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March 21, 2025

Jennifer Lilley, Director of Community & Economic Development
City of Riverside
3900 Main Street 3rd Floor
City of Riverside, CA 92522

RE: City of Riverside Senate Bill 9 Implementation — Letter of Technical Assistance

Dear Jennifer Lilley:

This letter provides technical assistance to the City of Riverside (City) regarding Chapters 19.443, titled "Two-Unit Developments", and 18.085, titled "Urban Lot Splits", of the Riverside Municipal Code (RMC), added by Ordinance Numbers 7592 and 7591, respectively, that implement Senate Bill (SB) 9 (Chapter 162, Statutes of 2021).[1] The California Department of Housing and Community Development (HCD) identified several provisions within RMC Chapters 19.443 and 18.085 (henceforth referred to as "the Ordinance") that conflict with SB 9, as detailed in this letter.

Background

HCD received a request for technical assistance from an applicant who currently has several SB 9 projects submitted with the City. The requester identified additional provisions of the Ordinance that potentially conflict with SB 9 during a July 24, 2024, meeting. On August 14, 2024, HCD met with City staff to review those provisions, as well as additional provisions identified by HCD that potentially conflict with SB 9.

Analysis

The City's Ordinance satisfies many statutory requirements; however, HCD finds that it does not comply with SB 9 in the following respects:

1. RMC 19.443.070(B)(a) – *Owner-occupancy requirements for units processed pursuant to SB 9* – This provision includes an owner-occupancy requirement for units processed pursuant to Government Code section 65852.21. This owner-occupancy requirement has no specified timeframe and requires a deed restriction recorded "on title to the subject property binding current and future owners to this requirement."[2] While Government Code section 66411.7, subdivision (g), requires an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of

[1] Gov. Code, §§ 65852.21, 66411.7. SB 450 (Chapter 286, Statutes of 2024) amended SB 9. This letter contains feedback that reflect these revisions to the law.
[2] RMC 19.443.070(B)(b).

the approval of the urban lot split, with specified exceptions,[3] there are no corresponding owner-occupancy requirements for a proposed housing development containing no more than two units under Government Code section 65852.21. Additionally, although a local agency may impose objective standards and certain conditions of approval pursuant to Government Code section 65852.21, subdivisions (b) and (c), respectively, the local agency must not preclude SB 9 units on otherwise eligible lots with an owner-occupancy requirement when a proposal does not include an urban lot split. Finally, the standard does not appear to be applied uniformly to development within the underlying zone.[4] The City must remove this provision.

2. RMC 19.443.050(A)(1)(b) – *Three-unit cap* – This provision states that "no more than three total dwelling units, inclusive of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs)… may be constructed on any undivided lot in a single-family zone." A local agency is not required to approve ADUs and JADUs on lots that involve both urban lot splits and units processed pursuant to Government Code section 65852.21.[5] A local agency may also impose a two unit maximum, inclusive of ADUs and JADUs, on lots created through an urban lot split.[6] However, SB 9 does not provide for a limit on the application of ADUs and JADUs on lots that do not involve an urban lot split.[7] The City must remove this provision so that the it does not conflict with ADU and JADU law by limiting their application on sites that do not involve an urban lot split.

3. RMC 19.443.050(C)(2) – *Street side setbacks* – This provision states that "street side yard setbacks for two-unit developments shall be as required by the Zone." However, Government Code section 65852.21, subdivision (b)(2)(B)(ii), states "a local agency may require a setback of up to four feet from the side and rear lot lines." A side lot line is a side lot line, regardless of whether that lot line abuts a street in the case of a corner lot. Limitations on side lot line setbacks, established in statute, apply to the street sides of a corner lot.[8] The City must amend this provision and require side setbacks no greater than four feet.

4. RMC 19.443.060(B) – *Setbacks above the first floor* – This provision states that "upper floors and the portions of the structure exceeding 16 feet in height shall comply with the minimum required setbacks of the underlying zone." However, Government Code section 65852.21, subdivision (b)(2)(B)(ii), states "a local agency may require a setback of up to four feet from the side and rear lot lines" and makes no exception above any heights or floors. The City must remove this provision and require side and rear setbacks no greater than four feet.

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[3] Gov Code, § 66411.7, subd. (g)(2).
[4] Gov Code, § 65852.21, subd. (b)(3).
[5] Gov Code, § 65852.21, subd. (f).
[6] Gov Code, § 66411.7, subd. (j).
[7] See HCD's SB 9 Fact Sheet, pg. 6, available at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/sb-9-fact-sheet.pdf ("When a lot split has not occurred, the lot is eligible to receive ADUs and/or Junior ADUs as it ordinarily would under ADU law.")
[8] See December 15, 2022, Review of the City of Union City's Accessory Dwelling Unit (ADU) Ordinance, available at https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/ordinance-review-letters/UnionCityADUordinance12152022.pdf.

