

Affordable Housing Overlay Zones: Oakley

This brief is part of the Turner Center series “Statewide Goals, Local Tools: Case Studies in Affordable Housing Development in California.”

While every city in California must adopt plans and land use regulations that provide opportunities for—and do not unduly constrain—housing development, very few cities zone for affordable housing in an explicit way. First introduced to California land use plans in early 2000, Affordable Housing Overlay Zones (AHO or HOZ) have become a flexible mechanism through which cities can prioritize and direct affordable housing development to site-specific zones. Overlay zones are flexible not only in format but also in the various land uses that they can regulate. For example, these zones are widely used to preserve historic buildings and areas in historic districts. Other common overlay districts include airport noise impact zones, highway corridor overlay districts, agricultural overlay districts, and planned unit development (PUD) overlay zones.¹

One of the first cities in California to adopt an AHO, Oakley up-zoned more than 16 acres from light industrial and commercial uses to “by-right” multifamily development during its comprehensive rezone in 2005. Since its enactment, seven affordable housing developments, totaling 509 units for low-income families and seniors, have been built because of Oakley’s AHO. The following case study demonstrates how AHOs provide a flexible tool that cities can use to prioritize affordable housing and direct development to site-specific zones.

Background

Located in eastern Contra Costa County on the western edge of San Joaquin Valley, Oakley is a rapidly growing² city in the San

Francisco Bay Area. Over the past twenty years, this agricultural community experienced dramatic growth due to its location at the intersection of State Routes 4 and 160, which provide access to San Francisco, San Jose, Sacramento, and the Central Valley.

Responding to an increase in population and a desire to control local growth and development decisions, Oakley incorporated in 1999. Incorporation occurs when corporate powers form a city, shifting local government responsibility of an unincorporated area from the County Board of Supervisors to a newly-established city council.³ Areas incorporate for a variety of reasons, but the most common reason is to shift the locus of power from the county to the city, thereby giving a community local control over land use planning and creating a locally-accountable governing body.

Once incorporated, Oakley was required to develop a land use plan, having previously relied on the land use and circulation policies outlined in the Contra Costa County General Plan. To establish consistency between Oakley’s new General Plan, residential land uses, and updated Zoning Ordinances, Oakley needed to rezone approximately 2,240 acres. Additionally, under state-mandated housing element law,⁴ Oakley also had to make adequate provisions for the existing and projected housing needs of all economic segments of the community based on its Regional Housing Needs Allocation (RHNA).⁵

Despite a need for affordable housing, the newly-formed city struggled to reach consensus on how to plan for affordable housing, with some residents expressing concern that incoming growth would disrupt the small-town character of the community, bringing with it increased crime, lowered property values, and traffic congestion.⁶ In 2001, anti-housing sentiment amidst a small coalition of residents ran so high over an affordable multifamily development that the incoming city council was almost disbanded

during the incorporation process (the site was later approved and converted to affordable senior housing).⁷ However, not all residents were against new affordable housing development. Analysis of Oakley's inaugural Housing Workshop in 2002 shows that when asked what types of affordable housing the city should focus on, over 25 percent of participating residents supported multifamily development.⁸ When asked how the city should assist in the development of affordable housing, roughly 67 percent supported increased densities or density bonuses.⁹ Affordable Housing Overlay Zones are one way in which Oakley ultimately opted to increase its housing density.

Affordable Housing Overlay Zones

AHO zones work by placing an additional zoning layer over base zoning designations. They encourage the production of affordable housing by providing incentive packages to developers who include affordable housing in their projects, such as impact fee waivers, enhanced density bonuses, reduced parking ratios, changes to setback requirements, relaxed height standards, and by-right zoning. To qualify, developers must meet baseline affordability qualifications pursuant to local zoning code. Typically, an AHO will require that between 25 and 100 percent of units in a development be affordable for households earning 50 to 80 percent of Area Median Income (AMI).

