

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

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June 22, 2026

Jenna Monterrosa, Principal City Planner
200 N. Spring St., Room 750
Los Angeles, CA

Dear Jenna Monterrosa:

RE: City of Los Angeles – Senate Bill 79 Ordinance to Exempt and Temporarily Exclude Sites – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance from the City of Los Angeles (City) regarding the proposed implementation of an ordinance to exempt and temporarily exclude certain sites subject to Senate Bill (SB) 79 (Ordinance). This letter provides technical assistance to the City on the implementation of the Ordinance, including clarification of certain methodologies and procedures to facilitate the City's ability to adopt and enact a local Ordinance.

Background

SB 79 is codified in Government Code sections 65912.155 – 65912.162, and its provisions and standards apply starting July 1, 2026 (see below "SB 79 Standards"), or when a local SB 79 ordinance¹ or transit-oriented development (TOD) alternative plan is adopted and enacted,² (see below "Local Government Options to Modify SB 79") whichever comes first.

On June 9, 2026, the City submitted a draft SB 79 ordinance that would:

- Exempt sites where there is no walking path of less than one mile from the TOD stop, pursuant to Government Code section 65912.160, subdivision (e)(1);
- Exempt sites within industrial employment hub areas, pursuant to Government Code section 65912.160, subdivision (e)(2); and
- Temporarily exclude qualifying sites from the provisions of SB 79, pursuant to Government Code section 65912.161, subdivision (b).

HCD also understands that, at this time, the City is not pursuing enactment of a TOD Alternative Plan pursuant to Government Code section 65912.161, subdivision (a), but may opt to at a later date.

¹ Gov. Code, §§ 65912.160, subd. (e); 65912.161, subd. (b)(1).

² Gov. Code, § 65912.161, subd. (d).

SB 79 Standards

SB 79 establishes development standards for eligible TOD housing development projects near qualifying TOD stops, which vary by the type of TOD stop, distance from a TOD stop, and population within the city.³ Qualifying projects located adjacent to a TOD stop are eligible for an adjacency intensifier to add an additional 40 units per acre of residential density, 20 feet of height, and 1.0 residential floor area ratio (FAR) beyond the lowest allowable maximums applicable to the parcel(s).⁴

Table 1. SB 79 Development Standards

Development Standard	Adjacent: Within 200 feet of a pedestrian access point	Within 0.25-mile of TOD Stop	Between 0.25- and 0.5-mile of TOD stop in city with at least 35,000 residents
Tier 1 – Heavy rail or very high frequency commuter rail			
Max. Density	≥ 160 units/acre	≥ 120 units/acre	≥ 100 units/acre
Max. Height	≥ 95 feet	≥ 75 feet	≥ 65 feet
Max. Residential FAR	≥ 4.5	≥ 3.5	≥ 3.0
Tier 2 – Light rail, high frequency commuter rail, bus w/ dedicated lane (excluding Tier 1)			
Max. Density	≥ 140 units/acre	≥ 100 units/acre	≥ 80 units/acre
Max. Height	≥ 85 feet	≥ 65 feet	≥ 55 feet
Max. Residential FAR	≥ 4.0	≥ 3.0	≥ 2.5

Local jurisdictions may not apply lower height, density, or residential FAR limits than those set by SB 79 unless the local government adopts and enacts an ordinance or TOD alternative plan to modify the local application of SB 79.

Local Government Options to Modify SB 79

A local jurisdiction has the option, but is not required, to adopt a local ordinance or TOD alternative plan which allows the local jurisdiction to modify certain SB 79 applicable sites or development standards, provided the ordinance or plan meets the applicable statutory requirements.

Table 2 below details the various options available to local governments to modify the provisions of SB 79 or Government Code section 65912.157. The statute does not limit which—nor how many—of these options a local government may choose.

³ Gov. Code, § 65912.157, subd. (a).

⁴ Gov. Code, § 65912.157, subd. (e).

Table 2. Local Government Options to Modify SB 79

Statute Reference	HCD Clarification
1 The ordinance may designate areas within one-half mile of a transit-oriented development stop as exempt from the provisions of this chapter if: (1) The local government makes findings supported by substantial evidence that there exists no walking path of less than one mile from that location to the transit-oriented development stop. - Government Code, 65912.160, subd. (e) and (e)(1)	<i>Exempt from SB 79:</i> Sites where there is no walking path of less than one mile from the TOD stop are exempt from SB 79 (“the provisions of this chapter”).
2 The ordinance may designate areas within one-half mile of a transit-oriented development stop as exempt from the provisions of this chapter if: (2) A local government with at least 15 transit-oriented development stops designates the area as an industrial employment hub. An industrial employment hub shall be a contiguous area of at least 250 acres designated in the jurisdiction’s general plan on or before January 1, 2025, as an employment lands area; the parcels within it shall be primarily dedicated to industrial use as defined in paragraph (3) of subdivision (f) of Section 65912.121; and housing shall not be a permitted use on any of the sites so excluded. - Government Code, 65912.160, subd. (e) and (e)(2)	<i>Exempt from SB 79:</i> Sites within a qualifying industrial employment hub are exempt from SB 79 (“the provisions of this chapter”). To qualify as an industrial employment hub: • The jurisdiction must have at least 15 TOD stops, and • The area must be contiguous and at least 250 acres that was designated as employment lands area⁵ in the jurisdiction’s general plan on or before January 1, 2025, and • The parcels must be primarily dedicated to industrial use as defined in section 65912.121, subdivision (f)(3), and • Housing is not a principally or conditionally permitted use on any of the sites so excluded. Any site that principally or conditionally permits residential use remains subject to SB 79.

