

## ARTICLE 2. BUILDING INTENSITY, HEIGHT AND RESIDENTIAL DENSITY

### 9-4.201 Building Intensity (Floor Area Ratio).

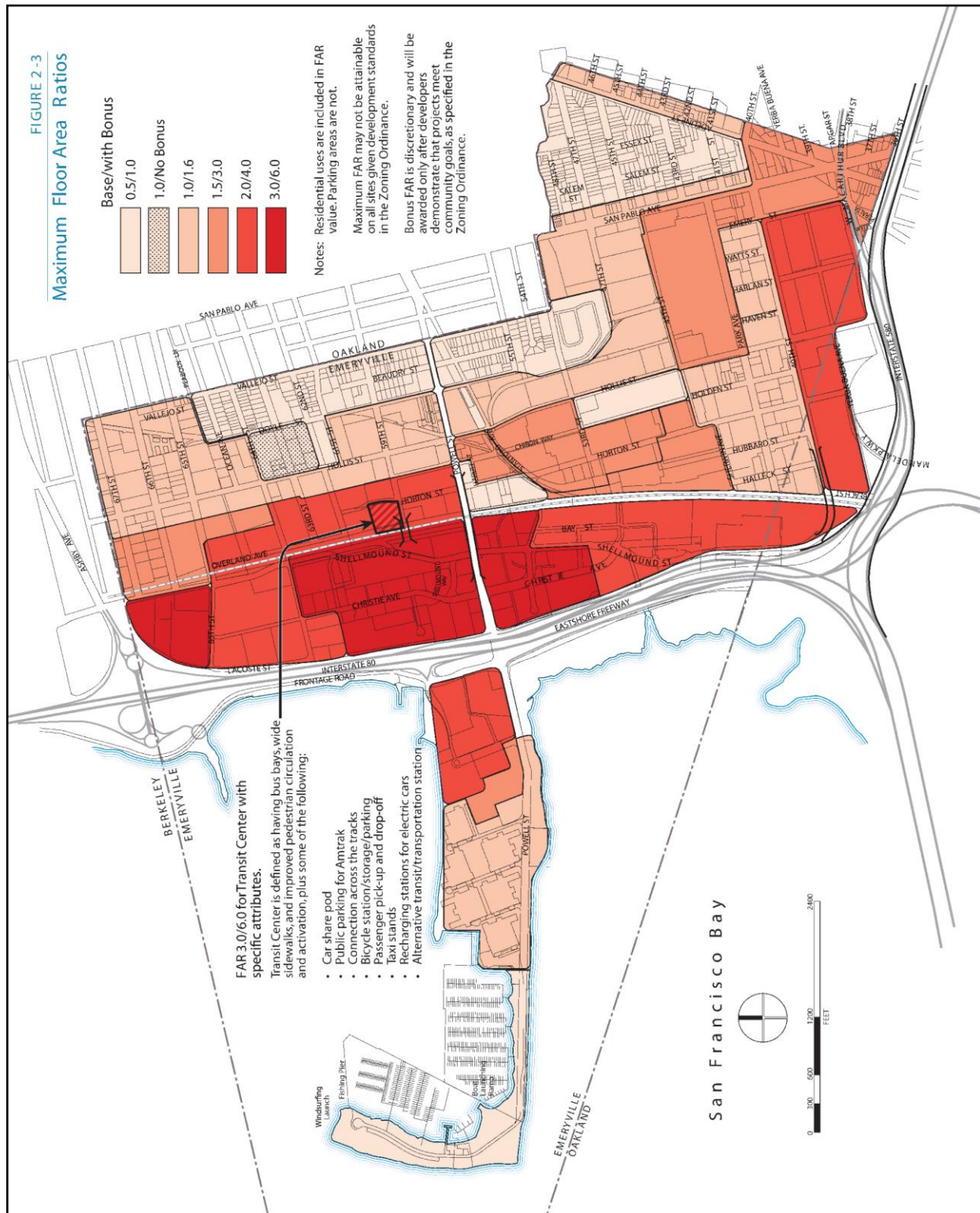
- (a) **Maximum Building Intensity (Floor Area Ratio).** The maximum intensity of buildings, expressed as a maximum floor area ratio (FAR), shall be as prescribed on the General Plan Floor Area Ratio Map (General Plan Figure 2-3, entitled “Maximum Floor Area Ratios”), which is made a part of these Regulations by this reference and is shown in [Figure 9.4.201\(a\)](#). The floor area ratio districts are delineated by numbers on this map and the corresponding limits for the maximum permitted FAR and bonus FAR that may be granted under [Section 9-4.204](#) are as shown in [Table 9-4.201\(a\)](#):