In addition, AHOs can expedite the approval and permit processes for affordable housing projects that might otherwise require an amendment to a general plan. In places where land is not zoned for residential use but where a city would like to see affordable housing built, an AHO may eliminate lengthy entitlement processes. For example, a project may require an independent review by a building department, health department, fire department, planning commission, and city council. Each layer of review can increase project approval time and cost to the developer. By creating exemptions that streamline project approvals, municipalities can encourage the development of affordable homes without additional costs to government or developers.

In addition to California's Density Bonus Law (SDBL),¹⁰ which provides incentives to encourage the production of affordable housing, especially in infill locations, AHOs can offer greater incentives—both in number and scope—including density bonuses that exceed the SDBL, by-right zoning, or streamlined administrative approvals of projects. Because incentives are contained within the AHO Zoning Ordinance, communities and developers are guaranteed a greater level of clarity and predictability of development standards and processes while also codifying a community's commitment to encouraging affordable housing through its land use regulations.

Unlike inclusionary zoning that requires either the building of affordable housing or the payment of an in-lieu fee, AHOs are incentive-based, offering developers key concessions in exchange for producing affordable housing. Both AHOs and Inclusionary Housing Ordinances can be used as complementary tools along with other housing policies.

AHO policies should be centered on four basic guidelines customized to best fit community needs.¹¹ They are:

- » **Geographic scope of applicability.** An effective AHO should have a broad geographic applicability, including in lower-density or commercial zones. AHOs can also complement other state and local housing policies and site-specific plans, including Priority Development Areas (PDAs) and sites with access to transit, amenities, and job centers.
- » **Baseline affordability qualifications for developments to access AHO incentives.** By establishing meaningful threshold requirements, AHOs can encourage the development of affordable housing for multiple tiers of low-income units identified in RHNA. To qualify, developers generally must make between 25 and 100 percent of the units affordable for households earning 50 to 80 percent of AMI.
- » **Incentives given to qualified developments.** A successful AHO can provide far greater incentives than the SDBL, thereby further encouraging developers to produce affordable housing. Types of incentives include enhanced density bonuses, reduced parking ratios, expedited permit processing, increased allowable heights, by-right zoning or administrative approvals, in-lieu fees, and impact fee waivers. Determining the most effective balance of incentives depends on local communities. However, it should be noted that an AHO can be used in conjunction with SDBL.
- » **The extent of exemptions from discretionary project-level approvals.** During the project-level approvals process, a city might require discretionary review to confirm a project's compliance with the City Zoning Code. Each layer of review can increase project approval time and cost to the developer. By creating exemptions that streamline the approvals process, municipalities can expedite the development of affordable homes while reducing overall development costs.

Oakley's AHO was established in response to state mandate. In June 2005, the Department of Housing and Community Development (HCD), citing an insufficient number of vacant parcels designated for Multifamily High (MFH) development to accommodate the city's remaining housing needs for low- and very-low-income groups, issued a "conditional certification"¹² for Oakley's 2001-2007 housing element. The certification was conditioned upon the city adopting an AHO zone.

For Oakley, adopting an AHO zone would cater to demands from both the state and city residents. An AHO would address divergent views amongst the constituency on planning, implementing, and developing affordable housing. In addition, by certifying its housing element, Oakley could procure funding from the Contra Costa Measure C Growth Management¹³ program and other state and federal funding programs the city needed to improve other vital community needs like infrastructure and municipal services.¹⁴

Oakley's AHO zone was structured as follows. First, it rezoned 16.3 acres to MFH¹⁵ density. After considering more than a dozen sites, the council approved the rezoning on Carol Lane, selected due to

its proximity to commercial services, schools, parks, and transit. To encourage high-density development, the city offered several incentives, including reduced parking standards, reduced setback requirements, fee waivers, and a density bonus for proposed developments in this region. Second, it required that affordable housing built in the AHO (and that received the incentives or benefits of AHO zoning) remain affordable for a minimum of 30 years. Third, it set a base density of 24 units per acre. This density is lower than the state's default (30 units per acre) for cities in the region, but the city council lowered the base density in response to resident concerns over higher density development in the city.

