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Sent: Saturday, April 27, 2024 11:14:22 AM

To: Padilla, Ingrid <cityclerk@ci.brisbane.ca.us>

Subject: Article about SB9 and rezoning

Hi Ingrid - Could you please share this article as soon as possible with the Brisbane City Council, the Brisbane Planning Commission, our attorney, Tom McMorrow, Planning Staff and the City Manager?

I am requesting that we postpone making any decisions or holding hearings on Zoning Text and Map Amendment 2024-RZ-1. This rezoning will have a very severe impact on Brisbane.

Thank you.

Respectfully, Michele Salmon

SINGLE-FAMILY ZONING LAW

Ruling could upend housing

Judge overturns law that allows splitting properties

BY KATE TALERICO

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A controversial housing law that abolished single-family zoning across California has been ruled unconstitutional by a Los Angeles County judge, but the narrow ruling is likely to be appealed by the state and it's unclear how it might affect the Bay Area.

Passed in 2021, Senate Bill 9 allows single-family homeowners to split their lots in two and build two homes on each lot — allowing up to four units in a lot previously zoned for just one.

Five Southern California cities — Redondo Beach, Carson, Torrance, Whittier and Del Mar — sued the state in 2022, claiming the law was unconstitutional because it interfered with local authority over land use and zoning.

The Los Angeles County Superior Court judge's ruling, issued Monday, means that SB 9 can't be applied in these five cities. The judge is expected to produce a ruling in the next month that could strike down SB 9 in cities across the state.

What will happen in the Bay Area remains to be seen. For now, legal experts say SB 9 still applies. But if the ruling next month applies more widely, the law could be struck down in what are known as charter cities, those that have authority over municipal affairs, even when they might be at odds with a state statute. California has more than 120 charter cities, including Oakland, San Jose and San Francisco, meaning SB 9 could be upended in the region's three largest cities.

The attorney general's office said it is reviewing the decision and “will consider all options in defense of SB 9.”

Housing advocates worry that the court ruling chips away at a key piece of legislation intended to increase density around the state.

“The writing is on the wall for this particular court ruling to upend future SB 9 processing,” said Rafa Sonnenfeld, policy director at the San Francisco-based pro-housing group YIMBY Action.

UC Davis law professor Chris Elmendorf called it “the most ridiculous opinion that any court has issued in a housing-related case.”

At the heart of the case is local authority and what gives the state the right to usurp control. In California, the constitution requires that state laws stepping on cities’ local control must show a reasonable relationship between the stated intention and the design of the law.

In the case of SB 9, that stated intention was improving housing affordability.

The dominant theory in housing policy in recent years is that the state’s decadeslong undersupply of housing has pushed up the cost of rent and homeownership and that building more housing — both market-rate and subsidized — will improve affordability. That was reflected in SB 9’s design, which allows for more homes to be built via lot splits. In contrast to state-subsidized affordable housing or deed restrictions that cap rent, the affordable housing created through SB 9 would be what housing policymakers call “naturally occurring.”

But the judge, Curtis Kin, ruled that the legislature’s intention — housing affordability — didn’t match up with the design. Because SB 9 doesn’t require any of the units constructed to actually be below-market-rate, it was not “reasonably related and sufficiently narrowly tailored” to ensuring access to affordable housing, and therefore unconstitutional.

The judge’s opinion echoed critics’ doubts that increasing supply actually boosts affordability.

“The decision confirms that most of these so-called housing affordability laws are a sham and won’t result in much-needed affordable housing,” said Susan Candell, a Lafayette city councilmember and proponent of the Our Neighborhood Voices initiative, which seeks to return local land-use decisions back to cities.

“In Redondo Beach, we support laws that reasonably address the crisis in affordable housing, but this isn’t one of them,” City Attorney Michael Webb said. “This would just create more market rate housing.”

The opinion is a victory for CalCities, a group lobbying on behalf of the state’s cities, which submitted an amicus brief arguing that SB 9 has stripped cities of their discretion to determine the location, density and site characteristics of housing without ensuring the construction of more affordable housing units.

“The court’s ruling reaffirms the foundational principle that land use planning and zoning are local matters,” League of California Cities Executive Director and CEO Carolyn Coleman said in a statement.

But pro-housing advocates say the judge’s ruling relies on a narrow definition of housing affordability.

“It’s clear that the legislature intended for ‘affordable housing’ to mean the naturally affordable housing that happens with more production,” Sonnenfeld said. “But the ambiguity over the phrase ‘affordable housing’ is unfortunately causing some confusion in the courts. That could be easily fixed by the legislature.”

Ben Bear, CEO of BuildCasa, a startup that helps homeowners split their lots under SB 9 and sell them to developers, said SB 9 enables housing affordability by increasing supply of small starter homes, “which makes all housing more affordable through the chain reaction effect.”

“We’ve seen that SB 9 units can sell for 30%-50% less per unit than other single-family homes due to increased density,” Bear said.

Advocates hope the legislature revives an SB 9 clean-up bill proposed last year by Sen. Toni Atkins, a San Diego Democrat, that could also clarify the law’s intention and resolve the judge’s concerns.

Even Candell of the Lafayette City Council acknowledged that a simple cleanup to SB 9 could render the Los Angeles Court’s decision moot.

“We’ve lost the war,” she said. “We can’t undo all these laws one by one.”