**Table 9-4.201(a): Maximum Floor Area Ratio**

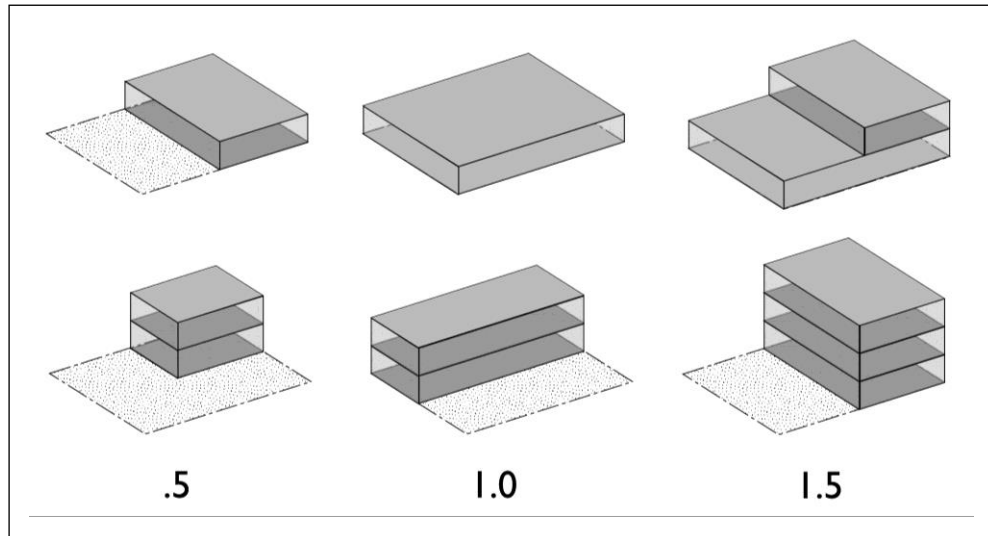
Map Designation	Maximum Permitted Building Intensity (FAR)	
	Base	Bonus
0.5/1.0	Up to 0.5	Up to 1.0
1.0	Up to 1.0	None
1.0/1.6	Up to 1.0	Up to 1.6
1,5/3.0	Up to 1.5	Up to 3.0
2.0/4.0	Up to 2.0	Up to 4.0
3.0/6.0	Up to 3.0	Up to 6.0

- (b) **Determining Floor Area Ratio.** The floor area ratio (FAR) is the ratio of the floor area of all principal buildings on a lot to the lot area, rounded to the nearest tenth in accordance with [Section 9-1.203\(b\)](#). Examples of floor area ratio are shown in [Figure 9-4.201\(b\)](#). Note that floor area, as defined in [Chapter 8](#), does not include parking or loading areas.
- (c) **Interpretation of Floor Area Ratio Map.** If a lot is in two or more floor area ratio districts on the General Plan Floor Area Ratio Map, the floor area ratio indicated on the map shall apply to each portion of the lot, except that the floor area ratio for the entire lot may be increased up to the maximum floor area ratio applicable to any portion of the lot upon the granting of a conditional use permit pursuant to [Article 5 of Chapter 7](#). Such a conditional use permit may be granted only if both of the following conditions are met:
- (1) At least 50% of the lot area is already covered by the district with the maximum floor area ratio; and
  - (2) The entire lot could be included in said district by shifting the floor area ratio district boundary by not more than 50 feet as measured perpendicularly to said boundary at any point.

If subsections (c)(1) and (c)(2) above do not apply, the maximum permissible floor area for the lot shall be calculated based on the floor area ratios that apply to each portion of the lot. However, the resulting floor area may be located anywhere on the lot, subject to applicable height limits, setbacks, and any other dimensional requirements for each portion of the lot.



**Figure 9-4.201(a). Maximum Floor Area Ratios.**



**Figure 9-4.201(b). Examples of Floor Area Ratio.**

#### **9-4.202 Height and Bulk.**

- (a) **Maximum Height.** The maximum height of buildings and structures shall be as prescribed on the General Plan Height Map (General Plan Figure 2-4, entitled “Maximum Building Heights”), which is made a part of these Regulations by this reference and is shown in [Figure 9-4.202\(a\)](#). The height districts are delineated on this map and the corresponding limits for the maximum permitted height and bonus height that may be granted under [Section 9-4.204](#) are as shown in [Table 9-4.202\(a\)](#):

