



City of Encinitas

Office of
The Mayor

October 26, 2015

The Honorable Patricia Bates
California State Senate
State Capital Building, Room 4068
Sacramento, CA 95814

Kristin Gaspar
Mayor

Dear Senator Bates:

Catherine S. Blakespear
Deputy Mayor

On behalf of the City of Encinitas, I would like to thank you for your efforts to support local control over land use issues. Accordingly, I would like to draw your attention to a question of law that, depending upon interpretation, may adversely impact such efforts. Should you agree, you may desire to request an opinion from the Attorney General pursuant to Government Code Section 12519.

Tony Kranz
Council Member

As background, the State Density Bonus Law (Government Code Section 65915), generally requires cities to grant a density bonus and incentives or concessions to a developer who requests a density bonus and agrees to construct or donate land for affordable or senior housing. The ultimate density of market-rate units allowed in a density bonus development project is a function of a two-fold calculation: (1) the otherwise "maximum allowable residential density" (also known as base density), and (2) the "density bonus."

Mark Muir
Council Member

Government Code Section 65915(f) defines "density bonus" and states:

"(f) For the purpose of this chapter, 'density bonus' means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county."

Lisa Shaffer
Council Member

Contained in that same subparagraph 65915(f), which defines "density bonus" as noted above, 65915(f)(5) states in part:

"(5) All density calculations resulting in fractional units shall be rounded up to the next whole number"

Karen P. Brust
City Manager

In a separate subparagraph, Government Code Section 65915(o)(2) defines "maximum allowable residential density" and states:

"(2) 'Maximum allowable residential density' means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is

inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.”

The City of Encinitas understands the statute to mean that fractional units resulting from the base density calculation (i.e., the “maximum allowable residential density”) should be rounded up or down based on local control as defined in the zoning and/or the general plan of an individual local agency (city, county, or city and county). We believe that each city, according to its unique circumstances, should determine (and thereby control) how “maximum allowable residential density” is calculated. However, some have challenged our interpretation, asserting that Section 65915(f)(5) applies to both calculations—“density bonus” and “maximum allowable residential density.”

Cities in our region have differing practices with respect to calculating base density – some round fractional units up, some round down, and some take a mixed approach. We do not know if this is because their local zoning and/or general plans call for a particular rounding approach, or if it is because they interpret the statute differently.

Consistent with the efforts of your office to support local control regarding land use issues related to state legislation, an Attorney General opinion addressing the “rounding application/ interpretation” of Government Code Section 65915(f)(5) could resolve the uncertainty surrounding this statute. If the Attorney General should opine that the calculation of “maximum allowable residential density” resulting in a fractional number shall be rounded up, we would respectfully request that your office take action to introduce legislation to amend Government Code Section 65915(f)(5), so that rounding in this context may be determined at the local level based on what is most appropriate for a particular jurisdiction.

We believe the following question would be appropriate for your office to present to the Attorney General for an opinion:

“Under the state density bonus law (Government Code Section 65915), for purposes of calculating “maximum allowable residential density” (also known as base density) resulting in a fractional number, does Government Code Section 65915(o)(2) authorize a city, county, or city and county to exercise local control by either rounding up or down consistent with their local zoning and/or the general plan?”

Thank you for consideration of this important issue. Please feel free to contact me with any questions or comments at (760) 633-2624.

Sincerely,



Kristin Gaspar
Mayor

CC: City Council
JGC Consulting