

# Affordable Housing Overlay Zones

Affordable housing overlay zones (AHOZ) are area-specific incentives, such as density bonuses and streamlined environmental review, for development projects that include deed-restricted affordable housing. They are called “overlay” zones because they layer on top of established base zoning regulations, offering additional benefits to projects that increase the supply of affordable homes. Unlike inclusionary zoning policies that require either the building of affordable housing or the payment of an in-lieu fee, AHOZs are optional and incentive-based, offering developers key concessions in exchange for producing affordable housing.

## Legal Context

### What Does State Law Require?

[State Density Bonus Law](#) dictates that a developer who meets certain requirements is entitled to a density bonus, including up to a 50% increase in density depending on the amount of affordable housing provided, and an 80% increase for completely affordable projects.

[SB 35 \(2017\)](#) dictates that a developer can request a streamlined, ministerial approval process for multi-family developments which include specified levels of affordable housing in jurisdictions that have not met their prorated Regional Housing Needs Allocation (RHNA). Projects that comply with the jurisdiction’s objective design standards and existing zoning are exempt from California Environmental Quality Act (CEQA) review and public hearings. Depending on the number of units, the timeline for determining eligibility is either 60 or 90 days and the final decision must be issued between 90 and 180 days from application submission. [SB 423 \(2023\)](#) extends SB 35’s streamlined, ministerial approval process for qualifying multifamily developments until January 1, 2036. SB 423 also expands some provisions of SB 35, such as applying SB 35 to previously exempted coastal zone areas that are already zoned for housing.

### How Can Jurisdictions Implement Programs That Go Beyond State Law?

Local jurisdictions can offer density bonuses exceeding those provided through the State Density Bonus Law, as well as additional incentives, such as ministerial approval, fee waivers, expedited permit processing or reduced parking requirements.

## At-A-Glance

### RELEVANT STATE LAWS

- [State Density Bonus Law](#)
- [SB 35 \(2017\)](#)
- [SB 423 \(2023\)](#)

### POTENTIAL FUNDING SOURCE

- No ongoing costs
- General Fund

### COST


**Medium.** May require architectural studies or economic analysis.

### ADMINISTRATIVE BURDEN

 **Medium**

Staff capacity needed to design program, lead public and legislative processes and train staff on new procedures.

### EXTRA CONSIDERATIONS

 **Easy to implement**

### WHICH P?

Production

### OPTION FOR TOC POLICY COMPLIANCE?

Yes!



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## Program Design, Implementation and Evaluation Considerations

The callout box below labeled “TOC Policy Requirements” describes the policy features necessary for a jurisdiction to receive credit toward TOC Policy compliance. All other policy features discussed in this document represent details found in existing policies on the subject and a jurisdiction may want to consider them when adopting or implementing a policy, but nothing is required for TOC Policy compliance unless noted as a requirement in the “TOC Policy Requirements” callout box or the [TOC Policy Administrative Guidance](#).

### Elements of the Program

- Geographic scope of applicability
- Affordability requirements
- Incentives for qualified developments
- Exemptions from discretionary project-level approvals

### Program Design Considerations

Jurisdictions may want to consider the following:

**100% AFFORDABLE PROJECTS:** Providing a menu of benefits and incentives to 100% affordable projects that could include:

- streamlined review,
- potential zoning concessions such as reduced parking, open space or other amenities,
- increased density and flexibility on unit mix or unit size and
- other zoning controls that some affordable housing sources also monitor.

**PROGRAM AREA:** Implementing affordable housing overlay zones on a jurisdiction-wide basis and/or offering enhanced programs in high opportunity areas such as downtowns and the neighborhoods immediately surrounding transit (such as “station areas”). Jurisdictions can consider including Housing Element sites in affordable housing overlay zones as a mechanism to encourage development on community-identified sites for housing.

**DENSITY INCENTIVES:** Providing development incentives to encourage project sponsors to maximize affordable housing development,

especially in mixed use projects. Jurisdictions can expand on the State Density Bonus by:

- offering more density per percentage of affordable housing than allowed under State law;
- offering density benefits for moderate- or middle-income housing or other types of affordable housing the State law does not cover; or
- offering greater density for greater shares of affordability.