⁵ While the statute does not define “employment lands” area, HCD recommends local jurisdictions demonstrate how the general plan specifically designates a bounded, planned area that protects employment lands for job opportunities.

3	Prior to one year following the adoption of the seventh revision of the housing element, Section 65912.157 shall not apply to any of the following for which the local government has adopted an ordinance in accordance with Section 65912.160 indicating the site's exclusion: - Government Code, 65912.161, subd. (b)(1)	<i>Temporarily excluded from section 65912.157 until one year after 7th cycle:</i> Sites or TOD zones (depending on the specific criteria) that meet at least one of the criteria under Government Code section 65912.161, subdivision (b)(1)(A)-(F) may be temporarily excluded from the provisions of section 65912.157 until one year after the adoption of the jurisdiction's 7th cycle Housing Element.
4	Section 65912.157 shall not apply within a jurisdiction that has a local transit-oriented alternative plan that has been approved by the department as satisfying the requirements of this section in effect. The department's approval pursuant to this section shall be valid through the jurisdiction's next amendment to the housing element of its general plan. - Government Code, 65912.161, subd. (d)	<i>Section 65912.157 not applicable until adoption of the next housing element:</i> Sites included in an HCD-approved TOD Alternative Plan are not subject to Government Code section 65912.157 until the start of the jurisdiction's next housing element cycle.

Terms Used

The following terms are used consistently in this letter:

- **“Aggregate density”** – The greatest number of residential units allowed within a TOD zone, pursuant to Government Code section 65912.157, subdivision (a). In state housing law, the term “density” typically refers to the greatest number of dwelling units allowed on a site and is generally determined using dwelling units per acre.⁶
- **“Capacity”** – Consideration of both the greatest number of residential units allowed and maximum allowable residential floor area as measured in net habitable square footage.⁷

⁶ See, e.g., Gov. Code, § 65915, subd. (o)(6). State Density Bonus Law defines “maximum allowable residential density” or “base density” to mean “the greatest number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan, or, if a range of density is permitted, means the greatest number of units allowed by the specific zoning range, specific plan, or land use element of the general plan applicable to the project. Density shall be determined using dwelling units per acre.”

⁷ Gov. Code, § 65912.156, subds. (i), (l).

- **“Contiguous”** – Parcels sharing a common boundary; can include an easement or public right of way between parcels.⁸
- **“Exempt sites”** – Sites where there is no walking path of less than one mile from the TOD stop or within an industrial employment hub that is permanently exempted from Government Code section 65912.157 via a locally-enacted ordinance pursuant to Government Code section 65912.160, subdivision (e).
- **“Site” or “Project site”** – Parcel(s) containing the proposed housing development project.⁹
- **“Temporarily excluded site”** – Parcel(s) identified under a temporary exclusion ordinance to meet at least one of the criteria under Government Code section 65912.161, subdivision (b)(1)(A)-(F), and is therefore not subject to Government Code section 65912.157 until one year following the adoption of the seventh revision of the jurisdiction’s housing element.
- **“Temporary exclusion ordinance”** – A locally enacted ordinance that temporarily modifies the applicability of SB 79 on certain eligible parcels pursuant to Government Code section 65912.161, subdivision (b).
- **“TOD alternative plan”** – A locally enacted ordinance, zoning overlay, general plan housing element, housing element program, or specific plan that redistributes capacity pursuant to Government Code section 65912.161, subdivision (a).

The following terms refer to the varying capacity calculations that a local jurisdiction must make and demonstrate to exempt, temporarily exclude, or redistribute SB 79 capacity via a local ordinance or TOD alternative plan:

- **“Overall SB 79 capacity”** – The greatest number of residential units and maximum allowable residential floor area under Government Code section 65912.157 if a jurisdiction does not enact an ordinance or TOD alternative plan to make local modifications to the statute.
- **“Effective SB 79 capacity”** – The greatest number of residential units and maximum allowable residential floor area remaining when the capacity on exempt sites is subtracted from the overall SB 79 capacity. If a local jurisdiction

⁸ HCD has previously provided technical assistance that in the context of State Density Bonus Law, “contiguous” may include parcels that are separated by any width of public right of way or easements. See HCD Technical Assistance Letter to City of Los Angeles, February 9, 2024, available at:

<https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/losangeles-hau567-ta-02092024.pdf>

⁹ HCD SB 79 Advisory Clarifications on Definitions for Metropolitan Planning Organizations, dated March 20, 2026, clarifies the term “Project Site.” Available at: <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/sb-79-mpo-advisory.pdf>

does not enact an ordinance to exempt sites, then effective SB 79 capacity would be the same as overall SB 79 capacity.

- **“Residual SB 79 capacity”** – The greatest number of residential units and maximum allowable residential floor area remaining when the capacity on temporarily excluded sites is subtracted from effective SB 79 capacity. If a local jurisdiction does not enact an ordinance to temporarily exclude sites, then the residual SB 79 capacity would be the same as effective SB 79 capacity.

Analysis

Areas Where SB 79 Applies

- 1. What is the definition for “mixed” and “commercial” zoning? SB 79 provides for housing as an allowed use on “any site zoned for residential, mixed, or commercial development” under Government Code section 65912.157, subdivision (a).**

While the statute does not explicitly define “mixed” or “commercial” uses, if the local zoning principally or conditionally permits residential, residential mixed use, or commercial land use on a parcel, then SB 79 applies.¹⁰ Government Code section 65912.155 “finds and declares [that] California faces a housing shortage both acute and chronic, particularly in areas with access to robust public transit infrastructure”¹¹ and “building more homes near transit access reduces housing and transportation costs....”¹²

Therefore, if a site is zoned for industrial use, but allows for commercial uses, then SB 79 applies. This includes planned developments and public facility zones that principally or conditionally allow for uses serving the general public (e.g., retail, office, personal, or household service). The specific commercial uses allowed may vary by local jurisdiction, based on their local zoning definitions and regulations.

