



# **ZONING CODE BULLETIN**

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The following information is being provided to clarify questions regarding units in the Planning Code specifically designed to allow for both residential and working activities, commonly known as live/work or work/live units. This bulletin does not apply to traditional residential units that are used for home occupations pursuant to Chapter 17.112 of the Planning Code. There are several of these types of units in the Planning Code, including:

- Joint living and working quarters (JLWQs)
- Residentially oriented JLWQs;
- HBX and D-CE work/live units;
- HBX and D-CE live/work units;
- Work/live units in a CIX Zone;
- Artist work/live conversions in a CIX, IO, or IG Zone; and
- Live/work units in additions and new buildings.

This bulletin summarizes the regulations and provides clarity for the processing of these types of facilities through the Planning and Zoning Division. The bulletin should be used as a companion with regulations contained in the Planning Code. Note that development of these units has Building Code requirements that are not included in this bulletin.

## **I Joint Living and Working Quarters (Section 17.102.190 of the Planning Code)**

### **A. Definition of Joint Living and Working Quarters (JLWQs)**

JLWQs are live/work units resulting from the conversion of part or all of a building that was originally constructed for commercial or industrial activities. Specifically, Section 17.102.190 of the Planning Code states that JLWQs means residential occupancy by one or more persons maintaining a common household of one or more rooms or floors within the building envelope of an existing building originally designed for industrial or commercial occupancy. Each Joint Living and Working Quarter includes: (1) cooking space and sanitary facilities which satisfy the provisions of other applicable codes; and (2) adequate working space reserved for, and regularly used by persons residing therein.

### **B. Working requirement**

Each JLWQ must be occupied by at least one resident who works in their unit because, by definition, each JLWQ must have work area regularly used by persons residing therein. Evidence of work performed in a unit can be provided through a Business Tax Certificate and the City has the right to ask that such proof be furnished upon request. Other evidence may also be accepted on a case-by-case basis.

### **C. When JLWQs are permitted, conditionally permitted, and prohibited**

JLWQs are prohibited in the CIX, IO, IG, D-CE, and HBX-4 Zones<sup>1</sup>. In other areas, Section 17.102.190 contains the following requirements to establish JLWQs:

- JLWQs that are 14 or fewer bedrooms per unit are permitted “by right” in locations that permit or conditionally permit residential dwelling units<sup>2</sup>.
- The granting of a Conditional Use Permit (CUP) is required for the establishment of a JLWQ that is either: 1) 15 or more bedrooms, or 2) in a zone where residential activities are prohibited.
- Generally, a Design Review Exemption or Small Project Design Review procedure is required if the exterior of a building is changed.

Along with the findings required for all CUPs, Subsection 17.102.190(C) of the Planning Code has additional required CUP findings that must also be met to establish a JLWQ.

The State Building Code states that JLWQs cannot be greater than 3,000 square feet. It is unlikely that a 3,000 square-foot unit can contain 15 bedrooms; therefore, JLWQs in the appropriate zones are unlikely to require the granting of a CUP. The Planning Code allows a unit to be over 3,000 square feet in case the maximum unit size in the State Building Code is increased or in rare cases where an Alternative Materials and Methods Request is approved by the Building Official.

With the exception of the CIX, IO, IG, D-CE, and HBX-4 Zones, JLWQs can be established throughout the City, even if a particular zone allows other types of live/work or work/live units. For instance, the HBX Zones allow the establishment of new “HBX work/live units” and “HBX live/work units” (see Section III, below) and, with the exception of HBX-4, the establishment of JLWQs.

### **D. Required elements of a building eligible to be converted into a JLWQ**

Under Section 17.102.190 of the Planning Code, any building proposed to contain JLWQs must have following characteristics:

1. JLWQs must be within an existing building originally constructed for commercial or industrial purposes (buildings originally constructed for civic uses cannot contain JLWQs).
2. The building must be at least ten years old;
3. With the exception of mezzanines as defined by the Building Code, no new floors can have been created or moved in the past five years;
4. The building envelope, including the roof location, cannot have been changed in the past five years; and
5. The exterior of the building cannot have changed in the past five years except for the changing of windows or doors within their existing openings, repairs, painting, or to fulfill building code requirements regarding escape, egress, light, or ventilation.

