

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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September 3, 2026

Neda Zayer, Community Development Director
City of Burlingame
501 Primrose Road
Burlingame, CA 94010

Dear Neda Zayer:

**RE: City of Burlingame – Enacted Senate Bill 79 Transit-Oriented Development
Alternative Plan Findings Letter and Letter of Technical Assistance**

Thank you for submitting the City of Burlingame's (City) enacted Senate Bill (SB) 79 Transit-Oriented Development Alternative Plan (TODAP) and supporting documents, adopted under Ordinance No. 2050, Resolution 079-2026 (Downtown Specific Plan amendments), Resolution 080-2026 (North Rollins Specific Plan amendments), and Resolution 078-2026 (General Plan Land Use Element and Land Use Map amendments).

Pursuant to Government Code section 65912.160, subdivision (d)(3)(A), this letter consists of the California Department of Housing and Community Development's (HCD) findings that the TODAP is **not in substantial compliance** with SB 79. The standards and provisions of Government Code section 65912.157 apply in the City unless and until the City adopts a TODAP that has been approved by HCD.¹

Findings

HCD reviewed the documents submitted by the City (see Attachment A - Table 1) and finds that revisions will be necessary to substantially comply with the requirements of Government Code section 65912.161. Specifically:

Government Code section 65912.161, subdivision (a)(1): "A local transit-oriented development alternative plan shall maintain at least the same total net zoned capacity, in terms of both total units and residential floor area, as provided for in this chapter across all transit-oriented development zones within the jurisdiction."

The City's TODAP does not "maintain at least the same total net zoned capacity... as provided for *in this chapter*...." (Emphasis added.)

¹ Gov. Code, § 65912.161, subd. (d).

HCD understands that sites zoned PR (Parks and Recreation) and P/I (Public and Institutional) within its TOD zones were exempted from the TODAP calculation capacity. However, the City adopted a TODAP pursuant to Government Code section 65912.161, subdivision (a)(1) that allows for residential development in its PR and P/I zones, thereby making sites in those zones eligible for SB 79 pursuant to Government Code section 65912.157, subdivision (a).

In addition, regardless of the rezone, the City's TODAP must account for and maintain the units and residential floor area in its P/I zoned sites. Government Code section 65912.157, subdivision (a) states: "A housing development project shall be an allowed use as a transit-oriented housing development on any site zoned for residential, mixed, or commercial development within one-half or one-quarter mile of a transit-oriented development stop." According to the City's Zoning Code Section 25.18.020 Land Use Regulations, Table 25.18-1², the P/I zone principally and conditionally permits commercial uses, including, but not limited to, office-professional and medical clinics, and is therefore eligible for SB 79.

In conclusion, the City's TODAP must first analyze the units and residential floor area required by section 65912.157, subdivision (a)(3)-(6), (b), and (e) on sites that are zoned P/I and PR. Currently, the TODAP merely shifts capacity onto sites in the P/I and PR zones but does not maintain any capacity that results from rezoning those sites to allow for residential development.

Technical Assistance

Obligations Under Other State Housing Laws

The City is advised that, because a TODAP is part of a local jurisdiction's municipal code, other state housing laws apply that operate independently of the TODAP provisions, including the State Density Bonus Law (SDBL) pursuant to Government Code sections 65915-65918, not the modified version of the SDBL in section 65912.157, subdivision (d). Therefore, pursuant to SDBL, the City must remove language referencing and incorporating section 65912.157, subdivision (d) from Section 25.20.070(C) and Section 25.020.080(C) of its TODAP Ordinance.

Applicable SB 79 Requirements and Clerical Errors

In addition to removing the reference to section 65912.157, subdivision (d), HCD understands that the City's ordinance contains clerical errors and that the TODAP ordinance sections intended to state: "Qualifying housing development projects, as defined by California Government Code sections 65589.5, are subject to the requirements of Government Code sections **65912.157, subdivisions (a)(1), (a)(2), (c), (g), (j), and (k)** 65912.155 through 65912.162.1, except for the maximum density,

² Available at: <https://ecode360.com/49759724>

*height, and floor area ratio which are specified in subsections [...] below.*³ Since Government Code section 65912.157 would not otherwise apply to the TODAP,⁴ the City is advised to clarify the specific requirements of Government Code 65912.157 that the City has opted to apply to developments within the TOD overlays.

