



ZONING CODE BULLETIN

DATE EFFECTIVE: April 20, 2020 (amended: 2/11/21 and 8/27/21)

ZONING TOPIC: Clarification on how to calculate the maximum intensities for a site proposed for development.

Overall

1. What is maximum intensity?

Maximum intensity is a combination of the maximum residential density and the maximum nonresidential floor area ratio (FAR) allowed on a site. Maximum residential density is the number of dwelling units allowed on a site and nonresidential FAR is the amount of nonresidential floor area allowed on a site.

2. What is included in the lot area when calculating intensity?

When calculating intensity for a specific site, all areas of the parcel or parcels that make up the site are included in the lot area, except public and private streets and publicly accessible parks and public plazas. With the exception of mini-lot developments, public access easements are also excluded from the area of a site that is calculated to determine development intensity.

3. How is the maximum density calculation rounded?

With one exception, the maximum residential density calculation is always rounded down because the maximum density is expressed as the amount of lot area required per unit. For example, if a density calculation results in a maximum density of 13.9 units, the number of permitted units for the site is 13. The only exception to this is a project that seeks a density bonus through the State Density Bonus law, which specifically states that maximum residential density is always rounded up. In this case, if a density calculation results in a maximum density of 13.1 units, the number of permitted units is 14.

4. Can multiple density bonuses be applied to the same development project?

The City currently has the following density bonus incentives: the local PUD bonus (Chapter 17.142), the local senior housing bonus (Section 17.106.060), and the state affordable housing density bonus (Chapter 17.107). With one exception, multiple bonus incentives can be “stacked” on the same development project. For example, a

PUD bonus can be applied up to the General Plan¹ maximum density and then a State Affordable Housing Density Bonus can be applied on top of that. Also, the State Affordable Housing Density Bonus can be stacked with the 75 percent senior housing bonus in Section 17.106.060 of the Planning Code. The one exception is that, per Section 17.106.060 of the Planning Code, the state senior housing bonus cannot be stacked with 75 percent senior housing bonus in the Planning Code. While the PUD bonus and local senior housing bonus may be stacked, the resulting density cannot exceed the General Plan maximum density. In this case, the PUD density is calculated first.

Zoning

5. How is Zoning density calculated in mixed use developments?

Outside of Downtown and the Jack London District, Section 17.106.030(B) of the Planning Code states that, “for mixed use projects in which a maximum floor area ratio is generally prescribed for Nonresidential Facilities, no portion of lot area used to meet the density requirements for a Residential Facility shall be used as a basis for computing, through such FAR, the maximum amount of floor area for any Nonresidential Facility on the same lot, unless the total Nonresidential floor area on the lot is less than three thousand (3,000) square feet.”

This means that the portion of the lot used by nonresidential floor area must be subtracted from the total lot area when calculating the maximum number of units allowed in a project that is outside Downtown and the Jack London District. The following provides direction for how make this calculation.

In general terms,

$$\text{Residential Lot Area} = \text{Lot Area} - \frac{(\text{Nonresidential Floor Area} - 3,000)}{\text{Nonresidential FAR}}$$

This is the lot area used to calculate the number of residential units allowed at the site.

The following provides an example for how to calculate the permitted number of units in a hypothetical development in the CN-3 Zone within a 75-foot height area. The following are the relevant regulations for the height area and data for the project.

Maximum FAR: 4.0

Maximum Density: One unit per 275 square feet of lot area

Lot Area: 13,000

Nonresidential floor area: 11,000 square feet

¹For the purpose of this document, the General Plan consists of the Land Use and Transportation Element of the General Plan (LUTE) or a specific or a policy plan that implement the LUTE.

First, calculate the nonresidential floor area considered when determining the permitted density. The amount considered is 8,000 square feet (11,000 square feet minus 3,000 square feet). 3,000 square feet is subtracted from the total nonresidential floor area due to the regulation described in Section 17.106.030(B), above. If the development had 3,000 square feet or less, nonresidential floor area would have no effect on the permitted number of dwelling units.

