

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

651 Bannan Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



June 12, 2026

Michael Branson, Senior Deputy City Attorney
City of Oakland
One Frank H. Ogawa Plaza, Sixth Floor
Oakland, CA 94612

Dear Michael Branson:

**RE: City of Oakland – Review of Enacted Senate Bill 79 Ordinance to Temporarily
Exclude Sites under State SB 79 Law (Gov. Code, §§ 65912.155 - 65912.162)**

Thank you for submitting the City of Oakland's (City) adopted and enacted Ordinance No. 13875 (Ordinance) to the California Department of Housing and Community Development (HCD). The Ordinance amends Title 17 of the Oakland Municipal Code (the Planning Code) to add Chapter 17.86 S-8 Abundant and Affordable Homes Near Transit (Senate Bill 79) Combining Zone to identify sites eligible and ineligible or excluded from Senate Bill (SB) 79 property development standards.

Pursuant to Government Code section 65912.160, subdivision (d)(3)(A), this letter consists of HCD's findings that the Ordinance is **not in compliance** with State SB 79 law and details the revisions necessary to substantially comply with SB 79.

Analysis

HCD received the City's adopted and enacted ordinance on March 17, 2026 and supplemental documents on April 3, 2026, and April 30, 2026 (see Attachment A, Table 1 City of Oakland Submittal Documents), after receiving the draft ordinance on February 13, 2026.

HCD finds the Ordinance does not comply with State SB 79 law as follows:

1. **Section 17.86.050 – Eligibility** – The ordinance states: "The following zones are not residential, mixed, or commercial zones and therefore a site with any such designation is an Ineligible Site and may not utilize the development standards provided in the Abundant and Affordable Homes Near Transit Act:
 - OS Open Space Zoning Designations
 - M-40 Industrial Zone Designations
 - S-16 Interstate Corridor Commercial Zone Designations
 - D-CE-5, D-CE-6 Central Estuary District Industrial Zone Designations
 - D-GI Gateway District Industrial Zone Designations
 - D-CO-5, D-CO-6 Coliseum Area Industrial Zone Designations

- Undesignated areas serving as road, highway, train track, bicycle lane, and other right of way.
- Parcels lying underwater.

In addition, Section 17.86.020 (Definitions) provides definitions for terms that do not appear in Government Code section 65912.156. The City defines “ineligible site” to mean “a site within the S-8 zone (within one-half mile of a TOD Stop) that is not zoned for residential, mixed, or commercial development, as further identified in Section 17.86.050.”

However, Government Code section 65912.157, subdivision (a) states (emphasis added): “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....” Furthermore, 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”¹ and “building more homes near transit access reduces housing and transportation costs....”²

While the statute does not explicitly define “mixed” or “commercial” uses, if the jurisdiction’s zoning principally or conditionally permits residential, residential mixed use, or commercial land use on a parcel not underwater within a transit-oriented development (TOD) zone over which the jurisdiction has zoning authority, then SB 79 shall apply. This is consistent with prior HCD technical assistance explaining that “zoned for” means principally or conditionally permitted land use within a zone.³ For example, if a site is zoned industrial or open space but the zone allows for commercial development, then SB 79 may apply.

According to the City’s Planning Code, the following zones principally or conditionally permit residential, mixed, or commercial development and therefore are eligible for SB 79 unless specific exceptions apply. In addition, the parcel land areas must be included in the City’s SB 79 capacity calculations:

- [17.11.050](#) OS Open Space Zone conditionally permits permanent residential activities and commercial activities.
- [Table 17.72.01](#) M-40 Industrial Zone principally and conditionally permits commercial activities.
- [Table 17.73.020](#) CIX-, IG, IO Industrial Zones principally and conditionally permit commercial activities.

¹ Gov. Code, § 65912.155, subd. (a).

² Gov. Code, § 65912.155, subd. (c).

