



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Christopher Burton

SUBJECT: See Below

DATE: February 23, 2026

Approved

Date:

3/3/26

COUNCIL DISTRICT: Citywide

SUBJECT: Analysis on Senate Bill 79 and Assembly Bill 130, Historic Resources and Policy Recommendations

RECOMMENDATION

- (a) Consider analysis on the impact of Senate Bill 79 and Assembly Bill 130 on the City's historic resources;
- (b) Direct staff to return to City Council with a draft ordinance adding a definition for "demolition" for historic resources applicable to Assembly Bill 130 projects in Title 20 (Zoning Ordinance) of the San José Municipal Code.

SUMMARY AND OUTCOME

This memorandum is provided in response to City Council direction on Item 8.1 of the January 27, 2026 City Council agenda.¹ City Council directed staff to provide additional analysis on whether the City can adequately rely on the California Environmental Quality Act (CEQA) to protect historic resources under Senate Bill (SB) 79 given the new ministerial process and CEQA exemption for housing development provided under Assembly Bill (AB) 130.

Staff analysis indicates that of the 56 transit stations in San José that are impacted by the provisions of SB 79, the highest concentration of historic resources is within a half-mile radius of approximately six transit-oriented development (TOD) stops within the City's pre-World War II boundaries. These historic resources, and those in other TOD stops with medium to low concentrations of historic resources, face significant development pressure due to the upzoning provided in SB 79.

¹ <https://sanjose.legistar.com/View.ashx?M=F&ID=15124530&GUID=F426D2E1-3259-4F39-8A09-CBEB56D01FF5>

Projects eligible for SB 79 would be considered consistent with the General Plan land use designation and zoning district for the purposes of AB 130; therefore, the two state laws could be used together. While AB 130 does not exempt housing projects from CEQA that would demolish a historic resource, CEQA itself does not protect historic resources; it is a procedural state law requiring environmental review to identify, disclose, and mitigate significant impacts to historical resources. Further, the CEQA exemptions in AB 130 would allow significant alterations and impacts to historic resources with no environmental review and no historic review if a Historic Preservation Permit is not required (limited to City Landmarks and City Landmark Districts).

As a result, staff recommends the City Council direct staff to return to City Council with a draft ordinance adding a definition for “demolition” for historic resources applicable to AB 130 projects in Title 20 (Zoning Ordinance) of the San José Municipal Code. This ordinance amendment will narrow the standard definition of demolition (removal of more than 50% of the exterior walls of a building) to retain CEQA review of significant alterations to historic resources so their historic character and significance can be maintained.

The City Council may also consider additional policy options that provide more local control and a considered planning approach that could potentially minimize impacts to historic resources. The following options require budget allocation and consideration of staff work program priorities.

- 1) Funding historic resource surveys to identify, evaluate, and designate historic properties for the purpose of proactively planning for their incorporation into the City’s growth and development; and
- 2) Adopting a temporary delay ordinance in accordance with SB 79 to temporarily exempt historic resources to allow the City time to plan for state-mandated density by developing a TOD alternative plan for high concentrations of historic resources.

These options do not need to be completed by July 1, 2026, and could occur over the next couple of years; however, staff recommends the City Council prioritize the San José Municipal Code amendment to address the definition of demolition so that projects qualifying under SB 79 that propose to significantly alter a historic resource would undergo CEQA review by not qualifying for a statutory exemption under AB 130.

BACKGROUND

On January 27, 2026, the Planning, Building, and Code Enforcement Department presented a report on SB 79 to City Council with an initial analysis of potential impacts to San José and a summary of local implementation options. Staff recommended the preparation of an ordinance to designate qualifying employment areas identified in the General Plan as “industrial employment hubs” and to exempt those areas from the

provisions of SB 79 as provided for in state legislation. Staff recommended the preparation of additional ordinances following completion of that priority work to exempt sites where no one-mile walking path to the TOD stop exists, and to temporarily exempt sites with designated historic resources. This second phase of work is proposed to occur after the industrial employment hubs exemption and the July 1, 2026, effective date of SB 79.

The City Council approved the staff recommendation to immediately prepare an ordinance to exempt industrial employment hubs so that it may be reviewed and approved by July 1, 2026. The City Council also approved the staff recommendation to return at a later date with ordinances to exempt sites with no one-mile walking path and to increase minimum densities in the downtown core, and an evaluation and options for increasing minimum densities in other growth areas. City Council also directed staff to conduct additional analysis on how SB 79 applies to historic resources relative to AB 130 and whether CEQA review is sufficient to protect historic resources, and to provide policy options for City Council to direct staff.