5. RMC 18.085.030(A) and 19.443.040(A) – *Exempt Areas* – These provisions of the Ordinance include several areas where SB 9 units and urban lot splits cannot be located. For example, SB 9 project sites cannot be located in a "mapped Arroyo" or area "identified for habitat" as defined in the Western Riverside Multiple Species Habitat Conservation Plan.[9] SB 9 provides that the parcel must satisfy the requirements specified in Government Code section 65913.4, subdivision (a)(6)(B) through (K), inclusive, as that section read on September 16, 2021.[10] In general, when the Ordinance includes environmental exemption areas, those areas must align with those provided for in Government Code section 65913.4, subdivision (a)(6)(B) through (K) as that section read on September 16, 2021 so as to not preclude projects from occurring on eligible parcels or facilitate projects on ineligible parcels under SB 9. While HCD did not independently, exhaustively verify the eligibility of the exemption areas in the Ordinance that are based on local programs, HCD encourages the City to ensure exemption areas align with those provided for in SB 9 when the implementing Ordinance includes language different than state law.

6. RMC 18.085.030(A)(2) and 19.443.040(A)(2) – *Exempt Fire Areas* – These provisions of the RMC require that SB 9 projects "not be located within a Very High Fire Hazard Severity Zone." However, Government Code section 65913.4, subdivision (a)(6)(D), as read in 2021, provides that the project not be located "[w]ithin a very high fire hazard severity zone, *as determined by the Department of Forestry and Fire Protection* pursuant to Section 51178, or within a high or very high fire hazard severity zone *as indicated on maps adopted by the Department of Forestry and Fire Protection* pursuant to Section 4202 of the Public Resources Code." (emphasis added). In addition, the subparagraph states that it does not apply to sites that adopt specified fire hazard mitigation measures.[11] The City must update the Ordinance to allow for the exceptions provided for in Government Code section 65913.4, subparagraph (a)(6)(D), as that section read on September 16, 2021.

7. RMC 18.085.030(A)(5), 19.443.040(A)(5), 18.085.030(A)(7), and 19.443.040(A)(7) – *Additional Exclusions* – These provisions exclude SB 9 projects from "Neighborhood Conservation Area(s)" and on sites listed as a "Structure of Merit," designated pursuant to RMC Title 20. However, SB 9 only provides that a development should not be located "within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county Ordinance."[12] In other words, SB 9 exempts projects on or within a site that is (1) designated or listed as a landmark, (2) designated or listed as a historic property, or (3) designated or listed as an historic district. The term "district" in Government Code section 65852.21, subdivision (a)(5), is modified only by the word "historic" and neither of the terms "structure" nor "merit" appear in the subparagraph.[13] Thus, neither "Neighborhood Conservation Areas" nor "Structures of Merit" meet the criteria laid out in statute. Additionally, designation criteria

[9] RMC 19.443.040(A)(3).
[10] Gov. Code, §§ 65852.21, subd. (a)(2); 66411.7, subd. (a)(3)(C).
[11] See HCD technical assistance letter to the City of Jurupa Valley on June 24, 2022: https://www.hcd.ca.gov/community-development/housing-element/docs/rivJurupaValley-TA-062422.pdf
[12] Gov Code, § 65852.21, subd. (a)(5).
[13] See California Attorney General Notice of Violation to the City of Pasadena, pg. 2, available at https://oag.ca.gov/system/files/attachments/press-docs/AG%20Letter%20to%20Pasadena%20re%20SB%209%20Urgency%20Ordinance.pdf ("To the extent the exemption is at all ambiguous, it must be read narrowly as to not undermine the objectives of SB 9.")

for both "Neighborhood Conservation Areas" and "Structures of Merit" indicate that such designations may be made with criteria that do not involve "historic" or "historical" characteristics.[14] The City must not exclude SB 9 projects from sites within "Neighborhood Conservation Areas" or containing "Structures of Merit."

8. RMC 18.085.040(B)(b) – *Subjective Access Standard* – This provision provides that "additional access requirements, including but not limited to a wider access corridor or easement, may be required where necessary to provide adequate access for fire safety equipment as determined by the Fire Marshal." Based on the language of this provision and context provided during a call with the City on August 14, 2024, this standard is subjective. The City must ensure that objective zoning, subdivision, and design review standards "involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal."[15]

9. RMC 19.443.050(E) – *Waiving Standards that Physically Preclude Units* – This provision of waives "any development standard that would physically prevent the development of at least two primary dwelling units of at least 800 square feet." However, Government Code section 65852.21, subdivision (b)(2)(A) states that objective standards shall not be imposed that preclude "up to two units" of at least 800 square feet from being constructed. Accordingly, standards shall not be applied that preclude either one or two units, not a minimum of two as the Ordinance currently states. The City must amend the waiver language to reflect state law and waive standards that are found to physically preclude up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

10. *Review Timelines* – SB 450 amended SB 9 by adding review timelines for proposed housing developments containing no more than two residential units and urban lot splits, stating that "an application… shall be considered and approved or denied within 60 days from the date the local agency receives a completed application. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved."[16] Additionally, the new provisions state that "If a permitting agency denies an application…, the permitting agency shall… return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant."[17] The Ordinance and the City's application processing procedures[18] must be updated to reflect these new statutory application review timelines.