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<sup>1</sup> JLWQs are prohibited in the CIX, IO, and IG Industrial Zones, D-CE Zones, and HBX-4 Zone because they have their own work/live unit types and contain language stating that they supersede the JLWQ regulations in 17.102.190.

A building must retain these characteristics during and after the creation of the JLWQs.

The exterior of buildings or floors altered without the benefit of permits will be required to be restored to their permitted condition.

#### **E. Facility type**

Section 17.10.070(E) of the Planning Code states that the residential facilities within a JLWQ are accessory to the nonresidential facilities. Therefore, a JLWQ is considered a nonresidential facility. This is an important distinction because it impacts the density, open space and parking regulations for JLWQ conversions (see Sections F, G, and H below).

#### **F. Density requirements**

There is no maximum density for JLWQs because they are not considered residential facilities.

#### **G. Parking and loading requirements**

Whenever a JLWQ is permitted by right, no additional parking or loading is required because the conversion is from one nonresidential facility to another. However, all the existing on-site parking and loading must be retained that would be required for a standard living unit in the underlying zoning designation. For instance, if a commercial building is converted to have ten JLWQs on a lot with twelve parking spaces and one parking space is required per living unit in the underlying zoning designation, then retention of at least ten of the spaces would be required. If there were eight parking spaces on the lot, all the parking would need to be retained for the conversion but two additional spaces would not be required. Any required parking for other activities on the lot must also be retained.

Additional parking and loading areas may also be required as part of a CUP approval, based on a case-by-case evaluation.

#### **H. Open space requirements**

Open space requirements for residential units are not triggered by the conversion to JLWQs as they are not considered residential units. However, open space may be required as part of a CUP approval.

#### **I. Floor area standards**

The floor area of a JLWQ is a maximum of 3,000 square feet pursuant to the Building Code. To ensure that JLWQs are nonresidential facilities, a minimum of two-thirds (2/3) of the floor area of a unit must be designated for work activities and a maximum of one-third (1/3) can be designated for living activities. This one-third/two-thirds criterion is from Resolution 68516, adopted by City Council in 1991, relating to the evaluation of “work/live” units, and because Section 17.10.070(E) of the Planning Code states that the residential facilities within a JLWQ are accessory to the nonresidential facilities. Guidelines for floor plans and determining the live and work portions of the units are as follows:

1. In unpartitioned kitchens or work areas that include kitchen fixtures and appliances the following areas are considered “live” space: the counters, cabinets, eating space, sink and

- appliances in the area that will function as a kitchen and the floor area that is three feet in front these items.
2. If there is only one bathroom, half the bathroom should be counted as live space and half should be counted as work space. Otherwise, bathrooms are counted as live space if their access is through living space. For instance, a bathroom in a loft is considered living space if the loft is sleeping area. If the bathroom is accessed directly from the workspace, the bathroom should be counted as workspace. If accessed directly from both, half the bathroom is considered residential and the other half commercial.
  3. Interior hallways and closets shall be counted as part of the space to which they are adjacent.
  4. Living and working spaces should be within the same JLWQ unit and be directly connected.
  5. To accommodate flexible work activities, working areas in a JLWQ must be open and with as few interior walls as possible. "Offices" enclosed by four walls generally will be considered living space because they are indistinguishable from bedrooms and cannot be used flexibly for different commercial activities.
  6. Ground floor entrances into a JLWQ or the lobby of a JLWQ building should be adjacent to the most principal street, whenever feasible.
  7. In nonresidential zones, working areas of ground floor units that are adjacent to the street should be in the front of the unit closest to the sidewalk, whenever feasible.

Note that the Bureau of Building has different standards for the nonresidential vs residential split and what is considered residential and nonresidential space. Developers should check with both the Bureau of Building and Bureau of Planning when designing floor plans.

