

2.3.050 T5 Neighborhood (T5N 40/60 and T5N 50/70)

E. Building Form and Maximum Envelope

Height	Base	Height Bonus ¹
Overall Building Height^{2,3,4}		
T5N 40/60 and T5N 40/60 Open	40' max.	60' max. K
T5N 50/70 and T5N 50/70 Open	50' max.	70' max. K

Code 65915(f)(2) 50% Density Bonus for 15% very low income units

Code 65915(v)(2) 50% Density Bonus for 15% moderate-income units

Stacked is 100% Density Bonus

Waiver for height limit and **doubling units should double the height.**
So 50' would become 100', not 180' as in the project bonus plan shown
on subsequent pages.

Base has 50' roof

Bonus has 176'9" roof (and 191'9" mech.)

Base has 2 below ground parking floors.

Bonus has 2-3 above ground parking floors.

Base has 4-5 residential floors.

Bonus has 12-13 residential floors.

Base has 10' commercial floor to ceiling.

Bonus has 19' commercial floor to ceiling.

Base has 9' residential floor to floor.

Bonus has mostly 10' residential floor to floor.

Architectural floor plan of the base project building section. The plan shows a rectangular building footprint with various rooms and outdoor spaces. Key features include:

- Rooms:** RESIDENTIAL (yellow), COMMERCIAL (blue), PARKING (grey), MEP (grey), and COURTYARD (white).
- Levels:** LEVEL 05 (EL 48'-0"), LEVEL 04 (EL 39'-0"), LEVEL 03 (EL 30'-0"), LEVEL 02 (EL 21'-0"), LEVEL 01 (EL 12'-0"), GRADE (EL 8'-6 1/2"), and ROOF (EL 58'-0").
- Dimensions:** Overall building height is 48'-11".
- Notes:** "MANSARD ROOF ALLOWED IN LIEU OF STEEPBACK PER PRECISE PLAN 2.3.060 E", "RESIDENTIAL FINISH FLOOR IS 1'-11" MIN ABOVE EXISTING SIDEWALK LEVEL PER 2.3.050(F)", and "STOOP FRONTAGE PER OSR PRECISE PLAN 2.3.060".
- Other Labels:** PROPERTY LINE (ANGLED), CANTILEVERED BOARDWALK, CANAL, SECOND STREET, and PROJECTIONS OVER THE RIGHT OF WAY ARE ALLOWED WHEN AT LEAST 12" ABOVE THE ADJACENT SIDEWALK.

4 BASE PROJECT BUILDING SECTION
1/16" = 1'-0"

Architectural section drawing of the building at the commercial level. The section shows the vertical profile of the building, including the roof, residential floors, parking floors, and commercial floor. Key features include:

- Floors:** ROOF, MEP, RESIDENTIAL (yellow), PARKING (grey), and COMMERCIAL (blue).
- Levels:** TOP OF MECH (EL 203'-0"), ROOF (EL 183'-0"), LEVEL 17 (EL 176'-0"), LEVEL 16 (EL 169'-0"), LEVEL 15 (EL 162'-0"), LEVEL 14 (EL 155'-0"), LEVEL 13 (EL 148'-0"), LEVEL 12 (EL 141'-0"), LEVEL 11 (EL 134'-0"), LEVEL 10 (EL 127'-0"), LEVEL 09 (EL 120'-0"), LEVEL 08 (EL 113'-0"), LEVEL 07 (EL 106'-0"), LEVEL 06 (EL 99'-0"), LEVEL 05 (EL 92'-0"), LEVEL 04 (EL 85'-0"), LEVEL 03 (EL 78'-0"), LEVEL 02 (EL 71'-0"), LEVEL 01 (EL 64'-0"), R/F (EL 57'-0"), and SEA LVL (EL 1'-0").
- Dimensions:** Total height is 203'-0".
- Notes:** "PROJECTIONS OVER THE RIGHT OF WAY ARE ALLOWED WHEN AT LEAST 12" ABOVE THE ADJACENT SIDEWALK".
- Other Labels:** PROPERTY LINE AT NE CORNER, PROPERTY LINE AT NW CORNER, PROPERTY LINE AT SW CORNER, PROPERTY LINE AT SE CORNER, SECOND STREET, and CANAL.

1 BLDG SECTION - NS @ COMMERCIAL
1/16" = 1'-0"

Written by Richard Falk

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Code 65915(o)(6) states:

(6) “Maximum allowable residential density” or “base density” means the greatest number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan, or, if a range of density is permitted, means the greatest number of units allowed by the specific zoning range, specific plan, or land use element of the general plan **applicable to the project**. Density shall be determined using dwelling units per acre. However, **if the applicable zoning ordinance, specific plan, or land use element of the general plan does not provide a dwelling-units-per-acre standard for density, then the local agency shall calculate the number of units by:**

(A) Estimating the realistic development capacity of the site based on the objective development standards applicable to the project, including, but not limited to, floor area ratio, site coverage, maximum building height and number of stories, building setbacks and stepbacks, public and private open-space requirements, minimum percentage or square footage of any nonresidential component, and parking requirements, unless not required for the base project. Parking requirements shall include considerations regarding number of spaces, location, design, type, and circulation. **A developer may provide a base density study and the local agency shall accept it**, provided that it includes all applicable objective development standards.