Implementation

Oakley's AHO program proved successful in increasing the number of multifamily units and meeting the city's RHNA for very-low and low-income categories. In 2006, the non-profit developer Corporation for Better Housing (CBH) purchased the 16.3-acre site, developing a multi-phase, 100-percent affordable housing project spanning over a decade on the site. The city worked and continues to work with CBH to increase affordable housing on the Carol Lane site to accommodate future RHNA targets (Table 1). Over the course of a decade, this site has constructed a total of 434 affordable housing units. In a region reputed for its lack of affordable housing and inability to meet regional housing needs, Oakley's AHO has produced beyond the requisite housing needed for lower-income households.¹⁶

Table 1: Housing Estimates for Oakley

	2000	change	2008	change	2016
All Housing Units	7,946	+35%	10,748	+14%	12,294
Single Family Units	7,363	+39%	10,228	+12%	11,412
Multifamily Units	164	-18%	134	+278%	506

Source: California Department of Finance Population and Housing Estimates

Oakley city administrators had difficulty interpreting the AHO in relation to the SDBL. What was not clear to the city was that, under SDBL, cities are required to approve additional density bonuses of up to 35 percent over the base density for qualified affordable housing projects.¹⁷ The council and city residents had interpreted the negotiated AHO density of 24 units per acres as the maximum density allowed under SDBL. Instead, to their "surprise and disappointment,"¹⁸ an affordable housing builder could submit a subsequent density bonus application to attain a capacity of up to 32.4 units per acre (i.e., 35 percent over the ABO density threshold). For the city, the state mandates regarding the requirements of an AHO zone and the SDBL essentially removed the "city's discretion regarding the final density of the project."¹⁹

AHO zones can supplement a city's comprehensive housing affordability strategy by targeting certain areas for more streamlined affordable housing development. In addition to increasing affordable housing production, this tool could be used to further

fair housing goals—counteracting patterns of socioeconomic and racial segregation that were historically perpetuated through housing development—if neighborhoods of high opportunity are conscientiously selected.

Lessons Learned

- » **AHO zones can provide a flexible tool to increase the supply of affordable housing.** Overlay zones present an attractive alternative to municipalities interested in offering additional benefits to an already-zoned parcel to encourage affordable housing. They offer more flexibility as they may be tailored to be site-specific, or encompass a larger area to promote development in targeted areas that align with other state and local policy goals (e.g. RHNA, SB 375, PDAs).
- » **AHOs encourage the development of affordable homes without additional costs to the government or developers.** Because zoning decisions have financial benefits to developers, AHOs create value without relying on direct city expenditures. For example, on sites where land is not zoned for residential use but where a city would like to see affordable housing, AHOs may eliminate lengthy entitlement processes, including the need to amend the general plan.
- » **Technical support is essential to optimize AHO benefits for both the developer and community.** Clarity on how overlay

zones work when layered with other housing policies such as SDBL ensures that overlay zones meet the community's planning and strategic goals around land use and affordable housing, and that they are used as defined. In addition, clearly conveying the valuable housing incentives contained in AHOs can help developers leverage lower development costs and increase the number of affordable homes they construct.

Useful Sources

ABAG, Housing Overlay Zone
<http://housing.abag.ca.gov/policysearch>

Endnotes

1. Blackwell, R. (1989). "Overly Zoning, Performance Standards, and Environmental Protection After Nollan," *Boston College Environmental Affairs Law Review* 16, no. 3: 615–59.
2. City of Oakley and City of Oakley. (2015). "2015-2023 Housing Element." City of Oakley.

