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OPINION	:	
	:	No. 81-307
of	:	
	:	APRIL 29, 1981
GEORGE DEUKMEJIAN Attorney General	:	
	:	
Rodney O. Lilyquist Deputy Attorney General	:	

THE HONORABLE ROSS JOHNSON, ASSEMBLYMAN, SIXTY-NINTH DISTRICT, has requested an opinion on the following question:

Does the granting of a density bonus or an exemption from a local ordinance provision constitute a "direct financial contribution" for purposes of Government Code section 65916?

CONCLUSION

The granting of a density bonus or an exemption from a local ordinance provision does not constitute a "direct financial contribution" for purposes of Government Code section 65916.

ANALYSIS

In 1979, the Legislature added sections 65915–65918 to the Government Code.[1] (Stats. 1979, ch. 1207, § 10.) These statutes provide:

> "(§ 65915) When a developer of housing agrees to construct at least 25 percent of the total units of a housing development for persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code, a city, county, or city and county shall enter into an agreement with the developer to either grant a density bonus or provide not less than two other bonus incentives for the project.
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> "For the purposes of this chapter, "density bonus" means a density increase of at least 25 percent over the otherwise allowable residential density under the applicable zoning ordinance. The density bonus shall not be included when determining the otherwise allowable density. The density bonus shall apply to housing developments consisting of five or more dwelling units. Other bonus incentives which a city, county or city and county may agree to provide under this section include the following:
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> "(a) Exemption of the development from the requirements of Section 66477 and any local ordinance adopted pursuant thereto.
>
> "(b) Construction of public improvements appurtenant to the proposed housing development, which may include, but shall not be limited to, streets, sewers and sidewalks.
>
> "(c) Utilization of federal or state grant moneys or local revenues to provide the land on which the housing development will be constructed at a reduced cost.
>
> "(d) Exemption of the development from any provision of local ordinances which may cause an indirect increase in the cost of the housing units to be developed.
>
> "Nothing in this section shall preclude a city, county, or city and county from taking any additional actions which will aid housing developers to construct housing developments with 25 percent or more of the total units

[1] All section references hereafter are to the Government Code.

of a housing development for persons and families of low or moderate income. The determination of the means by which a city, county, or city and county will comply with this chapter shall be in the sole discretion of the city, county, or city and county; provided, that no developer shall be required to enter into an unacceptable agreement as a prerequisite to approval of a housing development."

"(§ 65916) *Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years*. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedure necessary to carry out this section." (Italics added.)

"(§ 65917) In enacting this chapter it is the intent of the Legislature that the agreement offered by the city, county, or city and county pursuant to this chapter contribute significantly to the economic feasibility of low- and moderate-income housing in proposed housing developments."

"(§ 65918) The provisions of this chapter shall apply to charter cities."

It is apparent that the intent of the legislative scheme as a whole is to encourage the construction of housing for persons and families of low or moderate income. The Legislature has essentially directed cities and counties to provide incentives to housing developers in return for the construction of housing units for such persons and families.

In certain cases, the Legislature has required that cities and counties "assure continued availability for low- and moderate-income units for 30 years." (§ 65916.) The question presented for analysis concerns the circumstances under which this mandate is applicable. Specifically, we are asked whether the granting of a density bonus or a conditional use permit or a variance from local codes constitute a "direct financial contribution" under section 65916, thus triggering the 30 year enforcement program. We conclude that such incentives do not constitute direct financial contributions under the statutory scheme.

Several well established principles of statutory construction govern our discussion. In interpreting statutes, the cardinal rule is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Select Base Materials* v. *Board of Equal.* (1959) 51 Cal. 2d 640,645.) In ascertaining legislative intent, we look first to the words of the statute, giving the language its usual and ordinary meaning. (*Moyer* v. *Workmen's Comp. Appeals Bd.* (1973)10 Cal. 3d 222, 230) The construction of a statute that renders some words surplusage is to be avoided. (*California Mfgrs. Assn.* v. *Public Utilities Com.* (1979) 24 Cal. 3d 836, 844.) Also, the various provisions of a statute should be harmonized and construed together. (*People* v. *Corey* (1978) 21 Cal. 3d 738, 743.)

Applying these rules, we note that the statutory scheme prescribes several ways in which a city or county may comply in granting incentives to builders of low and moderate income housing. Section 65915 specifies that a density allowance in excess of otherwise applicable zoning ordinance requirements may be given, with several alternatives also expressly mentioned. We have previously concluded that a city or county is not limited by the examples enumerated in section 65915 but may grant other incentives "provided that they are acceptable to the developer and carry out the purpose of the statute." (63 Ops. Cal. Atty. Gen. 478, 483 (1980).)

While some examples given in section 65915 involve the expenditure of money by the city or county (e.g. "Utilization of . . . local revenues to provide land on which the housing development will be constructed"), others do not (e.g. "Exemption of the development from any provision of local ordinances").

We believe that the Legislature had this distinction in mind when it enacted section 65916. It is only where the city or county makes an expenditure of money that the 30 year enforcement program must be implemented.

A "financial" contribution is one involving the spending of money (see Webster's New Internat. Dict. (3d ed. 1966) pp. 851, 1663), and the Legislature has mandated that the monetary outlay be "direct" as opposed to "indirect." Accordingly, the granting of a density bonus or an exemption from a local ordinance requirement cannot, without more, be said to involve a "direct financial contribution" on the part of the city or county.

This conclusion is buttressed by the further limitation that the contribution be "through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction."[2] Such limitation negates the possibility that a "direct financial

[2] The "infrastructure" is the underlying foundation, basic framework, substructure, or required

contribution" may take the form of a non-monetary incentive furnished by the city or county.

We thus conclude that the granting of a density bonus or an exemption from a local ordinance provision does not constitute a "direct financial contribution" for purposes of section 65916.

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permanent installation. (See Webster's New Internat. Dict. (3d ed.) p. 1161.)