The following provides a brief summary of SB 79 and AB 130 for City Council reference.

SB 79, which goes into effect on July 1, 2026, overrides local general plans and zoning to allow dense housing near major transit hubs. The law specifies maximum heights and densities within a half-mile of certain transit stops. SB 79 does not exempt projects from review under CEQA. However, SB 79 can be used in conjunction with AB 130, which provides a new statutory exemption for most types of residential projects in urban areas. Therefore, many projects utilizing SB 79 will qualify for a statutory exemption under AB 130 and will not be subject to environmental review under CEQA.

AB 130, which became effective on July 1, 2025, exempts most residential projects in urban areas from review under CEQA if the project meets certain criteria, like consistency with the General Plan land use designation and/or zoning, minimum density requirements, specific site size and location requirements, and criteria to avoid certain types of environmentally sensitive sites. (The full criteria are included in the Information Memorandum dated August 12, 2025²). Projects that meet SB 79 criteria would be considered consistent with the general plan and zoning for the purposes of AB 130

ANALYSIS

Historic resources are not excluded from SB 79 unless the local government adopts a compliant temporary delay ordinance or alternative plan for “sites with a historic

² <https://www.sanjoseca.gov/home/showpublisheddocument/123982/638907786894830000>

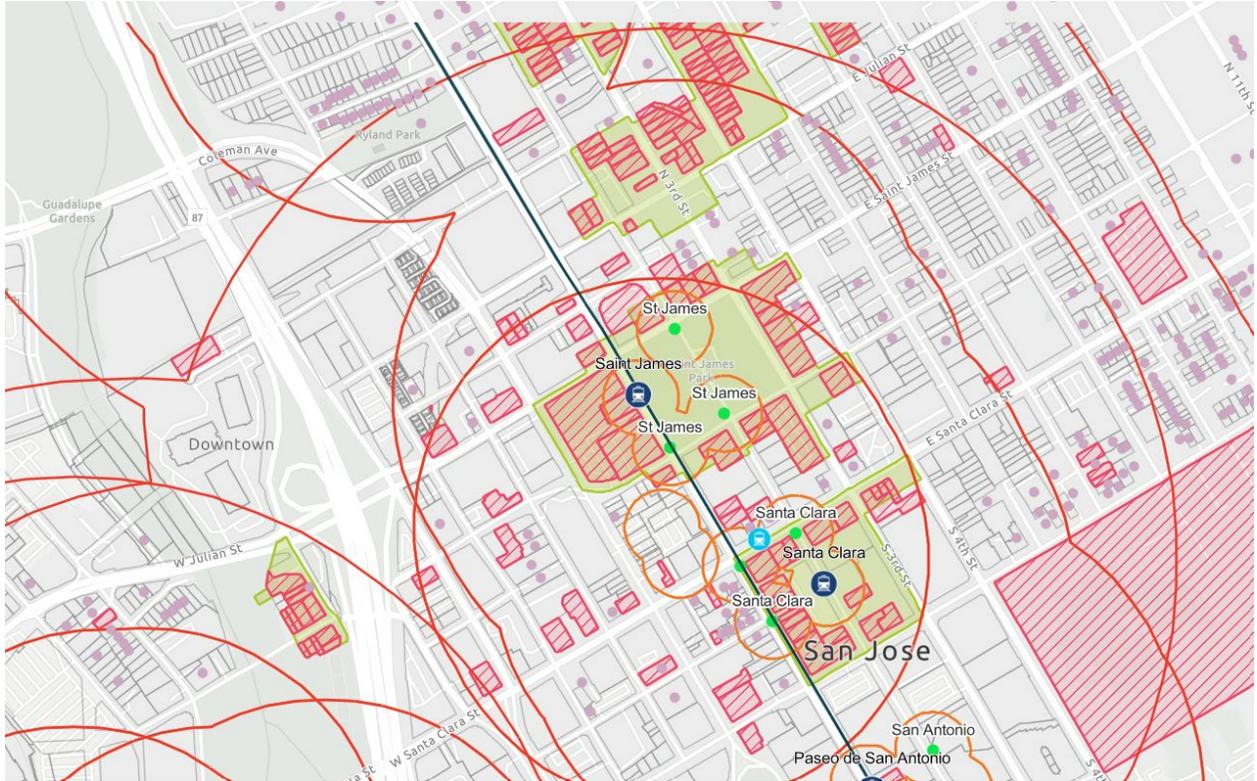
resource designated on a local register as of January 1, 2025.” (California Government Code Section 65912.161(b)(1)(F)). Cities may adopt local zoning standards in an alternative plan modifying SB 79 standards if the plan achieves equal or greater housing capacity than that allowed under SB 79.

