



**City of  
Encinitas**

Office of  
The Mayor

June 25, 2015

The Honorable Ed Chau  
California State Assembly  
10<sup>th</sup> & L Streets  
Sacramento, CA 95814

*Kristin Gasper*  
Mayor

**AB 744 (CHAU) PLANNING AND ZONING: DENSITY BONUSES (AS AMENDED 6/2/15) – OPPOSE UNLESS AMENDED**

Dear Assembly Member Chau:

*Catherine S. Blakepear*  
Deputy Mayor

The City of Encinitas strongly maintains its position of Oppose Unless Amended on AB 744.

*Tony Erone*  
Council Member

First and foremost, the City of Encinitas is requesting an amendment to AB744 that clarifies that all rounding calculations, both on base density and density bonus, are determined based upon local ordinance, not on state law. While recent amendments rolled back Section 65915(f)(5) to existing law, the section of law as it is currently written is ambiguous.

As such, we request that the section in question be amended to read as follows:

*Mark Muir*  
Council Member

***"All density calculations resulting in fractional units shall be rounded according to local ordinance."***

*Lisa Shaffer*  
Council Member

If you feel it necessary to prescribe the rounding of fractional units, we urge you to require that fractional units be rounded down to the nearest whole number. The City of Encinitas recognizes and values the need for affordable housing. But rounding up density calculations results only in additional market rate units, not in additional affordable units. Leaving the language as it is currently written perpetuates the ambiguity that has resulted in litigation. Therefore, while the best option is to clarify that rounding calculations are determined based on local ordinance, if the state legislators feel it necessary to prescribe how fractional units are rounded, the best choice is to require rounding down.

*Larry Warr*  
Interim City Manager

Second, we are opposed to the language in AB744 exempting senior and special needs housing developments from minimum parking requirements if they are within one-half mile of a transit center. Our city has only one transit center and the radius the bill prescribes encompasses an area that already presents a parking challenge. There appears to be an assumption that seniors aged 62 or older do not require automobiles, or do not have visitors requiring parking. We have several senior developments in our city and all of them are heavily dependent upon cars to meet the needs of residents and visitors.

The current state density bonus law already allows developers to reduce parking standards through "waivers" and "concessions". As such, there is no need to

change current law on this point. We do not believe that current law regarding minimum parking standards should be changed.

We also reject the idea that there should be no required minimum level of parking due to concern for the social equity effects of such a policy on the residents and the spillover impacts on adjacent homes and businesses. Most people choose where they live or open a business based upon local quality-of-life factors, which include having adequate places to park. When new commercial or residential development is proposed in a community, existing residents and business owners expect the city to ensure that the new development is properly planned to avoid negative spillover effects. Local parking ordinances arise from such individual community needs and preferences.

We appreciate your efforts to work with stakeholders to ensure that a good bill is crafted that will become state law. Your bill may benefit some cities in the state where adequate public transportation infrastructure is already in place, however, that is not the case in less dense cities such as ours.

We maintain that density rounding and parking are local issues and local land use decisions should be made at the local level. Because of the negative impacts of your bill on the City of Encinitas, the residents and a unanimous City Council are united in respectfully opposing AB744 unless amended.

Sincerely,



KRISTIN GASPAR  
Mayor of the City of Encinitas

cc: Senator Patricia Bates  
Assembly Member Rocky Chavez  
City Council  
Dan Carrigan, League of California Cities  
JGC Governmental Relations  
Planning & Building Department



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DENSITY BONUS LAW - #1600102

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Dear Mr. Chau:

You asked whether Government Code section 65915, subdivision (f)(5)<sup>1</sup> requires a city to round up to the next whole number all fractional density calculations, including fractional base density calculations, that are necessary for a city to arrive at the total allowable density of a development project under the Density Bonus Law.

As a general matter, a city may adopt zoning ordinances that govern land use, including the maximum allowable density for development projects. (§ 65850, subd. (c)(4).) The Planning and Zoning Law (§ 65000 et seq.) establishes the framework in which a city may exercise that power.<sup>2</sup> As a part of that framework, the Planning and Zoning Law requires a city, including a charter city (§ 65700, subd. (a)),<sup>3</sup> to adopt a general plan that governs development within the boundaries of the city, including zoning ordinances (§ 65300 et seq.). The general plan must include, among other mandatory and optional elements, a land use element and a housing element. (§§ 65300 & 65302, subds. (a) & (c).) The land use element governs the density within a city, and must include standards of population density, which is the number of people allowed in a given area,<sup>4</sup> and building intensity for the territory

<sup>1</sup> All further section references are to the Government Code.

<sup>2</sup> *Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1181.

<sup>3</sup> See, e.g., *Dateline Builders, Inc. v. City of Santa Rosa* (1983) 146 Cal.App.3d 520, 529, fn. 10 (a charter city must comply with the mandatory planning elements set out in the general plan); see also *Buena Vista Gardens Apartments Assn. v. City of San Diego Planning Dept.* (1985) 175 Cal.App.3d 289, 306 (court held that a charter city was required to comply with a provision of the housing element that requires it to adopt a program to accomplish specific housing goals because the "need to provide adequate housing ... is a matter of statewide concern").

<sup>4</sup> See, e.g., *San Francisco Tomorrow v. City and County of San Francisco* (2014) 228 Cal.App.4th 1239, 1249.