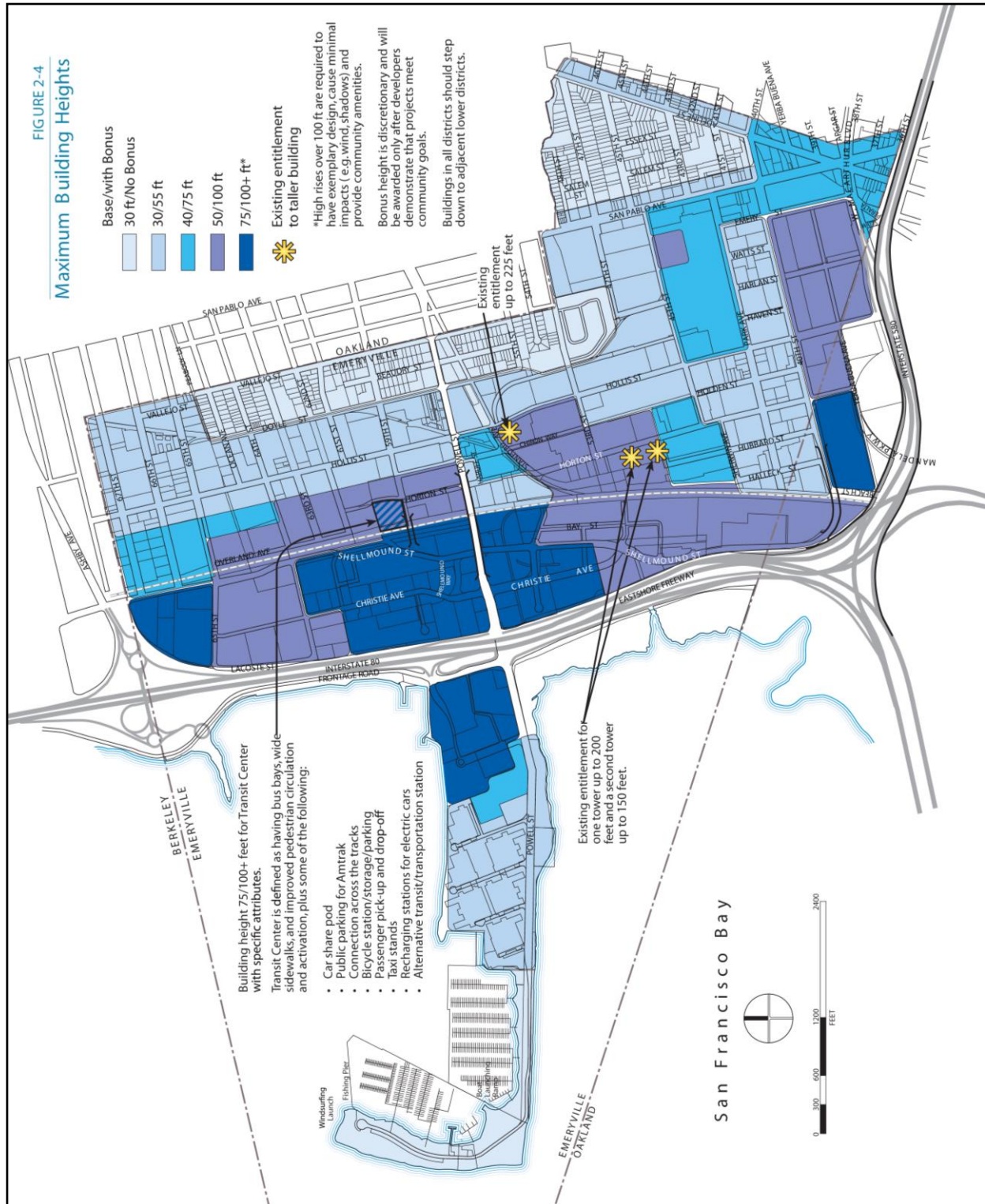
**Table 9-4.202(a): Maximum Height**

Map Designation	Maximum Permitted Height (Feet)	
	Base	Bonus
30	Up to 30	None
30/55	Up to 30	Up to 55
40/75	Up to 40	Up to 75
50/100	Up to 50	Up to 100
75/100+	Up to 75	75 to over 100

#### **(b) Measuring Height.**

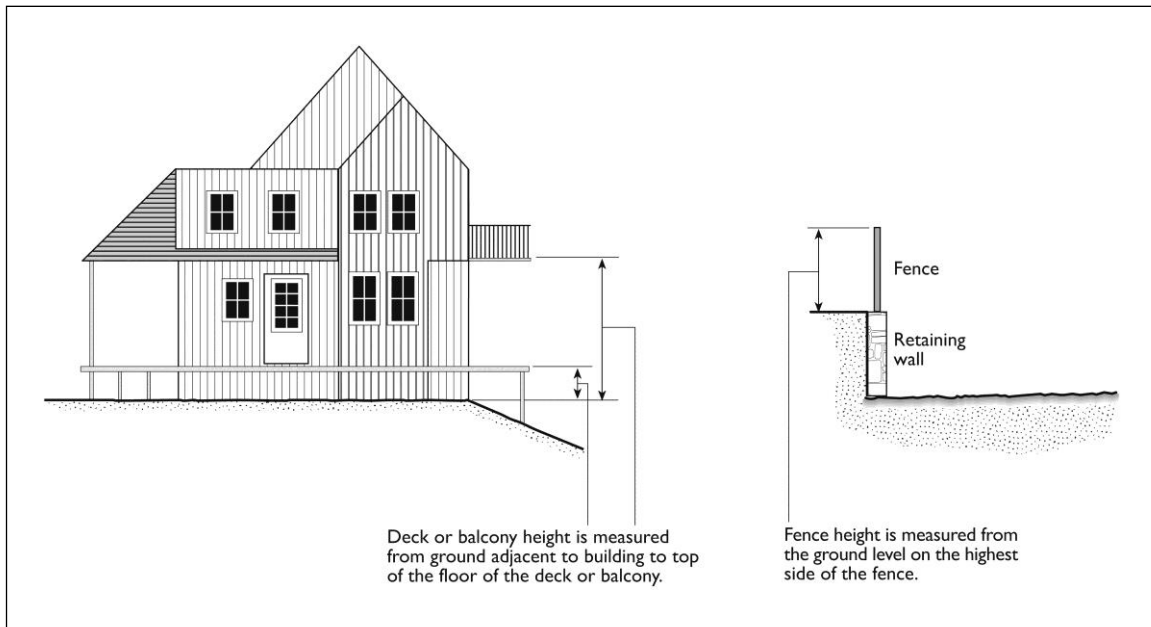
- (1) **Buildings.** Building height is measured from the average level of the highest and lowest points of finished grade surrounding the building to the highest point of the roof, not including parapets. The height of a stepped or terraced building is the maximum height of any segment of the building.
- (2) **Other Structures.** The height of other structures is the vertical distance from the average ground level immediately under the structure to the top of the structure, with the following special provisions for fences and decks, as illustrated in [Figure 9-4.202\(b\)](#):