³ HCD TA Letter to the City of Hayward, dated January 28, 2025. Available at: <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/hayward-hau-1167-sb-684-1123-ta-01282025.pdf>

- [Table 17.101E.01](#) D-CE-5 and D-CE-6 Central Estuary District Industrial Zone principally and conditionally permit commercial activities.
 - [Table 17.101F.01](#) D-GI Gateway District Industrial Zone principally and conditionally permit commercial activities.
 - [Table 17.101H.01](#) D-CO-5, D-CO-6 Coliseum Area Industrial Zone principally and conditionally permit commercial activities.
2. **Section 17.86.060(B) – Exclusions: Sites 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 in the Abundant and Affordable Homes Near Transit (Senate Bill 79). (Gov. Code Sec. 65912.161(b)(1)(B)(ii))** – The Ordinance states: “The following TOD stops, and therefore all parcels located within one-half mile of those TOD stops, are primarily comprised of a low-resource area and include sites with densities cumulatively exceeding forty (40) percent of those specified in Section 65912.157(a). The TOD zones surrounding the following TOD stops are excluded from the standards provided in Senate Bill 79:”

A local government may enact an ordinance to temporarily exclude sites from the provisions of Government Code section 65912.157 until one year after the adoption of the jurisdiction’s seventh cycle Housing Element by demonstrating that the sites meet at least one of the criteria under Section 65912.161, subdivision (b)(1)(A)-(F).⁴ One of the criteria includes Section 65912.161, subdivision (b)(1)(B)(ii), which 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.”

Based on the City’s submitted documents, and related to Finding 1 above, HCD understands that the City did not assess the densities as specified in Section 65912.157, subdivision (a) for several zones that principally or conditionally permit residential or commercial development. For example, the City did not assess the densities for sites in the CIX, IG, and OS zones within the West Oakland BART TOD zone. Therefore, HCD is unable to determine whether the sites would meet 40 percent of the aggregate density for the TOD zone as specified in Section 65912.157, subdivision (a) because the City did not include all the land area eligible for SB 79 in its analysis.

In addition, please clarify whether the City intends to temporarily exclude sites in the AC Transit TEMPO 20th Avenue TOD Zone. Section 17.86.060(B)(11) specifies that the AC Transit TEMPO 20th Avenue Stop is excluded from the standards provided in

⁴ Gov. Code, 65912.161, subd. (b)(1).

SB 79; however, Exhibit B, Map 28 (AC Transit TEMPO 20th Avenue Stop) includes the label “Exclusion Removed by Council Amendment 3/3/2026.”

3. **Section 17.86.060(C) – Exclusions: Sites with a historic resource designated as of January 1, 2025, on a local register. (Gov. Code Sec. 65912.161(b)(1)(F))** – The Ordinance states: “All sites on the Local Register as mapped on City of Oakland Geospatial Information System Zoning Map as of January 1, 2025, are excluded. Policy 3.8 of the City of Oakland Historic Preservation Element, an element of the Oakland General Plan, defines the Local Register of Historic Resources. The Local Register is defined to include all Oakland Landmarks, S-7 and S-20 Preservation District combining zone properties, ‘Potentially Designated Historic Properties’ that have an existing survey rating of ‘A’ or ‘B’ or are located within Areas of Primary Importance (APIs), Heritage Properties, and Preservation Study List Properties.”

A local government may enact an ordinance to temporarily exclude “sites with a historic resource designated as of January 1, 2025, on a local register” from the provisions of Government Code section 65912.157 until one year after the adoption of the jurisdiction’s seventh cycle Housing Element.⁵ According to the City’s SB79 historic resources parcels document, the City excluded 1,820 sites under this temporary exemption provision.

However, HCD understands that excluded sites include “Potential Designated Historic Properties” (PDHPs) and the City’s website specifically states that “PDHP is not a designation.”⁶ PDHPs are not designated historic resources and therefore do not qualify for temporary exclusion under Section 65912.161, subdivision (b)(1)(F).

