

## MEMORANDUM

To: Hamilton Select Board  
From: Marnie Crouch, Chair, Hamilton Planning Board  
Re: Proposed Amendments to Inclusionary Housing Bylaw, Section 8.3, of the Hamilton Zoning Bylaw  
Date: December 18, 2024

The Affordable Housing Trust recommended amendments to the Inclusionary Housing provisions of the Hamilton Zoning Bylaw following the need for opinion letters from Town Counsel regarding interpretation of Section 8.3.3 and Section 8.3.4.3. In consultation with Town Counsel and pursuant to M.G.L. ch. 40A, §5, the Planning Board is initiating the following amendments to the Inclusionary Housing and Definitions provisions of the Hamilton Zoning Bylaw and requests that the Select Board include these proposed amendments on the Warrant for the annual 2025 Town Meeting. In accordance with M.G.L. ch. 40A, §5, the Planning Board requests the Select Board refer the proposed amendments back to the Planning Board for public hearing and followed by a report and recommendation to Town Meeting. Below is a summary of the proposed amendments. The text of existing Zoning Bylaw Sections 8.3 and 11.0 with the proposed changes follows the summary.

### **I. SUMMARY OF AMENDMENTS TO SECTION 8.3**

Section 8.3.1. Amend by making stylistic changes and adding a reference to the Executive Office of Housing and Livable Communities (EOHLC).

Section 8.3.2. Amend by making the second paragraph a new section (which will become Section 8.3.3) and adding the caption “Segmentation Prohibited,” as well as increasing the duration of common ownership from two to three years and making stylistic changes.

Section 8.3.3. Amend by renumbering to Section 8.3.4 and adding an example of how the number of Affordable Housing Units is calculated as follows:

For example, in the case of a proposed 50-unit development project subject to this Section, the project is required to provide six (6) Affordable Housing Units, namely one each for the 10<sup>th</sup>, 17<sup>th</sup>, 24<sup>th</sup>, 31<sup>st</sup> 38<sup>th</sup> and 45<sup>th</sup> units, for a total of six (6) Affordable Housing Units included in the total of 50 units in the development project.

Section 8.3.4. Amend by renumbering to Section 8.3.5, making a stylistic change, and rewording subsection 3 (which will become Section 8.3.5.3) to read as follows:

An equivalent fee in lieu of units for each required unit shall be 3 times the Area Median Income (AMI) as determined by the US Department of Housing and Urban Development (HUD) for the Boston-Cambridge-Quincy, MA-NH Metro FMR Area that includes Hamilton and for the most recent available data year. AMI shall be used and the equivalent fee in lieu calculated in accordance with this Section regardless of unit size or the number of persons likely to occupy each required unit.

Section 8.3.5. Amend by renumbering to Section 8.3.6 and further amend by providing the Planning Board may “promulgate Inclusionary Housing rules and Regulations” so that the sentence reads as follows:

The Planning Board shall be charged with administering this Section and may promulgate Inclusionary Housing Rules and Regulations, including but not limited to submission requirements and procedures, application and review fees, minimum requirements for a marketing plan and documentation required by the Town to qualify the Affordable Housing Units for listing on the Chapter 40B Subsidized Housing Inventory.

Further amend by striking out Planning Board and replacing it with EOHLC or its successor in subsection 2 (which will be Section 8.3.6.2) and by eliminating the reference in subsection 4 (which will be Section 8.3.6.4) to the DHCD and replacing it with a reference to the EOHLC or its successor.

Section 8.3.6. Amend by renumbering to Section 8.3.7.

Section 8.3.7. Amend by renumbering to 8.3.8.

Section 8.3.8. Amend by renumbering to 8.3.9 and add subsection 4 (which will be Section 8.3.9.4) as follows:

Further amend by adding a new subsection 4 (which will become 8.3.5.4) as follows:

4. An Affordable Housing Unit approved under this bylaw shall be deed restricted as Affordable Housing Unit(s) in perpetuity or for so long as allowed by law.