- 2. Confirm whether a large parcel, where only a small portion of the parcel is within the half-mile TOD zone and where significant portions of the parcel are further than a half mile from the transit stop, are considered eligible for SB 79 provisions in their entirety.**

Yes, large parcels where only a portion of which are in a TOD zone are eligible for SB 79 provisions in their entirety unless a development project subdivides the parcel. The

¹⁰ HCD TA Letter to the City of Hayward, dated January 28, 2025, explains that “zoned for” means any zone that allows the residential development as a principally or conditionally permitted land use. Available at: <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/hayward-hau-1167-sb-684-1123-ta-01282025.pdf>

¹¹ Gov. Code, § 65912.155, subd. (a).

¹² Gov. Code, § 65912.155, subd. (c).

statute simply states that a housing development project shall be an allowed use on “*any site* zoned for residential, mixed, or commercial development *within* one-half or one-quarter mile of a transit-oriented development stop”¹³ (emphasis added) and does not specify that the site (i.e., parcel or parcels) must be entirely or mostly within the TOD zone.

3. Can an applicant for a housing development project in a qualifying TOD zone choose to comply with local zoning requirements and procedures instead of SB 79?

Yes. An applicant for a housing development project is not required to utilize SB 79 provisions and standards and may opt to utilize the local ordinances, policies, and standards adopted and in effect when the preliminary application or full application was submitted. For example, an applicant may propose the development of a single-family dwelling unit on a site within one-quarter mile of a Tier 2 TOD stop where the local zoning permits single-family use and densities of less than 30 units per acre.

SB 79 merely makes certain housing development projects¹⁴ an allowed use on a qualifying site near a TOD stop,¹⁵ provided the project meets the statutory density and development standards,¹⁶ affordability criteria,¹⁷ and labor standards.¹⁸

Demolition and Anti-Displacement Protections

Government Code section 65912.157, subdivision (h) states:

“A development proposed pursuant to this section shall not be located on either of the following:

- (1) A site containing more than two units where the development would require the demolition of housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power that has been occupied by tenants within the past seven years.
- (2) A site that was previously used for more than two units of housing that were demolished within seven years before the development proponent submits an application under this section and any of the units were subject to any form of rent or price control through a public entity’s valid exercise of its police power.”

4. For calculating the overall SB 79 capacity, can sites with more than two units that are subject to rent or price control be excluded?

¹³ Gov. Code, § 65912.157, subd. (a).

¹⁴ Gov. Code, § 65912.156, subd. (g).

¹⁵ Gov. Code, § 65912.157, subds. (a)(3)-(6), (h).

¹⁶ Gov. Code, § 65912.157, subds. (a)(1)-(2), (d), (e).

¹⁷ Gov. Code, § 65912.157, subds. (c), (i).

¹⁸ Gov. Code, § 65912.157, subd. (k).

No. Government Code section 65912.157, subdivision (h), the source of language in question, does not state that such sites may be excluded from the overall SB 79 capacity, only that SB 79 developments that require demolition of such units, or where such units were demolished, may not be located on them. Because both provisions include a seven-year lookback window, eligibility under SB 79 is dependent on the date a particular application is filed. Once seven years have passed, such developments would be eligible. Therefore, otherwise eligible sites with more than two units subject to local rent or price control must be included in the overall SB 79 capacity.

Temporary Exclusion Ordinance

Government Code section 65912.161, subdivision (b)(1) states:

“Prior to one year following the adoption of the seventh revision of the housing element, Section 65912.157 shall not apply to any of the following for which the local government has adopted an ordinance in accordance with Section 65912.160 indicating the site’s exclusion:”

To temporarily exclude certain sites or TOD zones by enacting a local ordinance, a jurisdiction must demonstrate that the site or TOD zone meets at least one of the criteria listed in Government Code section 65912.161, subdivision (b)(1)(A)-(F). See Table 3 below for further clarifications. SB 79 provisions and standards would not apply to temporarily excluded sites until one year after the adoption of the jurisdiction’s 7th cycle Housing Element.

Table 3. SB 79 Temporary Exclusion Ordinance - Deferable Site Criteria (must meet at least one)

Statute Reference		HCD Clarification
1	A site that has been identified by the local jurisdiction which permits density and residential floor area ratio at no less than 50 percent of the standards specified under subdivision (a) of Section 65912.157. - Government Code, § 65912.161, subd. (b)(1)(A)	Site permits at least 50 percent of the density (i.e., residential units) and residential floor area (i.e., residential square footage) allowed under Section 65912.157, subdivision (a) standards.
2	A site in a transit-oriented development zone in which at least 33 percent of sites in the relevant transit-oriented development zone have permitted density and residential FAR no less than 50 percent of the standards specified under subdivision (a) of Section 65912.157 and which includes sites with densities that cumulatively allow for at least 75 percent of the aggregate density for the transit-oriented development zone	Site is in a TOD zone that meets both of the following criteria: - At least 33 percent of the sites (i.e., parcel count) in the TOD zone allow at least 50 percent of the density (i.e., residential units) and residential FAR (i.e., residential square footage) allowed under Section 65912.157, subdivision (a), and - The TOD zone allows at least 75 percent of the aggregate density (i.e.,