**Figure 9-4.202(a). Maximum Building Heights.**

- a. Fences on Retaining Walls. The height of a fence that is on top of a retaining wall is measured from the ground level on the highest side of the fence and wall. See also [Section 9-4.505\(c\)](#).
- b. Decks and Balconies. Deck and balcony height is determined by measuring from the ground adjacent to the building to which the deck or balcony is attached to the top of the floor of the deck or balcony.



**Figure 9-4.202(b). Measuring Height of Decks, Balconies, and Fences.**

**(c) Allowed Projections above Top of Building.**

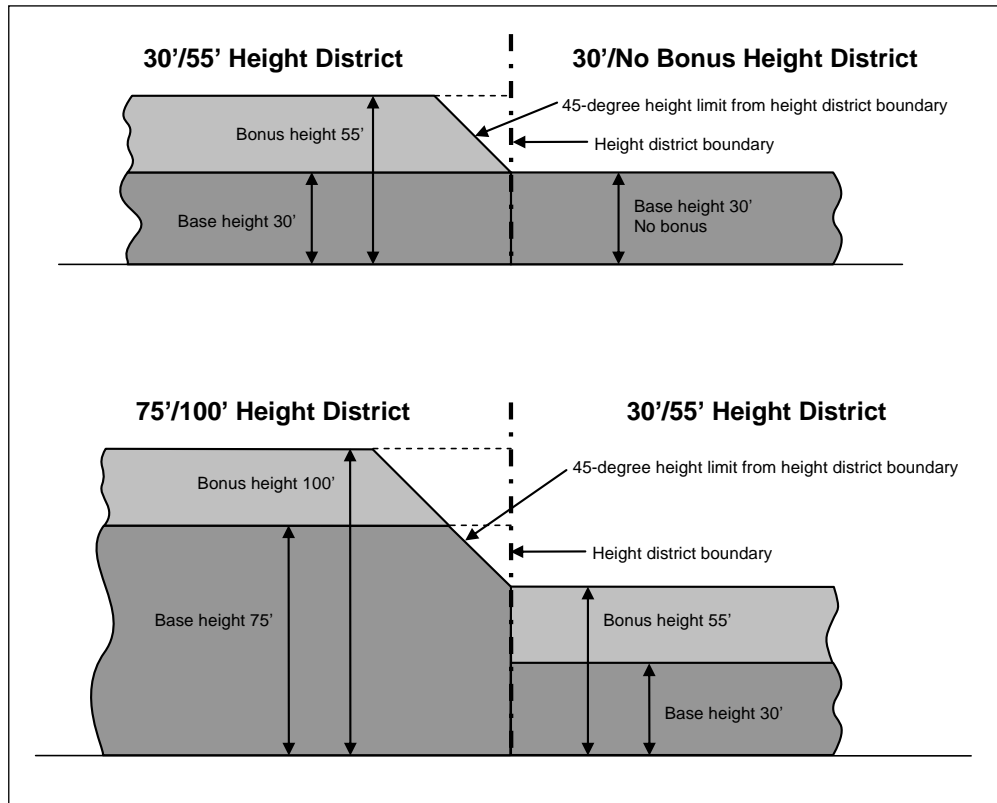
- (1) Allowed Projections. The height limits for the various height districts do not apply to spires, belfries, cupolas, domes, or other architectural projections not used for human habitation, nor to chimneys, ventilators, skylights, parapet walls, cornices, solar energy systems, mechanical equipment, or other appurtenances usually located on the roof level, provided that such features are limited to the height necessary for their proper functioning.
- (2) Height of Projections. Except for parapet walls, such features may project up to 15 feet above the roof of the building in the 30-foot height district, and up to 25 feet above the roof of the building in all other height districts. Parapet walls may extend up to three feet above the roof of the building in the 30-foot height district, and up to five feet above the roof of the building in all other height districts.
- (3) Coverage of Projections. Except as provided in subsection (4) below, all of the above mentioned features which project more than five feet above the roof of the building shall be limited to a maximum aggregate coverage of ten percent of the building's horizontal roof area. For projections of five feet or less, including parapet walls, there is no limitation on coverage. Rooftop equipment shall be set back from the edge of the roof to the maximum extent feasible to minimize

visibility from below and shall be screened as required by [Section 9-4.507](#). Architectural features that are intended to be visible need not be set back from the edge of the roof or screened.