8,000 is then divided by the maximum FAR to calculate the portion of lot used by nonresidential floor area: $8,000 \text{ sf} / 4.0 = 2,000 \text{ sf}$.

This number is then subtracted from the total lot area to determine the amount of lot area available for the residential density calculation. ($13,000 \text{ sf} - 2,000 \text{ sf} = 11,000 \text{ sf}$), which is then divided by the maximum lot area per unit to calculate the total number of units allowed at the site: $(11,000 \text{ sf}) / (275 \text{ sf per unit}) = 40 \text{ residential units}$.

In this case, a project on the hypothetical site with 13,000 square feet of nonresidential floor area would be permitted a maximum of 40 residential units.

Note that if this project were in Downtown or the Jack London District, the allowed density would simply be the lot area (13,000 square feet) divided by 275 square feet per unit, or 47 units (47.27 rounded down as described in #3 above).

General Plan

6. Can a project have a greater intensity than allowed in the General Plan?

Except for projects utilizing the State Density Bonus Law, projects cannot have a residential density or FAR that exceeds the maximum residential density or FAR allowed by the General Plan. This includes projects seeking a density bonus through a Planned Unit Development permit as described in Section 17.142.100 or a Senior Housing density bonus through Section 17.106.060 of the Planning Code.

7. How is the General Plan maximum intensity determined?

As mentioned in #6, the maximum General Plan intensity can be important in calculating the number of units allowed in planned unit developments and senior housing projects.

The Land Use and Transportation Element (LUTE) of the General Plan established 15 land use classifications to graphically depict the type and intensity of allowable future development throughout the City, but also acknowledged that more site-specific maximum densities would be provided through an implementing zoning ordinance:

The Land Use classification and diagrams generally describe citywide development patterns. Designating an area with a particular classification does not entitle a property owner to automatically develop

at the maximum stated density. Maximum densities for individual properties will be specified in implementing ordinances, in particular the zoning and subdivision ordinances.

The Zoning Ordinance will provide further definition by regulating densities, intensities, and land uses based on the direction provided by the General Plan. Any one Land Use Classification may correspond to multiple zoning districts to reflect the unique characteristics of Oakland's neighborhoods and business areas. Site and neighborhood-specific conditions, development standards, transportation capacity, and other City requirements also come into play when determining maximum site specific densities.

Land Use and Transportation Element, p. 144.

In 2011, the City adopted new zoning regulations intended to implement the General Plan Land Use and Transportation Element. Consistent with the direction in the General Plan, there are several zoning categories in the Planning Code such as the RD Zones (RD-1 and RD-2), RU Zones (RU-1 through RU-5), CN Zones (CN-1 through CN-4), HBX Zones (HBX-1 through HBX-4), and others. Each of these zoning categories implements a particular LUTE land use classification and are mapped to coincide with the land use map in the LUTE. For projects located in areas that have been zoned to implement the General Plan, the maximum intensity of a land use classification under the General Plan is the same as the maximum intensity permitted in the "zoning category" that implements the corresponding classification in the plan. For instance, the zones implementing the Mixed Housing Type Residential General Plan classification include, in order of least to greatest maximum density, the RM-1, RM-2, RM-3, and RM-4 Zones. The maximum residential density for a project is equal to the maximum density as stated under the applicable zoning designation; however, the maximum General Plan density corresponds to the maximum density in the highest RM zone, the RM-4 Zone: one unit per 1,100 square feet of lot area. Only a project that applies for and receives a state density bonus can exceed the greatest maximum density under the General Plan designation.

The maximum density and FAR of several zones in the City is controlled by a height map, not a single density and FAR maximum. For instance, the maximum density for each CN Zone ranges from one unit per 550 square feet of lot area to one unit per 225 square feet of lot area, depending on the location of the parcel on the City's height map. Similar to above, the maximum residential density for a project will be equal to the maximum density provided by the height map. But the greatest maximum density permitted on the height map for the CN zones corresponds to the maximum density described under the Neighborhood Center Mixed Use LUTE classification (the CN Zones implement this classification). Only a project that receives a state density bonus is able to exceed this greatest maximum density.