Historic Resources Within a Half-Mile of TOD Stops

Staff analyzed Geographic Information System data of historic resources located within a half-mile radius of TOD stops to determine the potential magnitude of impacts of SB 79 on historic resources. This data is organized by concentration of historic resources as outlined in the Attachment - Concentration of Historic Resources in TOD Areas.

SB 79 applies to 56 TOD areas associated with transit stations in or adjacent to San José, with approximately 17 TOD areas containing designated historic resources that are listed in the Historic Resources Inventory. The highest concentration of historic resources is within six TOD stop areas within and adjacent to downtown. Figure 1 illustrates the concentration of historic resources in downtown within TOD areas. These historic resources will face significant development pressure due to the upzoning provided in SB 79.

Figure 1: Concentration of Historic Resources in Downtown



(Note: circles indicate 1/4 mile and 1/2 mile TOD stop areas, hatched red are designated historic properties, lavender dots are other Historic Resources Inventory properties, green shaded areas are historic districts)

Interface of SB 79 with AB 130

Projects eligible for SB 79 would be considered consistent with the General Plan land use designation and zoning district for the purposes of AB 130; therefore, the two state laws could be used together. The following outlines the implications of SB 79 and AB 130 projects.

- 1) Demolition - Not CEQA Exempt: A housing development project cannot use a statutory exemption under AB 130 if the project requires the demolition of a “historic structure that was placed on a national, state, or local historic register before the date a preliminary application was submitted for the project pursuant to Section 65941.1 of the California Government Code.” The City considers any structure listed on the Historic Resource Inventory to be a historic structure for the purposes of AB 130.
 - a) Consider the procedural nature of CEQA. The process provided for in AB 130 does not preserve historic resources - it just means a developer cannot use the CEQA exemption and must go through the CEQA process - either standard or focused. CEQA itself does not protect historic resources; that is the role of local ordinances. Environmental review only provides a tool for advocacy and procedural requirements that ensure impacts are studied, disclosed, and mitigated where feasible.

- 2) Alterations - CEQA Exempt: AB 130 does not exclude alterations to historic resources or their setting that could compromise the historic integrity of the structure and/or setting but do not meet the definition of demolition (currently defined as removal of more than 50% of exterior walls).³ Therefore, a project could significantly alter a historic resource by removing walls, the roof, interior of the building, character-defining features, and/or changing the historic setting of the building and still qualify for a statutory exemption under AB 130 because the project would not result in “demolition.” No analysis or mitigation would be required. Moreover, if the historic resource is eligible or listed on the National Register of Historic Places (the highest historic designation) but is not a designated City Landmark or located in a City Landmark District, then a Historic Preservation Permit would not be required and there would be no historic review, which is typically carried out under CEQA.
 - a) Consider the San Jose Downtown Commercial District, which is listed on the National Register of Historic Places and contains the highest concentration of 19th and early 20th-century commercial buildings in the area. Since the district is not a City Landmark District and most of the buildings are not

³ San Jose Municipal Code 20.80.420

https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT20ZO_CH20.80SPUSR_E_PT4COREDW

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individual landmarks, no Historic Preservation Permit would be required. Under AB 130, a project could alter a significant building in the district as long as it does not demolish it. The character of prominent buildings lining East Santa Clara Street that define the prominence of the historic district and other significant buildings like the Alliance building could be substantially altered without any CEQA review (Figure 2 and Figure 3 below).

Figures 2 and 3: AB 130 would not protect the historic character of prominent downtown buildings that are not landmarked

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- 3) Unlisted Historic Resources - CEQA Exempt: Significant properties not listed on the Historic Resources Inventory could be demolished without CEQA review because they do not count as “historic structures” under AB 130. Eligible historical resources are not covered under AB 130.
 - a) Consider the Seely Avenue Mixed Use Project. If it were less than 20 acres, the project could have been CEQA exempt under AB 130 because the Sakauye Farm was not listed on the Historic Resources Inventory and there would have been no historic report, mitigation measures, or alternatives analysis (Figure 4).

Figure 4: Sakauye Farm House on Japanese-American Farmstead off Montague Expressway



In summary, AB 130 allows the demolition of eligible historic resources not listed in the Historic Resources Inventory and significant alterations that could diminish or destroy the integrity of a historic structure. CEQA itself does not protect historic resources; it is a procedural state law requiring environmental review to identify, disclose, and mitigate significant impacts to historic resources. Municipal codes like the Historic Preservation

Ordinance provide the legal protection (e.g., permits, design review, demolition delays) for designated properties. CEQA cannot be relied upon to protect historic resources.