- (4) **Mechanical Penthouses.** Allowed projections that are completely enclosed in a mechanical penthouse shall be limited to a maximum aggregate coverage of 20% of the building's horizontal roof area. Such penthouses shall be compatible with the architectural design of the building; shall be completely roofed except for cooling towers and any other equipment that cannot properly function if roofed; and are eligible for development bonuses pursuant to item (17) in [Table 9-4.204\(c\)](#).
- (5) **Exceeding Height and Coverage Limits.** The limits listed in this Section, related to both projection height and horizontal area coverage, may be exceeded upon the granting of a minor conditional use permit pursuant to [Article 5 of Chapter 7](#).
- (6) **Solar Panels.** The limitations set forth in this Section do not apply to solar panels.
- (d) **Interpretation of Height Map.** If a lot is in two or more height districts on the General Plan Height Map, the height limit indicated on the map shall apply to each portion of the lot, except that the height limit for the entire lot may be increased up to the maximum height limit applicable to any portion of the lot upon the granting of a conditional use permit pursuant to [Article 5 of Chapter 7](#). Such a conditional use permit may be granted only if both of the following conditions are met:
  - (1) At least 50% of the lot area is already covered by the district with the maximum height limit; and
  - (2) The entire lot could be included in said district by shifting the height district boundary by not more than 50 feet as measured perpendicularly to said boundary at any point.

If subsections (d)(1) and (d)(2) above do not apply, the maximum height for each portion of the lot shall be as indicated on the General Plan Height Map, provided that the height limit shall step down from higher height limits to lower height limits as required by subsection (e) below.

- (e) **Height Limits Adjacent to Lower Height Districts.** Where a height district abuts a lower height district, the maximum permitted height shall step down at a 45-degree angle, as measured perpendicular to the boundary between the height districts, to the bonus height of the adjacent height district at the height district boundary, or, if the adjacent height district has no bonus height, to the base height of the adjacent height district at the height district boundary, as illustrated in [Figure 9-4.202\(e\)](#). This regulation does not apply where different height districts are on opposite sides of a public street or railroad right-of-way, nor in the 100+ height district, which has no absolute bonus height.



**Figure 9-4.202(e). Examples of Height Limits Adjacent to Lower Height Districts.**

- (f) **Tower Separation.** In the 100+ height district, buildings over 100 feet in height shall be separated from each other by a minimum horizontal distance equal to no less than the height of the taller building.
- (g) **Building Bulk.** All development proposals are subject to design review pursuant to the design review procedures in [Article 4 of Chapter 7](#), including the provisions of the Emeryville Design Guidelines pertaining to Building Massing.

#### 9-4.203 Residential Density.

- (a) **Maximum Residential Density.** The maximum density of residential uses, expressed as units per acre, shall be as prescribed on the General Plan Residential Density Map (General Plan Figure 2-6, entitled “Maximum Residential Densities”), which is made a part of these Regulations by this reference and is shown in [Figure 9-4.203\(a\)](#). The residential density districts are delineated by numbers on this map and the corresponding limits for the maximum permitted residential density and bonus residential density that may be granted under [Section 9-4.204](#) are as shown in [Table 9-4.203\(a\)](#):