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[14] See definitions for "Structure (or Resource) of Merit" and "Neighborhood conservation area" in RMC 20.50.010.
[15] Gov. Code, §§ 65852.21, subd. (j)(2); 66411.7, subd. (m)(1).
[16] Gov. Code, §§ 65852.21, subd. (h); 66411.7, subd. (b)(1).
[17] Id.
[18] Under the Permit Streamlining Act (PSA), a local agency has 30 calendar days to determine whether a specified application is complete. If an application is determined to be incomplete, the local agency must provide an exhaustive list of items that were not complete. For an explanation of an interaction between a similar ministerial application review timeline and the PSA, see HCD's letter of technical assistance to the City of Los Angeles on December 11, 2024: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/losangeles-hau1189-ta-sb684-12112024.pdf

11. RMC 18.085.060 – *Noticing for Urban Lot Splits* – This provision of the Ordinance requires an applicant for a proposed urban lot split to provide written notice to property owners within 300 feet of the site where the subdivision is proposed. However, SB 450 amended Government Code section 6411.7, subdivision (c)(1) to clarify that a local agency may impose objective standards to applications for an urban lot split "that are related to the design or to improvements of a parcel." A requirement to provide notice to nearby property owners of an application submittal is not related to the design or improvements of the parcel. The City must remove the noticing requirement for urban lot splits.

12. RMC 19.443.080 – *Noticing for SB 9 Units* – This provision of the Ordinance requires an applicant for a proposed housing development containing no more than two residential units to provide written notice to property owners within 300 feet of the site where the project is proposed. However, SB 450 amended Government Code section 65852.21, subdivision (b)(3) to require that, "A local agency shall not impose objective… standards that do not apply uniformly to development within the underlying zone." The requirement to provide notice to nearby property owners of an application submittal does not appear to be a standard applied uniformly to development within the underlying zone. If the standard is not applied uniformly to development within the underlying zone, the City must remove this provision from the Ordinance.

13. *Standards Not Applied Uniformly Within the Underlying Zone* – The Ordinance contains several additional standards that do not appear to be applied uniformly to development within the underlying zone. Government Code section 65852.21, subdivision (b)(3) requires that, "A local agency shall not impose objective… standards that do not apply uniformly to development within the underlying zone." If not applied uniformly to development within the underlying zone, the City must remove the following provisions:

    - RMC 19.443.060(A)(a), "A minimum separation of 10 feet shall be provided between any detached dwellings on the site." Additionally, the term "dwellings" as defined in RMC 19.910.050 also appears to include ADUs. Were this standard permissible pursuant to Government Code section 65852.21, subdivision (b)(3), the City should still assess the provision for compliance with ADU law.[19]
    - RMC 19.443.060(A)(b), "Windows within 30 feet of a neighboring structure on another parcel shall not directly align with the windows of the neighboring structure."
    - RMC 19.443.060(A)(c), "Upper story unenclosed landings, decks, and balconies that face or overlook an adjoining property shall be located a minimum of 15 feet from the interior lot lines."
    - RMC 19.443.060(D), "A minimum of one 24-inch box tree of a broad leaf or evergreen species shall be provided on site per unit constructed. Palms shall not be considered to satisfy this requirement."

[19] See HCD ADU Handbook pg. 38: "Minimum distance or other requirements may not be applied if they would unreasonably restrict the creation of ADUs, unless they are a requirement of a Building or Fire Code (Gov. Code, § 66314, subd. (d)(8))." https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/ADUHandbookUpdate.pdf

Conclusion

HCD finds that several provisions in the City's Ordinance conflict with SB 9. HCD looks forward to assisting the City in implementing SB 9 unit and urban lot split Ordinances that comply with state law and hopes the City finds this letter of technical assistance helpful. HCD would also like to remind the City that HCD has enforcement authority over SB 9, among other state housing laws.[20] Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a City's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law. If you have questions or need additional information, please contact Brandon Yung at brandon.yung@hcd.ca.gov.

Sincerely,

Shannan West
Housing Accountability Unit Chief

[20] Gov. Code, § 65585, subd. (j).