Policy Options

Coupled with the CEQA exemptions in AB 130, significant alterations and impacts to historic resources could occur with no environmental review. As a result, the City Council may wish to consider the following policy options to provide more local control and a considered planning approach that may potentially minimize possible impacts to historic resources. The options are noted as “immediate,” recommended for action soon, or “future,” which require the allocation of additional financial or staff resources to implement.

1) Amend Definition of Demolition (Immediate)

Staff recommends the City Council direct staff to return to City Council with a draft ordinance adding a definition in Title 20 (Zoning Ordinance) of the San José Municipal Code for “demolition” specific to historic resources that is applicable to AB 130 projects citywide. The definition does not need to apply to SB 79 because it overrides local general plans and zoning and does not change the applicability of CEQA.

As outlined above, a CEQA exemption cannot be used when a project requires the demolition of a “historic structure.” However, AB 130 would allow the significant alteration of historic resources because the law does not define the term “demolition.” By default, the City’s Zoning Ordinance would be applied. Section 20.80.40 of the Zoning Ordinance (in the context of Special Use Regulations) primarily defines “demolition” as the removal of more than 50% of the exterior walls of a building. This provides wide latitude for the alteration of historic resources without actually demolishing them and could result in the destruction of their significance.

Other California cities have addressed this issue by adopting a separate definition for demolition in their municipal code that only applies to historic resources. For example, demolition could be defined as substantial alterations that remove significant historic fabric, such as more than 10% of the surface of all external walls facing a public street(s). By narrowing the definition of demolition, projects that significantly alter a historic resource would not qualify for a statutory exemption under AB 130.

2) Historic Resources Survey and Designation (Future)

While SB 79 freezes the consideration of historic resources to those listed by January 1, 2025, AB 130 allows the consideration of historic resources placed on a national, state, or local historic register before the date a preliminary application was submitted for the project. Significant properties not listed on the Historic Resources Inventory could be demolished without CEQA review because they do not count as “historic structures”

under AB 130. Therefore, it is still important to continue the identification, evaluation, and designation of historic properties for the purpose of proactively planning for their incorporation into the City's growth and development. Focus can be on the TOD stop areas within the pre-World War II City boundaries (including downtown) and further study of listed properties classified as stand-alone Contributing Structures and Identified Structures in those areas. In addition, there are many properties listed on the Historic Resources Inventory that have been determined to be eligible for City Landmark designation that could be brought forward for formal designation by the City Council.

3) Temporary Delay Ordinance and Alternative Plan (Future)

SB 79 provides for a local jurisdiction to:

- Adopt an ordinance to temporarily exempt sites with a historic resource designated on a local register as of January 1, 2025 until one year following the adoption of the next Housing Element; and/or
- Adopt a transit-oriented development alternative plan that can exempt or reduce density on sites containing a locally designated historic resource. However, this limits a local jurisdiction's ability to exempt historic resources because the historic resource exemption is capped at 10% of the total area of any TOD zone.

The preparation and adoption of an ordinance to enact a temporary delay of SB 79 for historic resources will allow the City time to plan for state-mandated density by developing a TOD alternative plan/s, which allows cities to redistribute housing density near transit stops while meeting SB 79's statutory housing targets. Through this mechanism, growth can be steered away from historic sites or development standards can be adjusted around them. If historic resources were temporarily exempted, other eligible sites within a half-mile radius of TOD stops would still be available for SB 79 implementation and development. SB 79 caps the exemption of historic resources in an alternative plan at 10% of the total area of any TOD zone, so it would not significantly impact development potential, which would be accommodated elsewhere in the TOD zone.

The temporary delay ordinance could be adopted at any time, even following the effectuation of SB 79 on July 1, 2026. If an ordinance is not adopted and a TOD alternative plan/s not developed over the next several years to redistribute the density within the TOD area, then historic resources would face significant development pressure due to the upzoning provided in SB 79. While a statutory exemption cannot be used under AB 130 if a project requires the demolition of a "historic structure that was placed on a national, state, or local historic register before the date a preliminary application, more historic resources could be demolished, even after going through the CEQA process. AB 130 does not exclude alterations to historic resources or their setting that could compromise the historic integrity of the structure and/or setting. This could potentially be improved with the recommended San José Municipal Code revision

to add a definition for demolition applicable to historic resources and AB 130; however, even if that is done, adjacent development under SB 79 would be significantly out of scale with historic resources. Developing an alternative plan would help protect resources by guiding the distribution of density to other areas of the TOD to relieve development pressure and to maintain the lower density setting of historic resources. This will not decrease the overall density allowed, merely redistribute the density with area-specific planning.