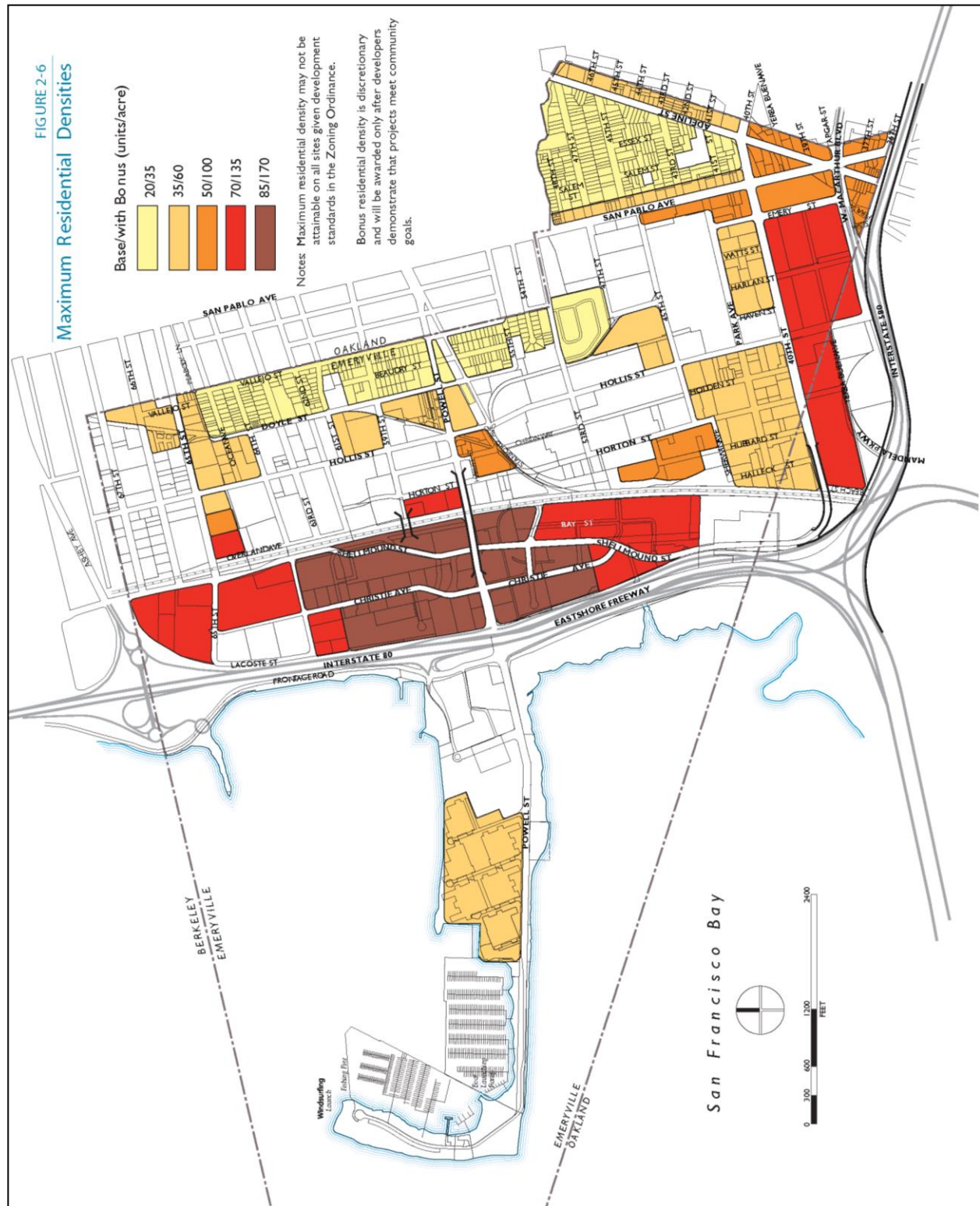
**Table 9-4.203(a): Maximum Residential Density**

Map Designation	Maximum Permitted Residential Density (Units per Acre)	
	Base	Bonus
20/35	Up to 20	Up to 35
35/60	Up to 35	Up to 60
50/100	Up to 50	Up to 100
70/135	Up to 70	Up to 135
85/170	Up to 85	Up to 170

- (b) **Determining Residential Density.** The residential density is the ratio of the number of dwelling units on a lot to the lot area in acres, rounded to the nearest whole number in accordance with [Section 9-1.203\(a\)](#). (One acre equals 43,560 square feet.)
- (c) **Interpretation of Residential Density Map.** If a lot is in two or more residential density districts on the General Plan Residential Density Map, the residential density indicated on the map shall apply to each portion of the lot, except that the residential density for the entire lot may be increased up to the maximum residential density applicable to any portion of the lot upon the granting of a conditional use permit pursuant to [Article 5 of Chapter 7](#). Such a conditional use permit may be granted only if both of the following conditions are met:
- (1) At least 50% of the lot area is already covered by the district with the maximum residential density; and
  - (2) The entire lot could be included in said district by shifting the residential density district boundary by not more than 50 feet as measured perpendicularly to said boundary at any point.

If subsections (c)(1) and (c)(2) above do not apply, the maximum permissible residential density for the lot shall be calculated based on the residential densities that apply to each portion of the lot. However, the resulting dwelling units may be located anywhere on the lot, subject to applicable height limits, setbacks, and any other dimensional requirements for each portion of the lot.