Conclusion

Please note, pursuant to Government Code section 65912.161, subdivision (b)(2), the City’s public zoning map must be updated to reflect any amendments to the sites or transit-oriented development zones that are and are not covered by Section 65912.157. In addition, pursuant to Government Code section 65912.160, subdivision (f), the Metropolitan Transportation Commission (MTC) SB 79 map shall have rebuttable presumption of validity for use by project applicants and local governments and therefore the City’s Ordinance and zoning map shall be at least as inclusive as MTC’s map when it is made available. HCD reserves the right to request additional information to monitor ongoing substantial compliance with SB 79 and may update its findings if new information comes to light. HCD may revoke compliance if the local government’s actions do not comply with state law.

⁵ Gov. Code, 65912.161, subd. (b)(1)(F).

⁶ City of Oakland, Historical and Architectural Rating Systems website: “PDHP is not a designation. It is a category based on Survey ratings, and the ratings simply report what the Survey has found throughout Oakland.” Available at: <https://www.oaklandca.gov/Planning-Building/Historic-Preservation/Historical-and-Architectural-Rating-Systems>

HCD is committed to assisting the City in addressing all statutory requirements of SB 79. If you have any questions or need additional information, please contact Grace Wu at grace.wu@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda Coy", with a long, sweeping horizontal stroke extending to the right.

Melinda Coy
Housing Accountability Unit Chief

Enclosure

Attachment A – Table 1 City of Oakland Submittal Documents

Attachment A

Table 1 City of Oakland Submittal Documents

	Filename	Document Description	Submittal Date
1	View Supplemental Legislation and Exhibits A B C And D – 352026.pdf	• Ordinance 13875 (p. 1-6); • Exhibit A: S-8 Abundant and Affordable Homes Near Transit (Senate Bill 79) Combining Zone (p. 7-15); • Exhibit B: SB 79 Low Resource and 40% Density Eligibility & Exclusion Analysis Map (p. 16-63); • Exhibit C: SB 79 Site Exclusion Analysis – Sites Excluded Based on Zoning Under Gov. Code 65912.161(b)(1)(A) (50 percent density and residential FAR) (p. 64-82) • Exhibit D: SB 79 Exclusion Analysis of Historic Resources – Sites Excluded Under Gov. Code 65912.161(b)(1)(F)(local register of historic resources) (p. 83-101)	03/17/2026
2	Att A_50% capacity calculation.pdf	Zoning Analysis for 50 Percent Exclusion	03/17/2026
3	Att B_Tier 1-40% density calculation.pdf	Summary of Density of Tier 1 TOD Zones by Geographical Area	03/17/2026
4	Att C_Tier 1-parcel calculation.pdf	Housing Capacity Analysis of Oakland Zoning Compared with SB 79 Standards in Tier 1 TOD Zones for Six BART Stations	03/17/2026
5	Att D_Tier 2-40% density calculation.pdf	Summary of the Density of Tier 2 TOD Zones by Geographic Area	03/17/2026
6	Att E_Tier 2-parcel calculation.pdf	Housing Capacity Analysis of Oakland Zoning Compared with SB 79 Standards in Tier 2 TOD Zones for 39 AC Transit Tempo Stops	03/17/2026
7	Analysis of Zones Within Each TOD Zone.xlsx	Zoning Districts Within Each TOD Zone (excel)	04/03/2026
8	Attachment A Zoning Analysis for 50 percent exclusion.xlsx	Zoning Analysis for 50 Percent Exclusion (excel)	04/03/2026
9	SB79 historic resources parcels.dbf	List of historic resources parcels: Address, APN, Tier, Distance, TOD Zone (excel)	04/20/2026
10	S-8 Combining Zone (SB 79) Map DRAFT	Public zoning map indicating sites or TOD zones covered and not covered by SB 79 (ArcGIS webmap)	04/30/2026