Statute Reference		HCD Clarification
	specified under subdivision (a) of Section 65912.157. - Government Code, § 65912.161, subd. (b)(1)(B)(i)	residential units) allowed under Section 65912.157, subdivision (a) for that TOD zone.
3	A site in a transit-oriented development zone around a transit-oriented development stop that is primarily comprised of a low-resource area which includes sites with densities that cumulatively allow for at least 40 percent of the aggregate density for the transit-oriented development zone specified under subdivision (a) of Section 65912.157. - Government Code, § 65912.161, subd. (b)(1)(B)(ii)	Site is in a TOD zone that meets both of the following criteria: • The TOD zone is primarily a low-resource area (i.e., land area), and • The TOD zone allows at least 40 percent of the aggregate density (i.e., residential units) allowed under Section 65912.157, subdivision (a).
4	A site in an area designated as low resource on the most recently adopted version of the opportunity area maps published by the California Tax Credit Allocation Committee and the department, and within a jurisdiction that cumulatively allows for at least 50 percent of the total capacity for units and floor area as specified under Section 65912.157 across all transit-oriented development zones. - Government Code, § 65912.161, subd. (b)(1)(B)(iii)	Both of the following criteria are met: • Site is in a low-resource area, and • Across all TOD zones in the jurisdiction, the cumulative capacity (i.e., zoned maximum number of residential units and floor area square footage) is at least 50 percent of the maximum effective SB 79 capacity under Section 65912.157. Note that a jurisdiction utilizing this temporary exemption criteria must account for the density and residential floor area allowed under Section 65912.157, subdivision (a) as well as the additional capacity provided for under Section 65912.157, subdivision (e) (the adjacency intensifier).
5	A site that is covered by a local transit-oriented development alternative plan adopted by a local government. - Government Code, § 65912.161, subd. (b)(1)(C)	Site is covered by an adopted TOD alternative plan.

6	Sites within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within the state responsibility area, as defined in Section 4102 of the Public Resources Code. - Government Code, § 65912.161, subd. (b)(1)(D)	Site is in a very high fire hazard severity zone: - As determined by the Department of Forestry and Fire Protection pursuant to Government Code section 51178, or - Within the state responsibility area, as defined in Public Resources Code section 4102.
7	Sites that are vulnerable to one foot of sea level rise, as determined by the National Oceanic and Atmospheric Administration, the Ocean Protection Council, the United States Geological Survey, the University of California, or a local government's coastal hazards vulnerability assessment. - Government Code, § 65912.161, subd. (b)(1)(E)	Site is vulnerable to one foot of sea level rise, as determined by any of the following: - National Oceanic and Atmospheric Administration, - The Ocean Protection Council, - The United States Geological Survey, - The University of California, or - A local government's coastal hazards vulnerability assessment.
8	Sites with a historic resource designated as of January 1, 2025, on a local register. - Government Code, § 65912.161, subd. (b)(1)(F)	Site contains a historic resource designated as of January 1, 2025, on a local register.

5. When evaluating whether a site meets any of the criteria for temporary exclusion via a temporary exclusion ordinance, should the City use the effective SB 79 capacity or the residual SB 79 capacity?

The City should use the effective SB 79 capacity (i.e., capacity after taking out exempt sites but not temporarily excluded sites) when doing this evaluation. The statute specifies that SB 79 provisions under section 65912.157 shall not apply to a site that meets “any” of the temporary exclusion site criteria, signifying that each site criterion listed under Government Code section 65912.161, subdivision (b)(1)(A) through (F) must be considered separately from the others. Moreover, the calculation would be unworkable if it used residual capacity, since the residual capacity is the result of subtracting the capacity of temporarily excluded sites.

For example, if some sites in the jurisdiction are eligible for temporary exclusion due to location in a very high fire hazard severity zone per Government Code section 65912.161, subdivision (b)(1)(D), the reduction in capacity resulting from these sites being temporarily excluded would not change the effective SB 79 density and residential floor area. Therefore, if the City seeks to temporarily exclude a site pursuant to Government Code section 65912.161, subdivision (b)(1)(A), that site must still permit at

least 50 percent of the effective SB 79 density and residential floor area, including any capacity associated with temporarily excluded sites in very high hazard severity zones.

6. When considering whether a TOD zone is primarily comprised of a low-resource(s) area per Government Code section 65912.161, subdivision (b)(1)(B)(ii), is the City required to consider the portion of land area that is within another jurisdiction?

While the TOD zone is defined as “the area within one-half mile of a TOD stop,”¹⁹ SB 79 applies to a local government, and the temporarily excluded site itself must be within the local jurisdiction that is adopting a temporary exclusion ordinance. Therefore, the determination of whether a TOD zone is primarily comprised of low-resource areas does not need to include land area that is within another jurisdiction.

7. If a temporarily excluded site is located in more than one TOD zone (i.e., within one-half mile from multiple qualifying TOD stops), is the site also excluded from any overlapping TOD zones?

Yes, the temporary exclusion of SB 79 provisions applies to the “site,”²⁰ which would cover instances where the temporarily excluded site is within multiple overlapping TOD zones.

Please note that, for sites located in both Tier 1 and Tier 2 TOD zones, the statute does not require that the criteria be met for both tiers in order to temporarily exclude the site. The statute simply specifies that SB 79 provisions under Section 65912.157 shall not apply to a site that meets “any” of the temporary exclusion site criteria.²¹ Therefore, the City may temporarily exclude a site if it solely meets the lower Tier 2 TOD zone capacity.

Industrial Employment Hubs and Low-Resource TOD Zones

8. Will an industrial general plan land use designation and a land use element’s reference to employment protection suffice to exempt an industrial employment hub from SB 79 eligibility?

To exempt an industrial employment hub, the City’s general plan as of January 1, 2025, must have identified a bounded area of at least 250 acres dedicated to promoting employment opportunities.²² See also Row 2 of Table 2.

9. To meet the minimum 250-acre requirement, can an industrial employment hub include areas from more than one jurisdiction?