#### **J. Permitted activities in a JLWQ**

In general, activities permitted, conditionally permitted, and prohibited in a JLWQ are determined by the underlying zoning of the site. For instance, a resident can perform light manufacturing activities in their JLWQ if light manufacturing is permitted in the underlying zone.

Activities that qualify as a home occupation pursuant to Chapter 17.112 of the Planning Code may also be allowed in a JLWQ under the following permitting requirements:

- If residential activities are permitted in the facility by the underlying zoning, then an activity that qualifies as a home occupation is also permitted;
- Where residential activities are conditionally permitted in the facility by the underlying zoning, then approval of an activity as a home occupation in that same location also requires a CUP; and
- If residential activities are prohibited in the underlying zoning of the site, then approval of an activity *as a home occupation* is not allowed.

For instance, residential and office activities are conditionally permitted on the ground floor in the CN-1 Zone; therefore, approval of an office on the ground floor as a home occupation in the CN-1 Zone would require a CUP, similar to a residential activity. As a second example, residential activities are not permitted in the CC-3 Zone; therefore, an office cannot be approved as a home occupation. However, the office can be approved as a principal activity because Administrative Commercial Activities are permitted in the CC-3 Zone.

Any change in activity type within a JLWQ should be reviewed by the Building Bureau because

it may trigger additional Building Code requirements.

### **K. Design review requirements**

There is no design review process specifically required for the creation of JLWQs within an existing building. However, Section 17.136.030(B) of the Planning Code states that Small Project Design Review approval is required for “changes to storefronts or street-fronting facades (of commercial, industrial, and civic buildings), such as: (i) replacement or construction of doors, windows; bulkheads and nonstructural wall infill, or (ii) restoration of documented historic fabric.” Therefore, if a project includes any of these changes, the Planning Code requires Small Project Design Review approval. This approval is usually performed over-the-counter and generally does not require public notice.

### **L. Condominiums**

JLWQs are commercial facilities and, therefore, condominium conversion rights contained in Section 16.116.36 of the Oakland Municipal Code (Condominium Conversions) does not apply. However, other parts of the Oakland Municipal Code (OMC) relating to tenant’s rights do apply. The creation of JLWQ rentals do not create conversion rights. An applicant must provide evidence that at least one tenant works within each unit before approval of a tentative parcel map to convert JLWQs to condominiums.

## **II Residentially Oriented Joint Living and Working Quarters (Section 17.102.195 of the Planning Code)**

### **A. Summary**

Residentially Oriented JLWQs are live/work units resulting from the conversion of part or all of a building that is both: 1) originally constructed for nonresidential activities, and 2) at least ten years old. However, unlike standard JLWQs, Residentially Oriented JLWQs can only be in the Downtown and Jack London Square area, are subject to more flexible floor plan standards than standard JLWQs, and are considered residential units. However, the State Building Code may have floor plan standards not considered in this bulletin or the Planning Code.

### **B. Working Requirement**

There is no requirement that Residentially Oriented JLWQs have a tenant working in each unit.

### **C. Area where Residentially Oriented JLWQs are permitted**

Section 17.102.195 of the Planning Code states that Residentially Oriented JLWQs are permitted within the area bounded by Highway 980/Brush Street, the Estuary shoreline, the Lake Merritt/Estuary channel, the western shore of Lake Merritt, and 27th Street. However, a CUP for certain projects may be required for increased density or reduced open space and parking requirements (see Sections F and G, below). Residentially Oriented JLWQs are not permitted elsewhere in the City.

Note that standard JLWQs (see I, above) can also be established in the area where Residentially Oriented JLWQs are permitted.

#### **D. Required elements of a building to be converted into a Residentially Oriented JLWQ**

Under Section 17.102.195 of the Planning Code, any building proposed to contain Residentially Oriented JLWQs must have following characteristics:

1. Residentially Oriented JLWQs must be originally constructed within a building originally constructed for commercial or industrial purposes (buildings originally constructed for civic uses cannot contain JLWQs);
2. The building must be at least ten years old; and
3. The envelope of the building cannot be expanded to accommodate Residentially Oriented JLWQs, except for dormers that both: 1) do not exceed the existing roof height; and 2) occupy ten percent or less of the roof area. Minor additions to accommodate functional aspects of the building such as such as elevator shafts, skylights, rooftop gardens, are also permitted.