Between 2000-2010, Oakley experienced a 38 percent population increase, more than three times faster than the county's growth rate of 10 percent.
3. This process is accomplished under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, the law governing Local Agency Formation Commissions (LAFCOs) and local government organizational changes. Stanislaus County LAFCO. (2012). "A Citizen's Guide to the Incorporation Process." Stanislaus County LAFCO. The Act establishes procedures for local government changes of organization, including city incorporations, annexations to a city or special district, and city and special district consolidations. Local agency formation commissions (LAFCOs) have numerous powers under the act, but those of primary concern are the power to act on local agency boundary changes, and to adopt spheres of influence for local agencies. Among the purposes of LAFCOs are the discouragement of urban sprawl and the encouragement of the orderly formation and development of local agencies.
4. California Gov't Code § 65583.
5. Since 1980, the State of California has required each jurisdiction plan for its share of the state's housing need for people of all income levels (California Gov't Code § 65583). The Regional Housing Need Allocation (RHNA) (California Gov't Code §65583(c)(1) & §65583.2(h)) is the process by which each community is assigned its share of the housing need for an eight-year period. Each jurisdiction's responsibility for planning for housing is divided into four income categories that address all levels of housing affordability: very low-income (50 percent or less of AMI); low-income (50-80 percent of AMI); moderate-income (80-120 percent of AMI); and above-moderate (more than 120 percent of AMI). COGs calculate housing needs by looking at population and employment growth, existing employment, and household and employment growth near transit in the entire region and in each city or town. A jurisdiction's housing needs obligation reflects its share of regional growth. Once a jurisdiction receives its RHNA, it must update the housing element of its General Plan to show how it plans to meet the housing needs of its community.
6. Anonymous Interview, interview by Liana Arnold, Telephone Interview, December 5, 2016.
7. Ibid.
8. Thompson, B. (2002). "Joint General Plan Workshop - City Council and Planning Commission." City of Oakley 6.
9. Ibid.
10. Enacted in 1979, Density Bonus Law (California Gov't Code § 65915, et seq.) offers incentives to developers who include a percentage of units in a housing development to low- or very low-income households. In exchange, the city or county must grant the developer up to three itemized concessions and a "density bonus," which allows the development to increase the density of the development by a certain percentage above the maximum allowable limit under local zoning law. A key requirement is that developers require an affordability period of 55 years for all density bonus units.
11. Public Advocates and East Bay Housing Organization. (2010). "Factsheet: Housing Overlay Zones." Public Advocates.
12. The Department of Housing and Community Development (HCD) can find local housing elements in compliance with state housing element law subject to certain conditions, thereby issuing a conditional approval (commonly called "conditional certifications"). These conditions most frequently require local agencies to rezone, but, on occasion, require the actual construction of promised affordable housing projects or a record of project approvals.

13. Contra Costa Transportation Authority. "Growth Management Program (GMP)." Contra Costa Transportation Authority. Retrieved from: <http://www.ccta.net/sources/detail/8/1>.
14. Ryan, J. and Raney, T. (2004). "City of Oakley Housing Element Memorandum."
15. City of Oakley Municipal Code. (2016). "Chapter 9.1 ZONING," Code Publishing Company. Accessed: <http://www.codepublishing.com/CA/Oakley/html/Oakley09/Oakley091.html>.

The AHO applies only to areas zoned Multiple Family Residential (M-9, M-12, M-17) and where an applicant has applied for, and the City Council has approved a density bonus in accordance with § 9.1.412 to meet the City Regional Housing Needs Assessment.

16. Association of Bay Area Government. (2015). "San Francisco Bay Area Progress in Meeting 2007-2014 Regional Housing Needs Allocation (RHNA)." Association of Bay Area Governments. During the 4th Cycle, Oakley met its RHNA by 111 percent for very-low, and 159 percent for low-income categories. When compared to other cities in Contra Costa County, Oakley was second to El Cerrito (159 percent) in permitting units for very low-income household and ranked highest in permitting low-income units.
17. Cities and counties are required to grant a density bonus and other incentives or concessions to housing projects that include affordable and/or senior housing in their development. The amount of the density bonus is set on a sliding scale, based upon the percentage of affordable units at each income level.
18. City of Oakley. (2009). "Work Session Regarding the State-Mandated Housing Element Update." City of Oakley.
19. Ibid.

Acknowledgements

We would like to thank Liana Arnold, Echo Bergquist, and Sarah Mawhorter for their contributions to the research and authorship of these case studies. We're deeply grateful to the California Department of Housing and Community Development for the funding that made this work possible. Finally, we would like to thank each of the local officials and stakeholders who shared their knowledge and experience through the interviews documented in these case studies.