¹⁹ Gov. Code, § 65912.156, subd. (m).

²⁰ Gov. Code, § 65912.161, subd. (b)(1).

²¹ Id.

²² Gov. Code, § 65912.160, subd. (e)(2).

No. To meet the minimum 250 acres, the employment lands area must be as designated in “the jurisdiction’s” general plan, suggesting a singular general plan and not the combination of employment lands designations from multiple jurisdictions.

10. What does the term “primarily” refer to under Government Code sections 65912.160, subdivision (e)(2) and 65912.161, subdivision (b)(1)(B)(ii)?

For purposes of SB 79 implementation, “primarily” refers to a plurality (i.e., more than any other classification or designation) given that the contexts in which the term is used in the statute refer to more than two classifications or designations.

The term “primarily” appears twice in SB 79, in the following contexts (emphasis added):

- **Exemption of Industrial Employment Hubs.** Government Code section 65912.160, subdivision (e)(2) states: “A local government with at least 15 transit-oriented development stops designates the area as an industrial employment hub. An industrial employment hub shall be a contiguous area of at least 250 acres designated in the jurisdiction’s general plan on or before January 1, 2025, as an employment lands area; the parcels within it shall be *primarily dedicated to industrial use* as defined in paragraph (3) of subdivision (f) of Section 65912.121; and housing shall not be a permitted use on any of the sites so excluded.”
- **Temporary exclusion of sites in low-resource TOD zones.** Government Code section 65912.161, subdivision (b)(1)(B)(ii) states: “A site in a transit-oriented development zone around a transit-oriented development stop that is *primarily comprised of a low-resource area* which includes sites with densities that cumulatively allow for at least 40 percent of the aggregate density for the transit-oriented development zone specified under subdivision (a) of Section 65912.157.”

Regarding the exemption of industrial employment hubs, the term “primarily” refers to “parcels” within an industrial employment hub “area” so that the land area (typically calculated in acreage) dedicated to industrial use must exceed the land area dedicated to any other land use designations within the industrial employment hub. Other land use designations include, but may not be limited to, residential, mixed-use, commercial, open space, and public and institutional uses.²³

Regarding the temporary exclusion of sites in primarily low-resource TOD zones, the term “primarily” specifies that the land area of the TOD zone is primarily designated as low resource on the most recently adopted version of the opportunity maps published by

²³ To demonstrate that an industrial employment hub is primarily dedicated to industrial use, HCD recommends jurisdictions include a summary table that bundles specific land use categories into the following broad classifications: Industrial, Residential, Mixed-Use Residential (including overlay zones that permit or conditionally permit residential), Commercial, Open Space, and Public and Institutional.

the California Tax Credit Allocation Committee and HCD (i.e., more than moderate, high, or highest resource designations).²⁴

TOD Alternative Plan

Government Code section 65912.161, subdivisions (a) and (d) state:

“(a) For purposes of this section, ‘transit-oriented development alternative plan’ shall mean a plan adopted by the local agency via the adoption of the housing element, a program to implement the housing element, the adoption of a specific plan, a zoning overlay, or enactment of an ordinance; that brings the local agency into compliance with this chapter and that incorporates all of the following:”

“(d) Section 65912.157 shall not apply within a jurisdiction that has a local transit-oriented alternative plan that has been approved by the department as satisfying the requirements of this section in effect. The department’s approval pursuant to this section shall be valid through the jurisdiction’s next amendment to the housing element of its general plan.”

A local government may adopt a TOD alternative plan in lieu of applying Government Code section 65912.157, but the TOD alternative plan must meet all statutory criteria for a TOD alternative plan (see Table 4 below). In other words, to meet the capacity criteria for a TOD alternative plan; a local government must first reference and analyze the units and residential floor areas provided for under section 65912.157, subdivisions (a)(3)-(6), (b), and (e). In addition, the capacity calculations shall include capacity, density, or floor area available under voluntary local housing incentive programs.²⁵

An existing TOD ordinance, overlay zone, specific plan, or zoning incentive ordinance may also qualify as a TOD alternative plan if it meets all TOD alternative plan criteria,²⁶ including review and approval by HCD.²⁷ Please note, HCD’s approval of a TOD alternative plan is valid only through the jurisdiction’s next housing element cycle,²⁸ thus requiring TOD alternative plans to be re-approved by HCD at the conclusion of each jurisdiction’s housing element cycle.

²⁴ Gov. Code, § 65912.156, subd. (j). The applicable maps can be found from the State Treasurer’s Office website here: <https://www.treasurer.ca.gov/ctcac/opportunity.asp>.

²⁵ Gov. Code, § 65912.161, subd. (a)(4).

²⁶ Gov. Code, § 65912.161, subd. (a)(5).

²⁷ Gov. Code, § 65912.161, subd. (d).

²⁸ Id. The date for the conclusion of a jurisdiction’s planning cycle is the due date for the next housing element revision which can be found at: <https://www.hcd.ca.gov/housing-open-data-tools/housing-element-regional-housing-needs-determination-schedule>.