Conclusion and Next Steps

The City has until Monday, November 2, 2026 (60 days from this letter), to respond to these written findings and technical assistance.⁵ Pursuant to Government Code section 65912.160, subdivision (d)(5), the City must consider the findings provided here and must either amend the TODAP and ordinance to comply with HCD's findings or enact the TODAP and ordinance without changes. If the City chooses to enact the TODAP and ordinance without changes, it must include findings in its resolution adopting the TODAP and ordinance that explain the reasons the City believes the TODAP and ordinance comply with Government Code section 65912.161 despite the findings provided by HCD.

Please be advised, if the City does not amend its TODAP and ordinance in response to HCD's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing HCD's findings, HCD shall notify the City and may notify the California Office of the Attorney General that the City is in violation of SB 79 pursuant to Government Code section 65912.160, subdivision (d)(6).

In addition, failure by the City to allow the SDBL to be used for housing development projects proposed on a TODAP site would be a violation of the SDBL. Under Government Code section 65585, subdivision (j)(3), HCD must notify a local government when that local government takes actions that violate the SDBL and may notify the California Office of the Attorney General of the violation.

³ Section 25.20.070(C) Downtown Transit-Oriented Development Overlay (DTOD) and Section 25.20.080(C) North Burlingame Transit-Oriented Development Overlay (NBTOD) state: "Qualifying housing development projects, as defined by California Government Code Sections 65589.5, are subject to the requirements of Government Code sections 65912.155 through 65912.162.1, except for the maximum density, height, and floor area ratio which are specified in subsections [...] below."

⁴ Gov. Code, § 65912.161, subd. (d).

⁵ Gov. Code, § 65912.160, subd. (d)(4).

Please also note that any applicable objective development standards must not reduce the capacity provided for in the TODAP, in terms of both total units and/or residential floor area.^{6,7} HCD reserves the right to request additional information to monitor ongoing substantial compliance with SB 79⁸ and may update its findings should new information come to light.

Finally, the Metropolitan Transportation Commission's (MTC) SB 79 map shall have a rebuttable presumption of validity for use by project applicants and local governments.⁹

HCD appreciates the cooperation of the City of Burlingame staff during the course of this review. HCD is committed to assisting the City in addressing all statutory requirements of SB 79. If you have any questions or need additional technical assistance, please contact Grace Wu at grace.wu@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a stylized flourish extending to the right.

David Zisser
Deputy Director
Housing Policy Development

Enclosure

Attachment A – Table 1 City of Burlingame Submittal Documents

⁶ Gov. Code, § 65912.161, subd. (a).

⁷ In Section 25.20.070(C)(3) Downtown Transit-Oriented Development Overlay (DTOD) and Section 25.20.080(C)(4) North Burlingame Transit-Oriented Development Overlay (NBTOD), the TODAP ordinance states: "All other applicable development standards set forth in the Municipal Code, underlying zoning district and/or the [Downtown Specific Plan / North Rollins Specific Plan] shall apply."

⁸ Gov. Code, § 65912.160, subd. (a).

⁹ Gov. Code, § 65912.160, subd. (f).

Attachment A

Table 1 Submittal Documents

	Filename	Document Description	Received Date
1	Zoning Ordinance.pdf	Ordinance 2050 with attachments for Zoning Code and Zoning Map amendments	7/2/2026
2	DTSP Amendments.pdf	Resolution 079-2026 with attachments for Downtown Specific Plan amendments	7/2/2026
3	NRSP Amendments.pdf	Resolution 080-2026 with attachments for North Rollins Specific Plan amendments	7/2/2026
4	General Plan Amendments.pdf	Resolution 078-2026 with attachments for General Plan and Land Use Map amendments	7/2/2026
5	06.01.26 CC Staff Report.pdf	Staff report for the June 1, 2026 City Council meeting for the item	7/2/2026
6	City of Burlingame Cover Letter 07.02.26.pdf	Cover letter from the City of Burlingame	7/2/2026
7	City of Burlingame Parcel Data DTOD.pdf	Parcel data for the DTOD overlay	7/2/2026
8	City of Burlingame Parcel Data NBTOD.pdf	Parcel data for the NBTOD overlay	7/2/2026