Some of the City has not been updated to implement General Plan, such as areas with an M-10, M-20, M-30, M-40, C-40, C-45, R-80, S-1 or S-2 Zoning. In this case, staff will calculate the General Plan maximum intensity for the applicable General Plan

designation. The General Plan lists maximum densities in terms of gross acres, which need to be translated into net acres to apply to a site. Overall, an average net-to-gross ratio of 75 percent is assumed, except downtown (including the Jack London District) where 60 percent is assumed. In other words, in general, 75 percent of land outside of Downtown and 60 percent of land within Downtown contains developable parcel area, i.e. areas that do not include park or public right of way.

The following is an example of converting gross density in the General Plan to net density that can apply to a site. Broadway between Embarcadero West and 5th Street is zoned C-45 and has an Estuary Policy Plan (EPP) designation of Retail Dining Entertainment - 2 (RDE-2). According to the EPP, the RDE-2 has a maximum density of 125 units per gross acre. This translates to a net density of 208.33 units per acre (125/0.6) or one unit per 209 square feet of lot area (43,560 sf/208.33 units).

Note that Section 17.106.030(B) does not apply to the determination of the General Plan maximum intensity. For example, the amount of nonresidential space in a PUD does not reduce the maximum General Plan density.

Density Bonus

8. What is the maximum allowable density in the State Density Bonus Law?

The State Density Bonus Law (found in California Government Code Sections 65915 – 65918) states that a development containing a certain number of affordable housing units can receive a density bonus on top of the “maximum allowable residential density.” How many more units above this maximum density depends on the percentage of affordable housing units that are included in the proposal. The law states that maximum allowable residential density is “the density allowed under the zoning ordinance and land use element of the general plan...If 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.” Therefore, for project where the zoning has been updated to be consistent with the General Plan, the “maximum allowable residential density” is the maximum density allowed by the underlying zoning or height map. For example, the maximum allowable residential density for a project seeking a state density bonus located in an RU-3 zoning district would be 1 unit per 450 square feet of lot area, as listed in Section 17.19.050. The density bonus would then be awarded on top of this maximum allowable residential density. Where the zoning has not been updated (e.g. the areas with an M-10, M-20, M-30, M-40, C-40, C-45, R-80, S-1 or S-2 zoning designation), the maximum General Plan density is calculated per #7, above.

There is one exception to this rule: Projects processed under SB 35 (Affordable Housing Streamlined Approval) always use the General Plan density maximum, not the maximum density in the Planning Code for a particular zone. Section 7 describes how to calculate the maximum General Plan Density.

Note: Per State law, projects can take advantage of the state density bonus even if it results in a greater density than allowed under the General Plan.

9. How is density calculated when a project seeks both a PUD and State Density Bonus?

When a project seeks both a PUD and State Density Bonus, the PUD bonus is calculated first and the State Density bonus is calculated from this new allowed number of units. As described in item #6, the PUD bonus cannot go over the General Plan maximum density. The following is an example.

A hypothetical project has the following characteristics:

Zoning designations: CC-2 with a height map designation of 75 feet.
General Plan designation: Community Commercial

Maximum Zoning Density: one unit per 275 square feet of lot area
Maximum General Plan Density: One unit per 225 square feet of lot area
PUD Density Bonus: 25 percent
State Density Bonus: 35 percent
Lot Area: 27,500 square feet

In this case, the maximum number of dwelling units allowed on the lot without any bonuses is 100 (27,500 square feet/275 square feet per unit). The 25 percent PUD density bonus increases this maximum to 125 units (100 * 1.25), which is over the General Plan maximum density, which is 122 units (27,500/225, rounded down). Therefore, the maximum PUD density is also 122 units. This number is increased by 35 percent to determine the maximum number of units with density bonus under the State Density Bonus Law. Therefore, the maximum number of units on the site with PUD and State Density Bonus Law bonuses is 165 units (1.35*122, rounded up).

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