Several other California cities are currently considering how to appropriately treat historic resources in light of SB 79. Some cities are pursuing formal ordinance drafting to delay effectuation and considering alternative plans (e.g., Los Angeles, Mountain View, Oakland, Palo Alto), and others are advocating at the state level, seeking modifications to legislation to better protect historic areas (e.g., Pasadena). The legislation is so new and complex that no jurisdiction has implemented any of these actions to date and it is possible that revisions to the state legislation could be forthcoming. Preparing the temporary delay ordinance provides additional time for staff to better understand the implications of SB 79, receive mapping from the Metropolitan Transportation Commission, and further consult with other cities about their experiences so San José can provide effective local planning tools for historic resources.

To maximize the City's financial and staff resources, one option might be to limit analysis to the six TOD stop areas that contain a "high" concentration of historic resources as outlined in the Attachment. Analysis would determine whether an alternative plan or plans could be prepared that meet the state criteria. The preparation of an alternate plan or plans would require discussion on budget allocation and priorities for staff work programs.

EVALUATION AND FOLLOW-UP

If directed, staff will bring forward an amendment to the Zoning Ordinance that will add a definition for demolition specific to historic resources for AB 130.

Staff will also continue its analysis of SB 79 related impacts to the City's historic resources. If future resources are allocated, then an alternative plan or plans can be developed following implementation of SB 79 on July 1, 2026, and/or historic resource surveys and designations can proceed.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

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PUBLIC OUTREACH

This memorandum will be posted on the City Council Agenda website for the March 17, 2026 City Council meeting.

BOARD, COMMISSION, COMMITTEE RECOMMENDATION AND INPUT

No board, commission, or committee recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-007, Preliminary direction to staff and eventual action requires approval from decision-making body.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

CHRISTOPHER BURTON
Director, Planning, Building, and Code
Enforcement Department

For questions, please contact Dana Peak Edwards, Principal Planner, Historic Preservation Officer, Planning, Building, and Code Enforcement Department, at dana.peak@sanjoseca.gov or (408) 534-2990.

ATTACHMENT:

Concentration of Historic Resources in TOD Areas

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Concentration of Historic Resources in TOD Areas

REF #	TOD STOP/ STATION NAME	CONCENTRATION OF HISTORIC RESOURCES	NAME OF HISTORIC RESOURCE/S
1	Japantown/Ayer	High	Hensley Historic District, Japantown, Individual City Landmarks
2	St. James	High	St James Park Historic District, southern end of Hensley Historic District, River Street City Landmark District, individual City Landmarks
3	Downtown San José Station W	High	San Jose Building and Loan, James Clayton Building, Farmer's Union, Masson Building, Lyndon Building, San Jose Downtown Commercial Historic District
4	Santa Clara	High	San Jose Downtown Commercial Historic District, individual City Landmarks
5	San Antonio	High	Saint Claire Hotel, Fox Theater, Twohy Building, Montgomery Hotel, Reed Street Historic District, Market Almaden Conservation Area
6	Virginia	High	Roma Bakery, Guadalupe Washington Conservation Area, North Willow Glen Conservation Area
7	Convention Center	Medium	Municipal Auditorium, Market Almaden Conservation Area
8	San Fernando	Medium	Lake House Historic District, San Jose Water Works
9	Diridon Station	Medium	Southern Pacific Depot, Lakehouse Historic District, Cal Pak District Manager's Office, Del Monte Plant 51, Babe's Muffler, Schurra's Candies
10	College Park	Medium	Schiele Subdivision and Alameda Park Historic District, Dunne Mansion, Wilder/Hait, Lawrence House, Bocks House
11	Race	Medium	Roberto Sunol Adobe, western section of Palm Haven Conservation Area
12	Tamien	Medium	Southern end of Guadalupe Washington Conservation Area, eastern side of North Willow Glen Conservation Area
13	Civic Center	Low	El Pueblo de San Jose Guadalupe Marker
14	Alum Rock	Low	The Orange
15	Alum Rock/28 th Street	Low	5 Wounds Portuguese National Parish, East San Jose Carnegie Library, San Jose Academy
16	Alum Rock and Jackson	Low	Cesar Chavez House, Nuestra Senora de Guadalupe Mural, McDonnell Hall
17	Berryessa	Low	Berryessa Elementary School

Note: Names of historic resources are provided for the purpose of orientation and context, but the list is not exhaustive of all historic resources in a TOD area.