**Figure 9-4.203(a). Maximum Residential Densities.**

#### 9-4.204 Development Bonuses.

- (a) **State Density Bonus Not Available.** If a developer chooses to request development bonuses pursuant to the provisions of this Section, density bonuses pursuant to the State Density Bonus requirements in [Article 5 of Chapter 5](#) are not available.
- (b) **Procedure.** Bonus floor area ratio, height, and/or residential density, as specified in this Article, may be permitted upon the granting of a conditional use permit pursuant to [Article 5 of Chapter 7](#) and the additional findings required by subsection (f) of this Section. Projects seeking bonus points for the Flexible Community Benefit pursuant to item (7) in [Table 9-4.204\(e\)](#) shall require approval of a conditional use permit by the City Council upon a recommendation of the Planning Commission. For Planned Unit Developments, development bonuses shall comply with the requirements of this Section, but shall not require a conditional use permit and shall be considered as part of the PUD approval process pursuant to [Article 10 of Chapter 7](#).
- (1) RM Medium Density Residential Zone.
- a. Multi-Unit Residential projects of 10 units or more must provide affordable units and community benefits as specified in this Section. The findings in subsections (f)(1) and (f)(2) below must be made.
- b. For all other projects, community benefits are not required. The findings in subsection (f)(1) below must be made.
- (2) In all other zones affordable housing and other community benefits as specified in this Section must be provided sufficient to earn the number of points required for the bonus amount requested, pursuant to subsections (c), (d) and (e) below. The findings in subsection (f)(2) below must be made.
- (3) For bonus height over 100 feet, affordable housing and other community benefits as specified in this Section must be provided sufficient to earn at least 100 points pursuant to subsections (d) and (e) below. The findings in subsections (f)(2) and (f)(3) below must be made.

To qualify for a bonus, a community benefit must be significant and clearly beyond what would otherwise be required for the project under applicable code provisions, conditions of approval, and/or environmental review mitigation measures.

- (c) **Determination of Bonuses.** Bonus floor area ratio, height, and/or residential density shall be calculated in accordance with the following procedures.
- (1) **Points Required.** The number of bonus points required, up to a maximum of 100, is calculated according to the following formula:

$$\frac{\text{Bonus Requested}}{\text{Bonus Increment}} \times 100 = \text{Points Required}$$

Variables used in bonus point calculation:

- a. Bonus Requested. The amount of FAR, height, or residential density requested for the project above the base level as specified in Tables [9-4.201\(a\)](#), [9-4.202\(a\)](#), and [9-4.203\(a\)](#), respectively.
  - b. Bonus Increment. The difference between the maximum bonus amount and the maximum base amount for FAR, height, and residential density as specified in Tables [9-4.201\(a\)](#), [9-4.202\(a\)](#), and [9-4.203\(a\)](#), respectively.
- (2) Points Count Toward All Bonuses. The points awarded for the provision of affordable housing and other community benefits pursuant to subsections (d) and (e) of this Section may be counted towards FAR, height, and residential density. It is not necessary to earn separate points for each of these bonuses.
- (3) Height Over 100 Feet. To qualify for bonus height over 100 feet in the 75/100+ height district, affordable housing and other community benefits worth at least 100 points must be provided pursuant to subsections (d) and (e) of this Section.
- (4) Modifications.
  - a. Prior to Issuance of Building Permit. No community benefit for which a bonus has been granted may be eliminated or reduced in size without the approval of the Planning Commission or City Council, whichever approved the project. To grant such approval, the Commission or Council must find that there is a corresponding reduction in intensity, height, and/or density, a substitution of an equivalent community benefit, or a combination of the two.
  - b. Prior to Issuance of Certificate of Occupancy. Before a certificate of occupancy is issued for a project, the applicant shall certify to the Director that the bonus points upon which the project's floor area ratio, height, and/or residential density were based have, in fact, been achieved. If the number of bonus points achieved by the completed project is less than required, the applicant shall contribute 0.1% of construction valuation per point of shortfall to the Citywide Parks Fund. Such contribution shall be made before a certificate of occupancy is issued.
- (d) **Affordable Housing.** No fewer than half of the bonus points required for the project, as calculated pursuant to subsection (c)(1) above, up to 50 points, shall be earned through the provision of affordable housing as specified below. If half of the bonus points required for the project is not a multiple of five, it shall be rounded up to the next multiple of five for the purposes of the provision of affordable housing.
- (1) Residential Projects. Multi-Unit Residential developments of 10 units or more shall provide affordable units in the development in accordance with the applicable requirements of [Article 4 of Chapter 5](#). The number of bonus points awarded shall be determined for providing affordable units at various income levels in accordance with [Table 9-4.204\(d\)\(1\)](#) below.

**Table 9-4.204(d)(1): Bonus Points for Affordable Units in Project**

Bonus Points Awarded	Rental Projects				Ownership Projects
	TOTAL	Very Low Income	Low Income	Moderate Income	Moderate Income
5	12.5%	2.8%	4.3%	5.3%	20.5%
10	13.0%	2.9%	4.5%	5.5%	21.0%
15	13.5%	3.1%	4.7%	5.8%	21.5%
20	14.0%	3.2%	4.9%	6.0%	22.0%
25	14.5%	3.3%	5.0%	6.2%	22.5%
30	15.0%	3.4%	5.2%	6.4%	23.0%
35	15.5%	3.5%	5.4%	6.6%	23.5%
40	16.0%	3.6%	5.6%	6.8%	24.0%
45	16.5%	3.7%	5.7%	7.0%	24.5%
50	17.0%	3.9%	5.9%	7.2%	25.0%

- (2) Nonresidential Projects. Nonresidential developments shall pay an additional affordable housing impact fee in accordance with [Table 9-4.204\(d\)\(2\)](#) below. The increase shall be based on the applicable fee in effect when the fee is due. For use types that are normally exempt from the affordable housing impact fee, the increased fee shall be based on the fee for nonexempt uses.

