic Plan Goal:**

Economic Development & Housing

**Attachment(s):**

1. Ordinance No. 4285 w/Legislative Draft
2. Planning Commission Agenda Packet