Table 4. TOD Alternative Plan - Redistribution of Capacity Criteria (Must meet all)

	Statute Reference	HCD Clarification
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. (A) Net-zoned capacity in units shall be measured by subtracting the current number of units on the site from the number allowed by the applicable development standards. (B) Net-zoned capacity in floor area shall be measured by subtracting the current developed floor area of the site from the amount allowed by the applicable development standards. - Government Code, § 65912.161, subd. (a)(1)	Across all TOD zones within the jurisdiction: The net-zoned capacity (total zoned residential units and residential floor area minus existing residential units and residential floor area) must be the same or greater than the net residual SB 79 capacity as provided for in the statute (total residential units and residential floor area allowed per Government Code 65912.157 minus any exempt²⁹ and temporarily excluded sites³⁰ minus existing residential units and residential floor area). For example (assuming no exemptions or temporary exclusions apply): On a 0.5-acre (21,750 square feet) parcel located within 200 feet of a Tier 1 TOD stop is an existing multifamily residential building that contains 25 units and 30,000 square feet of residential floor area. • SB 79 density: 0.5-acre x 160 units/acre = 80 units • Net SB 79 density: 80 units – 25 units = 55 units • SB 79 residential floor area: 21,780 sq. ft. x 4.5 FAR = 98,010 sq. ft. • Net SB 79 residential floor area: 98,010 sq. ft. – 30,000 sq. ft. = 68,010 sq. ft. Therefore, the net-zoned capacity in the TOD alternative plan must allow at least 55 units and 68,010 square feet of residential development.
2	The plan shall not reduce the maximum allowed density for any individual site on which the plan allows residential use by more than 50 percent below that permitted under this chapter, except for sites meeting any of the following criteria:	On each site: The zoned maximum density (i.e., greatest allowable number of residential units) in the TOD alternative plan cannot be less than 50 percent of the maximum units allowed under SB 79, in

²⁹ Gov. Code, § 65912.160, subd. (e).

³⁰ Gov. Code, § 65912.161, subd. (b).

Statute Reference		HCD Clarification
	- Government Code, § 65912.161, subd. (a)(2)	either Tier 1 or Tier 2 TOD zones, with exceptions (see rows 5 through 8 below).
3	The plan shall not reduce the capacity in any transit-oriented development zone in total units or residential floor area by more than 50 percent. - Government Code, § 65912.161, subd. (a)(3)	<i>In each TOD zone:</i> The zoned maximum density (i.e., greatest number of residential units) and maximum allowable residential floor area in the TOD alternative plan cannot be less than 50 percent of the greatest number of units and maximum allowable residential floor area allowed under SB 79.
4	A site's maximum capacity counted toward the plan shall not exceed 200 percent of the maximum density established under this chapter. - Government Code, § 65912.161, subd. (a)(4)	<i>On each site:</i> The TOD alternative plan may redistribute capacity from one site to another, but the amount of density that a receiving "upzoned" site can count towards the plan is capped at 200 percent of the maximum density allowed under SB 79.
Sites that can be reduced by more than 50 percent of maximum density allowed under SB 79.³¹		
5	Sites within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within the state responsibility area, as defined in Section 4102 of the Public Resources Code. - Government Code, § 65912.161, subd. (a)(2)(A)	<i>Site Within Either a Tier 1 or Tier 2 TOD Zone</i> is in a very high fire hazard severity zone: - As determined by the Department of Forestry and Fire Protection pursuant to Government Code section 51178, or - Within the state responsibility area, as defined in Public Resources Code section 4102.
6	Sites that are vulnerable to one foot of sea level rise, as determined by the National Oceanic and Atmospheric Administration, the Ocean Protection Council, the United States Geological Survey, the University of California, or a local government's coastal hazards vulnerability assessment. - Government Code, § 65912.161, subd. (a)(2)(B)	<i>Site Within Either a Tier 1 or a Tier 2 TOD Zone</i> is vulnerable to one foot of sea level rise, as determined by any of the following: - National Oceanic and Atmospheric Administration, - The Ocean Protection Council, - The United States Geological Survey, - The University of California, or

³¹ Gov. Code, § 65912.161, subd. (a)(2).

Statute Reference		HCD Clarification
		A local government's coastal hazards vulnerability assessment.
7	Sites with a historic resource designated on a local register, so long as sites excluded from the density requirements of this paragraph on that basis do not cumulatively exceed 10 percent of the eligible area of any transit-oriented development zone. - Government Code, § 65912.161, subd. (a)(2)(C)	Site Within Either a Tier 1 or Tier 2 TOD Zone with a historic resource on a local register, if the cumulative land area of such excluded sites does not exceed 10 percent of the land area of the TOD zone in which the site is located.
8	Sites within one-half mile of a Tier 2 transit-oriented development stop shall not have a density below 30 units per acre with a residential floor area ratio of 1.0, except for sites specified in subparagraphs (A) to (C), and should be considered for attached entry-level owner-occupied housing development opportunities. - Government Code, § 65912.161, subd. (a)(2)(D)	All Other Sites Within a Tier 2 TOD Zone Not Covered in Rows 5-7: Except that those sites shall not have the maximum allowable density reduced below 30 units per acre or the maximum FAR reduced below 1.0. Such parcels should be considered for attached units serving first-time homebuyers.

11. Can a TOD Alternative Plan redistribute residential density and floor area between various qualifying TOD zones?

Yes, provided that the local government demonstrates the zoning satisfies all the TOD alternative plan requirements under Government Code section 65912.161, subdivisions (a)(1)-(4), including, but not limited to, the zoned maximum density and residential floor area in *each* TOD zone is at least 50 percent of the maximum density and residential floor area allowed under SB 79.³²

12. Does a TOD alternative plan need to offset the capacity of sites in the very high fire hazard severity zone (VHFHSZ) that are eligible for specified density reductions under Government Code section 65912.161(a)(2)(A)?

Yes, the net zoned capacity in the TOD alternative plan must still maintain at least as many residential units and at least as much residential floor area across all TOD zones within the jurisdiction as net residual SB 79 capacity would have allowed, pursuant to Government Code section 65912.161, subdivision (a)(1).

In addition, Government Code section 65912.161, subdivision (a)(4) states, in part:

³² Gov. Code, § 65912.161, subd. (a)(3).