(B) **Maintaining the same average unit size and other project details** relevant to the base density study, excepting those that may be modified by waiver or concession to accommodate the bonus units, **in the proposed project as in the study**.

BOTTOM LINE: Form-based code uses a base density study that must match the proposed project (bonus study) details except for the waiver of height. Therefore, **doubling the density should double the height**.

APPEAL TO EXTREMES: One floor per unit and one floor per parking for each unit would result in 400 floors! The application is not following the law which results in their excessive 180' height result.

FLAWED CONCESSION ARGUMENTS

#1: "Slightly larger market rate units will help the Project subsidize the lower rents of the affordable units, furthering the affordable housing opportunities within the Project. The unit sizes proposed will result in "identifiable and actual cost reductions to provide for affordable housing costs." (Govt. Code § 65915(k).)"

#2: "The 3-bedroom and penthouse units (a mix of 2 and 3 bedroom units) and the higher proportion of market rate units situated in the top 1/3 of the Project help subsidize the lower rents of affordable units, furthering the affordable housing opportunities within the Project. Concentrating the affordable units on floors 5-11 and not providing 3-bedroom or penthouse affordable units will result in "identifiable and actual cost reductions to provide for affordable housing costs." (Govt. Code § 65915(k).)"

Market rate, price, value, revenue, income and profit to subsidize are not the same as cost.

Code 65915(d)(A) states the concession is to be granted unless based upon substantial evidence: "(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c)."

Schreiber v. City of Los Angeles, 69 Cal. App. 5th 549 (2021).

The City could only reject the request if it could find that the incentive would not result in a cost reduction. The court did note, however, that while the city could not require the developer to demonstrate the incentive was needed to make the project economically feasibility, **it could ask for information related to how the incentive would lead to cost reductions.**

CALIFORNIA ARCHITECTS BOARD RULES OF PROFESSIONAL CONDUCT

A violation of any rule of professional conduct in the practice of architecture constitutes a ground for disciplinary action. Every person who holds a license issued by the Board shall comply with the following:

(a) Competence:

(2) In designing a project, an architect shall have knowledge of all applicable building laws, codes, and regulations. An architect may obtain the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such laws, codes, and regulations and shall not knowingly design a project in violation of such laws, codes and regulations.

THE STATE BAR OF CALIFORNIA RULES OF PROFESSIONAL CONDUCT

Rule 1.1 Competence

(a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.

Rule 4.1 Truthfulness in Statements to Others

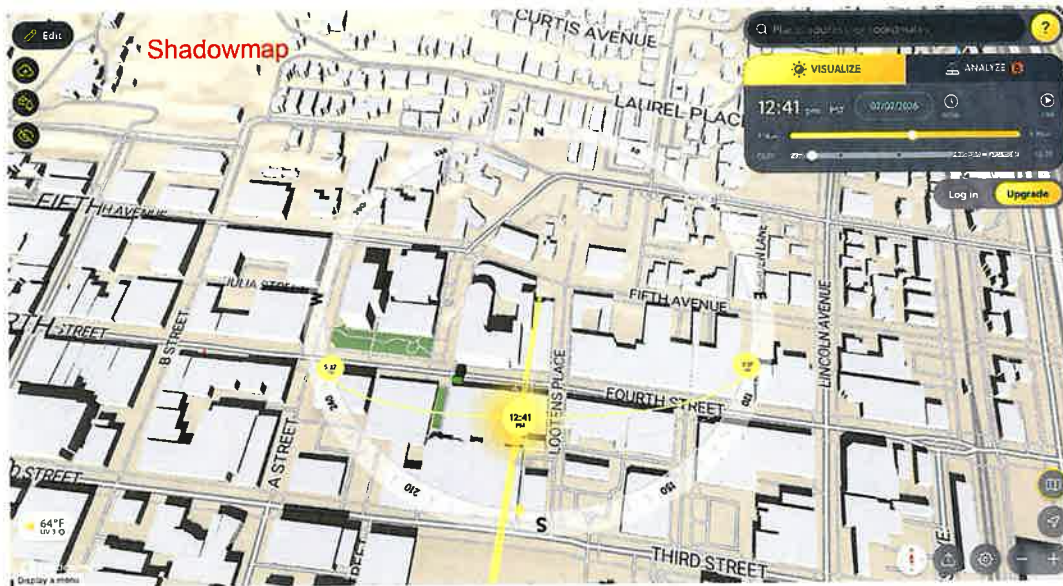
In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person;

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation;

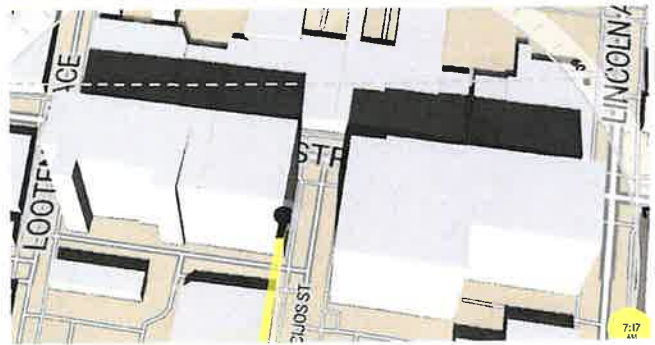


NOTE: This is during winter

60 feet height



120 feet height



120 feet height