**ADDITIONAL INCENTIVES:** State Density Bonus Law requires jurisdictions to grant one to three incentives to offset costs and an unlimited number of concessions, as necessary to accommodate the additional density. Jurisdictions can offer greater benefits than the State Density Bonus Laws by offering additional incentives:

- offering a higher number of incentives;
- offering process improvements for projects, including ministerial approval and other streamlining; or
- offering fee waivers or concessions that are not available under the State Density Bonus Law.

**AFFORDABILITY REQUIREMENTS:** Applying a single set of benefits to every project that includes at least some minimum share of affordable units (e.g., 15%). Some jurisdictions instead choose to offer more benefits to projects that include a higher share of affordable units (e.g. 20%) or more deeply affordable units.



**TOC Policy Requirements:** To comply with the TOC Policy, the Affordable Housing Overlay Zone (AHOZ) must be available in all station areas. It must provide greater incentives than what is already offered under State law. These can be in the form of a density bonus that offsets greater affordability with residential density greater than under State law. They could also be concessions or incentives that provide more to qualifying projects than what is already available under State Density Bonus Law. Incentives and concessions must result in an actual and identifiable cost reduction for the project. They could include ministerial approval, expedited permit processing, or modifications to other planning code requirements, such as reduced parking requirements.

The TOC Policy requires that incentives are offered for projects with 15% affordable housing or higher. The policy's minimum affordability requirement must exceed any jurisdiction-wide inclusionary zoning requirements. The policy's affordability requirements must define affordable units as rental housing available to lower-income households earning 80% of AMI or less, and ownership housing to lower- and moderate-income households earning 120% of AMI or less. These restrictions must also ensure affordability for at least 55 years for rental housing and at least 45 years for ownership housing. Jurisdictions should require deeper levels of affordability where feasible or by offering additional incentives.

## Program Implementation, Administration and Enforcement

Affordable housing overlay zones are implemented via local ordinance. Ordinances may lay out the geographic scope of the overlay zones, affordability requirements, incentives and exemptions for qualified developments.

Jurisdictions can provide technical assistance to developers to ensure they understand the benefits of affordable housing overlay zones and how they work in conjunction with density bonus law and inclusionary zoning. They can clearly convey the incentives contained in AHOZs that help developers leverage lower development costs and increase the number of affordable homes they develop.

Jurisdictions may entrust property managers with the responsibility of annual income verification and providing explanations when individuals on the waitlist are not selected. Alternatively, jurisdictions may partner with a third-party administering agent, which can market units, ensure tenants are eligible and support/monitor property management companies. By working with a nonprofit or other third-party partner, jurisdiction staff will have more capacity to focus on other responsibilities. Jurisdictions can identify which tasks could be accomplished in-house, which tasks can be delegated to property managers, and which can be contracted to a third-party administering agent or nonprofit.

## Program Evaluation

To evaluate the effectiveness of affordable housing overlay zones, jurisdictions can analyze the number of units developed, levels of affordability, unit occupancy rates and tenant demographics. Jurisdictions can also assess the accessibility of the overlay zone in terms of transportation, amenities and job opportunities to fine-tune the AHOZ locations.

## Complementary Policies

**INCLUSIONARY ZONING:** While affordable housing overlay zones target specific areas for inclusionary housing by offering incentives, inclusionary zoning can mandate affordability requirements across broader geographic areas.

*This document is intended to provide general information and does not constitute legal advice. Additional facts, facts specific to a particular situation, or future developments may affect the subjects discussed in this document. Seek the advice of your jurisdiction's legal counsel before acting or relying upon this information. For specific questions regarding TOC compliance, please reach out to [TOCpolicy@bayareametro.gov](mailto:TOCpolicy@bayareametro.gov).*

## Other Resources

### EXAMPLES\*

[City of Menlo Park - Affordable Housing Overlay](#)

[City and County of San Francisco - HOME-SF](#)

### OTHER RESOURCES

[Public Advocates - Affordable Housing Overlay Zones Fact Sheet](#)

[Home for All - Affordable Housing Overlay Zones](#)

[Metropolitan Transportation Commission - Production Policy 3: Affordable Housing Overlay Zones](#)

*\*Note that examples have not been vetted for full TOC Compliance.*