“Any site excluded from the minimum density requirements of subparagraphs (A) to (C) of paragraph (2) shall not be counted toward the plan’s capacity.”

Therefore, if the density on a site that qualifies for specified density reductions pursuant to Government Code section 65912.161, subdivisions (a)(2)(A)-(C) is reduced by more than 50 percent of the standards specified under Government Code 65912.157, subdivision (a), then the site shall not be counted towards the TOD alternative plan’s capacity.³³ “Any site excluded from the minimum density requirements” refers to the qualifying sites where the density may be reduced by more than 50 percent of effective SB 79 standards. “Shall not be counted towards the plan’s capacity” refers to the inability to count any remaining density on such sites towards meeting the TOD alternative plan capacity.

Also note, Government Code section 65912.161, subdivision (a)(3) states that the “plan shall not reduce the capacity in any transit-oriented development zone in total units or residential floor area by more than 50 percent” and does not provide any exceptions for sites in a VHFHSZ.

13. Can a local jurisdiction modify any project eligibility requirements as part of its TOD alternative plan?

A housing development project proposed pursuant to a TOD alternative plan is not subject to Government Code section 65912.157 and the project eligibility requirements therein.³⁴ Nevertheless, other state housing laws apply, including, but not limited to, the Housing Accountability Act (Gov. Code, § 65589.5),³⁵ State Density Bonus Law (Gov. Code, §§ 65915-65918), and the demolition and replacement provisions of the Housing Crisis Act (Gov. Code, § 66300.5-66300.6). In addition, local rules, regulations, requirements, and policies may apply, such as inclusionary zoning and local anti-displacement provisions.

Please note, while the local ordinance may include objective development standards that do not match the development standards under Government Code section 65912.157, the applicable local development standards, conditions, and policies applied to a project cannot physically preclude the densities and floor area provided for under the TOD alternative plan.³⁶ In addition, pursuant to the Housing Accountability Act, nothing in the local ordinance “shall limit a project’s eligibility for a density bonus, incentive, or concession, or waiver or reduction of development standards and parking ratios, pursuant to Section 65915.”³⁷

³³ Gov. Code, § 65912.161, subd. (a)(4).

³⁴ Gov. Code, § 65912.161, subds. (b)(1)(C), (d).

³⁵ See also Gov. Code, § 65912.156, subd. (g).

³⁶ Gov. Code, § 65912.160, subd. (c)(1).

³⁷ Gov. Code, § 65589.5, subd. (f)(1).

Ordinances to Exempt, Temporarily Exclude, and Redistribute Sites

14. Should sites that are not eligible for SB 79 (e.g., zoned exclusively for industrial use) be excluded from the overall SB 79 capacity?

Yes, sites not eligible for SB 79 should be excluded from the overall SB 79 capacity because the sites where SB 79 does not apply are not subject to the density and development standards specified in Government Code section 65912.157.³⁸

15. Can a jurisdiction adopt an ordinance to exempt and temporarily exclude a subset of sites within a TOD zone per Government Code sections 65912.160, subdivision (e) and 65912.161, subdivision (b), respectively, and redistribute SB 79 capacity per Government Code section 65912.161, subdivision (a) for the remaining non-exempt and non-temporarily excluded parcels in the TOD zone?

SB 79 does not preclude local jurisdictions from adopting and enacting:

- An ordinance to exempt sites where there is no walking path of less than one mile from the TOD stop, pursuant to Government Code section 65912.160, subdivision (e)(1);
- An ordinance to exempt sites within industrial employment hub areas, pursuant to Government Code section 65912.160, subdivision (e)(2);
- An ordinance to temporarily exclude certain qualifying sites from the provisions of SB 79, pursuant to Government Code section 65912.161, subdivision (b);
- A TOD alternative plan to redistribute net SB 79 capacity, pursuant to Government Code section 65912.161, subdivision (a), or
- An ordinance and TOD alternative plan that invokes all the above.

As detailed in Table 2, if a local government exempts sites via enactment of an ordinance,³⁹ then a concurrently or subsequently adopted TOD alternative plan would not be required to redistribute the capacity of those exempted sites where SB 79 does not apply.

Similarly, if a local government temporarily excludes sites from the provisions of Government Code section 65912.157,⁴⁰ then a concurrently or subsequently adopted TOD alternative plan would not be required to redistribute the capacity of those temporarily excluded sites where Government Code section 65912.157 does not apply. However, a valid TOD alternative plan must be amended in the 7th cycle Housing Element upon the “expiration” of the temporarily excluded sites.

³⁸ Gov. Code, § 65912.157, subd. (a).

³⁹ Gov. Code, § 65912.160, subd. (e).

⁴⁰ Gov. Code, § 65912.161, subd. (b)(1).

16. If a temporary exclusion ordinance or a TOD alternative plan has been adopted and approved by HCD, what happens when additional SB 79-eligible TOD stops are added?

If the MPO updates the applicable SB 79 map to include any additional TOD stops⁴¹ beyond those that were in effect and considered by the local government when adopting a temporary exclusion ordinance or a TOD alternative plan, and the site(s) are not otherwise exempt from SB 79 under Government Code, 65912.160, subdivision (e), then the following apply:

- **Temporary Exclusion Ordinance.** Any site within a TOD zone that is newly eligible for SB 79 due to a subsequently added TOD stop on the MPO map would not be excluded from SB 79 until the local government amends and re-adopts an HCD-approved temporary exclusion ordinance to account for newly eligible sites. For any existing temporarily excluded sites identified in the temporary exclusion ordinance adopted and enacted under Government Code section 65912.161, subdivision (b), the sites would remain excluded from the provisions of SB 79 until one year following the adoption of the 7th cycle housing element because the statute specifies that “Section 65912.157 shall not apply to any of the following [temporarily excluded sites] for which the local government has adopted an ordinance in accordance with Section 65912.160 indicating the site’s exclusion.”⁴²
- **TOD Alternative Plan.** Per Government Code section 65912.161, subdivision (d), “Section 65912.157 shall not apply within a jurisdiction that has a local transit-oriented alternative plan that has been approved by the department as satisfying the requirements of this section in effect.” Therefore, no new sites would qualify for SB 79 where a jurisdiction has adopted a TOD alternative plan that has been approved by HCD. Note, however, that HCD’s approval of the TOD alternative plan is only valid through the jurisdiction’s next amendment to the housing element⁴³ and any subsequently adopted TOD alternative plan must consider the eligible TOD zones and qualifying sites at the time of local adoption.

