

covered by the general plan. (§ 65302, subd. (a).) The standards for the housing element are set out in section 65580 et seq., and are intended to encourage the development of affordable housing. (§ 65581.)⁵

Other provisions of law also facilitate and encourage the provision of affordable housing.⁶ Specifically, the Density Bonus Law (§ 65915) requires a city or county to grant a density bonus⁷ to an applicant developer who agrees to construct a housing development that contains a certain percentage of one of the following eligible units: (1) certain housing developments that include very low, lower, or moderate-income housing; (2) senior citizen housing developments; or (3) mobilehome parks that limit residency based on age for housing for older persons (hereafter, collectively, type of affordable housing development). (*Id.*, subd. (b).) Generally, the higher the percentage of units reserved by the developer for the eligible units in question, the larger the density bonus. (*Id.*, subds. (b) & (f).)⁸ Furthermore, if certain criteria are met, the applicant may qualify for additional density bonuses. (§ 65915, subds. (g) & (h).) The Density Bonus Law is mandatory in nature, and, although a city may award a higher density bonus (*id.*, subd. (n))⁹ than is required by the Density Bonus Law, it may not award a lower density bonus.¹⁰ The court in *Friends of Lagoon Valley, supra*, 154 Cal.App.4th at page 824 described the basic purpose of the Density Bonus Law as follows:

“[T]he Density Bonus Law ‘reward[s] a developer who agrees to build a certain percentage of low-income housing with the opportunity to build more residences than would otherwise be permitted by the applicable local regulations.’ [Citation.]”

⁵ See *Haro v. City of Solana Beach* (2011) 195 Cal.App.4th 542, 550.

⁶ See § 65582.1 (listing statutes that the Legislature has enacted to provide reforms and incentives to facilitate and expedite the construction of affordable housing); *California Bldg. Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 445 (listing certain statutes that the Legislature has enacted to encourage affordable housing).

⁷ Section 65915, subdivision (f) defines the term “density bonus” for purposes of the Density Bonus Law as “a density increase over the otherwise maximum allowable residential density”

⁸ A developer may also be entitled to additional density bonuses or other incentives or concessions if the development meets certain requirements. (See §§ 65915, subds. (d), (g)-(k), 65916-65917.5.)

⁹ *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 832 (hereafter *Friends of Lagoon Valley*) (city may award a density bonus higher than the statutory maximum).

¹⁰ See, e.g., *Latinos Unidos Del Valle De Napa y Solano v. County of Napa* (2013) 217 Cal.App.4th 1160, 1165-1169 (county ordinance that required a developer to include a higher percentage of units of affordable housing in order to obtain a density bonus conflicted with the Density Bonus Law).

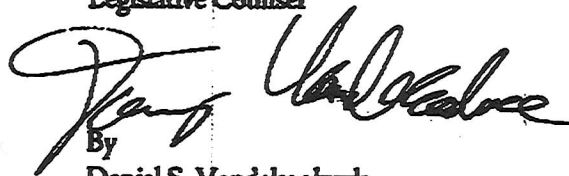
a project. As an initial matter, a city calculates the percentage of eligible housing units in a project by dividing the total units of a particular type of affordable housing development described in section 65915, subdivision (b)(1) by the total dwelling units in the project, and then multiplying that number by one hundred to generate a percentage. Then, a city takes that percentage and applies it to the applicable table set out in section 65915, subdivision (f)(1)-(4) in order to determine the percentage density bonus that is awarded for the project. Lastly, to calculate the total density bonus for the project, the city adds the percentage density bonus to the base density. Thus, the base density is necessary in order to calculate the total allowable density of a development project under the Density Bonus Law. Accordingly, it is our opinion that, based upon its plain language, section 65915(f)(5) requires a city when applying the Density Bonus Law to round any calculation for the base density that results in a fractional unit to the next whole number.¹³

Moreover, interpreting section 65915(f)(5) in that fashion furthers the purpose of the Density Bonus Law of encouraging the development of affordable housing.¹⁴ Requiring a city to round up the base density when calculating the total allowable density under the Density Bonus Law would further that purpose because it would result in a higher total allowable density. This result provides a greater incentive for a developer to include affordable housing in a housing project. If we were to conclude otherwise, it would be contrary to the purpose of the Density Bonus Law because it would reduce the incentive for a developer to construct affordable housing.

Therefore, it is our opinion that Government Code section 65915, subdivision (f)(5) 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.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel



By
Daniel S. Vandekoolwyk
Deputy Legislative Counsel

DSV:sjk

¹³ Section 65915(f)(5) only applies to density calculations under the Density Bonus Law. As such, it does not require a city to round up density calculations in other contexts.

¹⁴ See also *Friends of Lagoon Valley, supra*, 154 Cal.App.4th at pp. 823-824.

In summary, the Density Bonus Law generally provides that density bonuses are calculated using specified percentages, which are set based upon the percentage of eligible units planned for a housing development. Of relevance to your question, section 65915, subdivision (f)(5) (section 65915(f)(5)) requires “[a]ll density calculations resulting in fractional units [to] be rounded up to the next whole number.”¹¹ (Emphasis added.) You asked whether this provision 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.

To interpret section 65915(f)(5), we apply the principles of statutory interpretation that require us to read the words in a statute in accordance with their plain and ordinary meaning.¹² Under the plain meaning of section 65915(f)(5), a city must round up any density calculation that results in a fractional unit to the next whole number. Notably, section 65915 does not limit this requirement to a particular type of density calculation. By using the broad term “density calculation,” rather than specifying a particular type of calculation, it is our view that the Legislature intended this requirement to encompass any calculation that is necessary in order for the city to arrive at the total allowable density of a development project under the Density Bonus Law.

With that standard in mind, we can now address your question whether a city must round up base density calculations under the Density Bonus Law. The Density Bonus Law does not use the term “base density,” but the court in *PR/JSM Rivers LLC v. Community Redevelopment Agency* (2009) 180 Cal.App.4th 1475, 1486 equated the term “base density” with the definition of “maximum allowable residential density” in section 65915, subdivision (o)(2). That paragraph defines “maximum allowable residential density” to mean “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.” (§ 65915, subd. (o)(2).) In other words, base density is the permissible level of units allowed under a local zoning ordinance and land use element of the general plan that applies to the project in question.

The next question, then, is whether a city must calculate the base density in order to arrive at the total allowable density of a development project under the Density Bonus Law. Under the standard described above, if the calculation of base density is necessary in order to determine the maximum allowable density of a project for purposes of section 65915, then, that calculation would be considered a “density calculation.” In that respect, there are several calculations that a city must undergo in order to arrive at the total allowable density of

¹¹ Other provisions of the Density Bonus Law similarly require a city to round up certain types of calculations that result in a fractional unit to the next whole number. (§ 65915, subds. (c)(3)(B), (g)(2).)

¹² See, e.g., *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707, 719.