The Building Code may have additional requirements for Residentially Oriented JLWQs.

#### **E. Facility type**

Residentially Oriented JLWQs are considered residential facilities under the Planning Code because the flexible floor standards are conducive to performing predominantly residential activities within a unit.

#### **F. Density requirements**

The maximum number of Residentially Oriented JLWQs permitted on a lot is the same as that for residential units. According to the requirements of Section 17.102.195(D) of the Planning Code, the number of Residentially Oriented JLWQs can exceed this normally maximum density only upon the granting of a CUP (Chapter 17.134 outlines the CUP process) or through affordable and senior housing density bonuses.

#### **G. Parking, loading, and open space**

All existing on-site parking, loading, and open space must be retained, unless they exceed the total requirement for the lot listed in Chapter 17.116 of the Planning Code (Parking and Loading Requirements) for dwelling units. In this case, the project need only retain the parking and loading required under Chapter 17.116. Required parking for other activities on the lot would also have to be retained.

According to the requirements of Section 17.102.195(D) of the Planning Code, parking and open space requirements can be reduced upon the granting of a CUP (Chapter 17.134 outlines the CUP process).

#### **H. Floor area standards**

There is no minimum working space required in a residentially oriented JLWQ in the Planning Code. The minimum and maximum size of units is described in the State Building Code.

## **I. Permitted activities in a Residentially Oriented JLWQ**

The activity regulations are the same as for standard JLWQs (see subsection J. in the previous section).

In addition, all existing ground-floor commercial space must be retained for commercial activities except upon the granting of a CUP according to the requirements of Section 17.102.195(D) of the Planning Code.

## **J. Design review requirements**

There is no design review process specifically required for the creation of Residentially Oriented JLWQs within a building. However, Section 17.136.030(B) of the Planning Code states that Small Project Design Review approval is required for “changes to storefronts or street-fronting facades (of commercial, industrial, and civic buildings), such as: (i) replacement or construction of doors, windows; bulkheads and nonstructural wall infill, or (ii) restoration of documented historic fabric.” Therefore, if a project includes any of these changes, the Planning Code requires Small Project Design Review approval. Otherwise, the project can be approved through a Design Review Exemption.

## **K. Condominiums**

Residentially-oriented JLWQs are residential facilities and, therefore, all the tenant rights conferred to tenants of standard residential units contained in Section 17.116.36 of the Oakland Municipal Code (Condominium Conversions) apply. The creation of JLWQ rentals do create conversion rights.

## **III HBX and D-CE Work/Live and Live/Work Units (Sections 17.65.150, 17.65.160, 17.101E.150 and 17.101E. 1560 of the Planning Code)**

### **A. Overview**

HBX and D-CE work/live units are nonresidential facilities that can be established within an existing building, an expansion of an existing building, or a new building. HBX and D-CE live/work units are similar to standard living units but have areas available for working and can be used for walk-in customers if approved by the Bureau of Building.

### **B. Where HBX and D-CE work/live and live/work units are allowed**

HBX work/live and live/work units only permitted in the Housing and Business Mix (HBX) Zones while D-CE work/live and live/work units are only permitted in the Central Estuary District (D-CE) -3, -4, and -5 Zones.

### **C. Working requirement**

There is a requirement that at least one tenant of an HBX and D-CE work/live unit maintain a City of Oakland Business Tax Certificate and work out of the unit. No working activities are required to be performed in D-CE or HBX live/work units.

#### **D. JLWQs in the HBX and D-CE Zones**

JLWQs are permitted in the HBX-1, HBX-2, HBX-3, D-CE-3, D-CE-4 Zones but not permitted in the HBX-4 Zone or any other D-CE Zone.

#### **E. Development standards**

Activity, density, parking, loading, open space, unit size, entrance location, unit type, floor space designation, and other standards for HBX work/live, HBX live/work, D-CE work/live and D-CE live/work are contained in Sections 17.65.150, 17.65.160, 17.101E.070, and 17.101E.080 of the Planning Code, respectively.