17. Does the California Environmental Quality Act (CEQA) exemption specified in Government Code section 65912.160, subdivision (c)(2) apply to any ordinance that is adopted pursuant to Government Code section 65912.160 (including a temporary exclusion ordinance and zoning ordinance as part of a TOD alternative plan)?

⁴¹ Government Code section 65912.156, subdivision (p) specifies that only Tier 1 TOD stops would be eligible to be added to a subsequently created MPO SB 79 map, and bus service stops remain ineligible for designation as a TOD stop in counties that qualify as an urban transit county after July 1, 2026. “Urban transit county” is as defined in Government Code section 65912.156, subdivision (q) to mean “a county with more than 15 passenger rail stations.

⁴² Gov. Code, § 65912.161, subd. (b)(1).

⁴³ Gov. Code, § 65912.161, subd. (d).

Yes, any ordinance to enact the provisions of SB 79, including a temporary exclusion ordinance and a TOD alternative plan, is not a project under CEQA pursuant to Government Code section 65912.160, subdivision (c)(2).

For more information regarding the procedures and implementation of CEQA, please see the guidelines and resources available at the Governor's Office of Land Use and Climate Innovation: <https://lci.ca.gov/ceqa/>.

HCD Review and Enforcement

18. Is there a presumed compliance assumption upon adoption and submission or is the compliance only provided upon receipt of a compliance letter from HCD?

A local jurisdiction's SB 79 ordinance or TOD alternative plan takes effect upon enactment by the local legislative body; however, the ordinance or plan is considered substantially compliant with state law only upon issuance of HCD's letter of written findings confirming substantial compliance.

HCD has up to 90 days, with one optional 30-day extension, to determine whether the enacted SB 79 ordinance or TOD alternative plan substantially complies with SB 79. At the end of HCD's review, the local jurisdiction will receive a letter in writing from HCD that determines whether the ordinance is substantially compliant with state law. If HCD does not provide written findings to the local government within the 90- to 120-day review period, then the ordinance is automatically deemed compliant for the limited purpose of assessing penalties.⁴⁴

19. On what date does HCD's review period begin following enactment of an SB 79 ordinance or TOD alternative plan? Does the ordinance or TOD alternative plan have to be in effect?

Per Government Code section 65912.160, subdivision (d)(2), an adopted ordinance must be submitted to HCD within 60 calendar days of *enactment*. HCD's review begins on the date that the adopted and *enacted* ordinance is submitted by the local jurisdiction to HCD.⁴⁵

The ordinance or TOD alternative plan does not have to be in *effect* when submitted to HCD for review; the local legislative body has the option to set an effective date of July 1, 2026, or later. SB 79 provisions and standards would apply on July 1, 2026, if a local ordinance or TOD alternative plan has not otherwise taken effect.

20. If the City submits an ordinance or TOD alternative plan that is later found to be out of compliance by HCD, does Government code section 65912.157 go into effect immediately until amendments are made to satisfy HCD's findings?

⁴⁴ Gov. Code, § 65912.160, subd. (d)(3).

⁴⁵ Gov. Code, § 65912.160, subd. (d)(2).

After receiving a letter finding that an ordinance or TOD alternative plan does not comply with SB 79, the local jurisdiction must either amend the ordinance or provide findings that explain the reasons the local jurisdiction believes the ordinance or plan complies with the statute despite HCD's findings within 60 days.⁴⁶ If the local jurisdiction fails to amend the ordinance in accordance with HCD's findings or its findings fail to adequately explain why the ordinance complies, HCD will issue a Notice of Violation and may refer the matter to the California Office of the Attorney General for further enforcement.⁴⁷

If HCD finds that an ordinance or TOD alternative plan does not comply with SB 79, HCD urges local jurisdictions to repeal or delay implementation of the ordinance or plan until it is compliant, and to instead apply Government Code section 65912.157. This will avoid confusion and the risk of unlawfully denying proposed SB 79 projects. Such denials could result in penalties pursuant to Government Code section 65912.157, subdivision (m).

Please note, a qualifying housing project within a TOD zone that submits while a jurisdiction's ordinance is found to be out of compliance must be afforded the full weight of the statute.

Conclusion

HCD appreciates the hard work involved in preparing a local SB 79 ordinance and is committed to assisting the City in addressing all statutory requirements to implement SB 79.

As the State of California remains in a housing crisis and the provision of much-needed housing, especially affordable housing, continues to be a priority, HCD encourages the City to apply the provisions of SB 79 to the greatest extent possible to facilitate a higher capacity of residential development near transit. If you have any questions or need additional technical assistance, please contact Grace Wu at grace.wu@hcd.ca.gov.

Sincerely,



Melinda Coy
Housing Accountability Unit Chief

⁴⁶ Gov. Code, § 65912.160, subds. (d)(4), (5).

⁴⁷ Gov. Code, § 65912.160, subd. (d)(6).