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November 28, 2023

Court Invalidates Ordinance Reducing Floor Area Ratio on Residential Lots



The Housing Crisis Act of 2019, which enacted Government Code section 66300, generally precludes a city from reducing the intensity of land use on a parcel where housing is allowed below what was allowed on January 1, 2018.

A court held that this provision prohibits reductions in the Floor Area Ratio (FAR) as well as reductions in density. *Yes in My Back Yard v. City of Culver City*, No B321477 (2nd Dist., Oct. 27, 2023).

Culver City initiated proceedings to address community concerns regarding "mansionization" in the City's R-1 single family residential zoning district. A consultant concluded that houses maximizing the existing FAR are "consistently disliked." A staff report opined that because recent state laws preclude counting second units in FAR calculations, the original intent of the FAR had been undermined. Accordingly, an ordinance reducing the FAR in the R-1 district was proposed.

Staff asked the California Department of Housing and Community Development (HCD) whether the proposed ordinance would violate the Housing Crisis Act. HCD warned that the Act "ta[lk]s about intensity of uses," and stated that because the proposed FAR reduction could affect the number of bedrooms, the proposed ordinance "might trigger the less intensive use provision."

In 2020, the Council enacted an ordinance reducing the FAR from .60 to .45. Yes In My Back Yard sued to invalidate the ordinance.

The City defended its ordinance by relying on dictionaries to argue the terms "density" and "intensity" are ambiguous. It further argued that the Legislature intended that only a reduction in density, meaning the number of housing units, violates the Act. The court disagreed, noting that the Act itself defines "reducing the intensity of land use" to include reductions in floor area ratio. "A statute itself furnishes the best evidence of its own meaning, and if an act's intent can be ascertained clearly from its own provisions, that intent prevails and courts

do not resort to other aids for construction." The ordinance therefore violated the Act.

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