However, how to designate residential and nonresidential space in D-CE work/live units is not in the Planning Code. For guidance, refer to the floor areas standards for JLWQs in Section I, above.

The Building Code has additional floor area and unit size requirements for HBX work/live, HBX live/work, D-CE work/live and D-CE live/work units.

#### **F. Density and Floor Area Ratio**

HBX and D-CE work/live units do not count towards density but do fall under nonresidential floor area ratio requirements because they are nonresidential facilities. Conversely, HBX and D-CE live/work units do count towards density but do not fall under nonresidential floor area ratio requirements because they are residential facilities.

#### **G. Approval process**

Both D-CE and HBX work/live and live/work units require Regular Design Review Approval to be established and have special design review approval criteria. The focus of the design review for criteria for work/live units is to assure that units can function as working spaces and that there is a business presence facing the street.

#### **H. Signs and disclosure statements**

On-site signs regarding and lease disclosures the nature of work/live units are required for HBX and D-CE work/live buildings (see Planning Code Sections 17.65.150(I-J)) and 17.101E(F)). The signs must be included on the building permit plans and sample disclosures must be shown to the Bureau of Planning prior to issuance of occupancy permits.

#### **I. Condominiums**

HBX and D-CE work/live units are nonresidential facilities and, therefore, Section 17.116.36 of the Oakland Municipal Code – (Condominium Conversions) does not apply. However, other parts of the Municipal Code relating to tenant's rights do apply. The creation of work/live rentals do not create conversion rights. An applicant must provide evidence that at least one tenant works within each unit before approval of a tentative parcel map to convert HBX or D-CE units to condominiums. The same condominium regulations apply to HBX and D-CE live/work as regular dwelling units.

## **IV Work/Live Units in the CIX, IG, and IO Zones (Section 17.73.040 of the Planning Code)**

### **A. Where work/live units are permitted in Industrial Zones**

In Chapter 17.73 of the Planning Code, the CIX, IG, and IO Industrial Zones Regulations provides a “work/live” unit type that only apply to the CIX, IG, and IO Zones (called “industrial work/live units” for the purposes of this section). The CIX Zones conditionally permit the establishment of industrial work/live units as part of a new building or the conversion of an existing building if the site is within 300 feet of a Residential Zone. Industrial work/live units are not permitted in the IG or IO Zones, except the legalization of existing units that house artists (see below) are conditionally permitted anywhere in the CIX, IG, and IO Zones.

All other work/live units, live/work units, and JLWQs described in other chapters of the Planning Code are prohibited in all areas of the CIX, IG, and IO Zones.

Section 17.73.040 of the Planning Code conditionally permits the conversion of existing buildings to “work/live” units in any area of a CIX, IO or IG Zone provided there are existing artist and/or artisan residents in the building. For the purpose of this code bulletin, artists are people who participate in art-making, which, according to City Council Resolution 68516 regarding artist live/work units, the City defines as:

The activity of creating objects and expressions of form (inert, organic, or synthetic) primarily for purposes of visual or auditory contemplation. Art-making activities include all creative endeavors in the visual arts, dramatic arts, music, and dance. Art-making is an activity undertaken by an artist or a person studying to become an artist; it is not a hobby activity.

The intent of the CUP for “work/live” units is to allow artists to remain in units that have historically been occupied by artists. In general, applicants should provide evidence that units in a building have been occupied by artists for at least ten years to qualify for CUP approval. Also, in general, the CUP will not be approved for the expansion of units within a building.

### **B. Required Permits**

The establishment of any work/live units in the CIX, IO, or IG Zones requires approval through the CUP and Regular Design Review Process. Section 17.73.040 of the Planning Code contains special findings required to be met to be granted Regular Design Review and CUP approval and additional regulations for live/work units in the CIX, IO, and IG Zones.

### **C. Development standards**

Density maximums do not apply to work/live units because they are considered nonresidential facilities. However, a minimum size threshold of 800 square feet for a unit and floor area ratio maximums do apply. Also, see Section 17.73.040 of the Planning Code for standards relating to minimum activity, floor area, parking, loading, open space, and unit size standards.