**Table 9-4.204(d)(2): Bonus Points for Non-Residential Uses**

Bonus Points Awarded	Additional Fee
5	10%
10	20%
15	30%
20	40%
25	50%
30	60%
35	70%
40	80%
45	90%
50	100%

For example, if the current fee for nonexempt uses were \$4.00 per square foot, to earn 30 points, an additional fee of \$2.40 per square foot would be required (60% of \$4.00) for a total of \$6.40 per square foot. A use type that is normally exempt from the affordable housing impact fee would not pay the base fee of \$4.00 per square foot, but would pay the fee increase of \$2.40 per square foot.

- (e) **Community Benefits.** No more than half of the bonuses points required for the project, as calculated pursuant to subsection (c)(1) above, may be earned through the provision of community benefits. The maximum number of points that may be awarded for each community benefit, the calculation method, and other requirements are as shown in [Table 9-4.204\(e\)](#):

**Table 9-4.204(e): Community Benefits and Bonus Points**

Community Benefit	Maximum Points	Point Calculation	Requirements
(1) Public Open Space	50	15% of site area or 2,000 square feet, whichever is greater: 50 points	Must be in addition to what is required by <a href="#">Article 3</a> of this Chapter. Design must comply with applicable provisions of the Emeryville Design Guidelines and be approved as part of Design Review for the project. Open space must be accessible to the general public at all times. Provision must be made for ongoing operation and maintenance in perpetuity.
		10% of site area or 1,500 square feet, whichever is greater: 35 points	
		5% of site area or 1,000 square feet, whichever is greater: 20 points.	
		Contribution to Citywide Parks Fund: 10 points for every 1% of project construction valuation up to 50 points.	Contribution must be made prior to issuance of building permit.
(2) Zero Net Energy	50	100% of energy load (zero net energy): 50 points	Percent of total building energy load measured as kilowatt per square foot provided by solar panels, wind turbines, or other renewable sources.
(3) Public Improvements	50	10 points for every 1% of project construction valuation up to 50 points	Does not include improvements along project frontage that are normally required. Examples include curb, gutter, and sidewalk; pedestrian and bicycle paths; sanitary and storm sewers; and street trees, beyond what would normally be required.
(4) Utility Undergrounding	50	Contribution to Citywide Underground Utility Fund: 10 points for every 1% of project construction valuation up to 50 points	Does not include utility undergrounding that is normally required.
(5) Additional Family Friendly Units	50	5 points for each additional 5 percent of total units that have two or more bedrooms, of which at least 1 percent of total units must have three or more bedrooms.	Two- and three-bedroom units are in addition to those required by <a href="#">Section 9-5.2003</a> , and must comply with the applicable provisions of the Emeryville Design Guidelines pertaining to Family-Friendly Residential Unit Design.



Community Benefit	Maximum Points	Point Calculation	Requirements
(6) Small Businesses	50	Contribution to Citywide Fund to Support Small Local-Serving Businesses: 10 points for every 1% of project construction valuation up to 50 points.	Contribution must be made prior to issuance of building permit.
(7) Flexible Community Benefit	50	The City Council shall determine the number of points to grant for the proposed community benefit based on 10 points for every 1% of project construction valuation.	Currently undefined community benefit proposed by the applicant that is significant and substantially beyond normal requirements. An example would be Universal Design features beyond those required by applicable building codes.

- (f) **Findings.** To grant a conditional use permit for bonus floor area ratio, height, or residential density, as prescribed in this Article, the following findings must be made in addition to the findings required by [Article 5 of Chapter 7](#):
- (1) In the RM Medium Density Residential zone:
    - a. That the proposed project is compatible with the surrounding neighborhood with regard to building scale, form, and materials, and street orientation.
    - b. That the proposed project has been designed to minimize the appearance from the street of driveways, parking spaces, maneuvering aisles, and garage doors as much as possible given the size and shape of the lot, and that at least 70% of the street frontage is devoted to active non-parking related uses, except that a driveway of up to ten feet in width shall be allowed.
  - (2) In all other zones:
    - a. That the proposed project will provide community benefits sufficient to earn the number of points required for the bonus amount requested, pursuant to subsections (c), (d), and (e) of this Section.
    - b. That the proposed community benefits for the project are significant and clearly beyond what would otherwise be required for the project under applicable code provisions, conditions of approval, and/or environmental review mitigation measures.
    - c. That the proposed community benefits for the project are acceptable and appropriate in this case, and will provide tangible benefits to the community.
  - (3) Bonus height over 100 feet:
    - a. That the proposed project will provide community benefits sufficient to earn at least 100 points pursuant to subsections (d) and (e) of this Section.

- b. That the proposed project will minimize impacts on public views, wind, and shadows at the street level.
- c. That the proposed project will be separated by an adequate distance from any other building with a height greater than 100 feet as specified in [Section 9-4.202\(f\)](#).