How to designate residential and nonresidential space in D-CE work/live units is not in the Planning Code. For guidance, refer to the floor areas standards for JLWQs in Section I, above.

The Building Code may have additional floor area and unit size requirements for these work/live units.

#### **D. Tenant's Rights and Condominium Conversions**

CIX, IO, and IG work/live units are nonresidential facilities and, therefore, Section 17.116.36 of the Oakland Municipal Code – (Condominium Conversions) does not apply. However, other parts of the Municipal Code relating to tenant's rights do apply. An applicant must provide evidence that at least one tenant works within each unit before approval of a tentative parcel map to convert work/live units to condominiums.

#### **V Work/live and live/work units in additions and new construction**

With the exception of the CIX, IO, IG, HBX, D-CE Zones, the Planning Code does not include regulations for live/work and work/live units in a newly constructed building or expansion of an existing building. Therefore, in general, these types of units are not permitted outside of these zones.

The zoning has not been updated in some areas of the City to be consistent with the Estuary Policy Plan (EPP) or Land Use and Transportation Element (LUTE) of the General Plan, particularly the Jack London District. In these areas, the potential for units in new construction or additions will be evaluated after a staff analysis of applicable EPP or LUTE designations and any applicable design review process.

The floor area standards, facility type requirements, building code requirements, and allowed activities within a JLWQ (see above) apply to live/work and work/live units in newly constructed buildings. The parking, open space, and density requirements for residential units of the underlying zone also apply to newly constructed live/work and work/live buildings.

Note that a loft-style residential unit can be constructed to accommodate activities consistent with the City's home occupation regulations and not be considered a live/work unit under the Planning Code.

#### **VI Building Code**

The following table describes, in general terms, the Building Code requirements the Planning Bureau should require for each of the live/work, work/live and JLWQ types. These Building Code requirements are included here because they can have a significant effect on the function and layout of these units, particularly in terms of ADA access and bathroom configuration.

The Planning and Building Department staff should work together during the Building Permit plan check phase to assure that the appropriate Building Codes are applied to the project. Further, applicants should check with the Building Bureau prior to submitting plans to the Planning Bureau to assure the feasibility of the proposal.

Exceptions to these requirements can be made on a case-by-case basis, particularly for legalization of long established existing JLWQ and work/live facilities.

Location	Facility Type				
	JLWQs (Section I)	Residentially Oriented JLWQs (Section II)	HBX/D-CE Work/Live Units (Section III)	HBX/D-CE Live/Work Units (Section III)	Work/live units in Industrial Zones (Section IV)
In a Residential Zone	1	1	NA	NA	NA
Commercial Zone that permits, by right, ground floor residential facilities.	1	1	2	3	NA
Commercial Zone that does <u>not</u> , by right, permit ground floor residential facilities	4	4	NA	NA	NA
Commercial Zone that does <u>not</u> , by right, permit residential facilities	5	5	5	5	5
Industrial Zone	NA	NA	NA	NA	6

Notes:

1. All units must meet the provisions of the State Building Code that accommodate commercial activities in the nonresidential space of each unit. No units are required to be constructed according to building codes that accommodate employees or customers.
2. Ground floor units must meet the provisions of the State Building Code that accommodate employees, customers, and manufacturing activities in the nonresidential space. The nonresidential space in upper story units must meet the provisions of the State Building Code that accommodate commercial and/or manufacturing activities but accommodations for employees and customers are not required.
3. Accommodating commercial activities, customers and/or employees under the State Building Code is not required.
4. Ground floor units must meet the provisions of the State Building Code that accommodate employees and customers in the nonresidential space. The nonresidential space in upper story units must meet the provisions of the State Building Code that accommodate commercial and/or manufacturing activities but accommodations for employees and customers are not required.
5. All units must meet the provisions of the State Building Code that accommodate employees, customers, and commercial activities in the nonresidential space.
6. All units must meet the provisions of the State Building Code that accommodate employees, customers, and manufacturing activities in the nonresidential space.

**RECEIVED AND APPROVED BY:**

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