## **II. PROPOSED WARRANT ARTICLE WITH BYLAW AMENDMENTS**

To see if the Town will amend the Town of Hamilton Zoning Bylaw by making the changes to Section 8.3 Inclusionary Housing and Section 11.0 Definitions as set forth below with language to be deleted in strikethrough and language to be added in bold and underlined, or take any action relative thereto.

### **8.3 INCLUSIONARY HOUSING.**

8.3.1 Purpose. The purpose of the Inclusionary Housing Bylaw is to:

1. Produce high-quality Affordable Housing Units ~~to~~ **for** Low- or Moderate-Income Households;
2. Encourage more housing choices in Hamilton;
3. Promote geographic distribution of Affordable Housing Units throughout the Town and avoid over-concentration; and
4. Assist the Town in creating units eligible, **through means other than a Comprehensive Permit,** for the Chapter 40B Subsidized Housing Inventory **managed by the Executive Office**

**of Housing and Livable Communities (EOHLC) or its successor.** ~~through means other than a comprehensive permit.~~

8.3.2 Applicability. This Section applies to all developments involving the creation of ten (10) or more Dwelling units or ten (10) or more lots for residential use.

**8.3.3 Segmentation Prohibited.** Developments may not be segmented to avoid compliance with this Section. Divisions of land that would cumulatively result in an increase by ten (10) or more residential ~~L~~lots or ~~d~~Dwelling units above the number existing on any parcel or any contiguous parcels in common ownership in the ~~twenty-four (24)~~ **thirty-six (36)** months prior to any application for development under this Bylaw or the Subdivision Control Law are subject to this Section. For purposes of this Section, a division of land shall mean any division of land subject to G.L. c. 41, s. ~~§§~~81K-81GG.

8.3.34 Mandatory Provision of Affordable Housing Units. In any development subject to this Section, the tenth dwelling unit and every seventh unit thereafter shall be an Affordable Housing Unit. Nothing in this Section shall preclude a developer from providing more Affordable Housing Units than are required hereunder.

**For example, in the case of a proposed 50-unit development project subject to this Section, the project is required to provide six (6) Affordable Housing Units, namely one each for the 10<sup>th</sup>, 17<sup>th</sup>, 24<sup>th</sup>, 31<sup>st</sup> 38<sup>th</sup> and 45<sup>th</sup> units, for a total of six (6) Affordable Housing Units included in the total of 50 units in the development project.**

8.3.45 Methods of Providing Affordable Housing Units. **In addition to providing on-site Affordable Housing Units,** ~~the~~ Planning Board may approve one (1) or more of the following methods, or any combination thereof, for the provision of Affordable Housing Units:

1. The Affordable Housing Units may be constructed or rehabilitated on a locus different from that of the development. The Planning Board may allow a developer of non-rental dwelling units to develop, construct or otherwise provide Affordable Housing Units reasonably equivalent to those required by this Section in an off-site location in the Town of Hamilton. All requirements that apply to on-site provision of Affordable Housing Units shall apply to provision of off-site Affordable Housing Units. In addition, the location of the off-site Affordable Housing Units shall be approved by the Planning Board as an integral element of the development review and approval process.
2. A donation of land may be made in lieu of providing Affordable Housing Units. An applicant may offer, and the Planning Board may accept, subject to approval of the Board of Selectmen, donations of land in fee simple, on-or off-site, that the Planning Board determines are suitable for the construction of an equivalent number of Affordable Housing Units. Land donated for this purpose shall be subject to a restriction assuring its use for affordable housing. Prior to accepting land as satisfaction of the requirements of this Section, the Planning Board may require the applicant to submit an appraisal or other data relevant to the determination of suitability for an equivalent number of Affordable Housing Units.

3. An equivalent fee in lieu of units for each required unit shall be 3 times the Area Median Income (AMI) as determined by HUD ~~(the US Department of Housing and Urban Development (HUD) for the Boston-Cambridge-Quincy, MA-NH Metro FMR Area that income limits which includes Hamilton~~ **and for the most recent available data year. AMI shall be used and the equivalent fee in lieu calculated in accordance with this Section regardless of unit size or the number of persons likely to occupy each required unit.**

8.3.56 General Provisions. The Planning Board shall be charged with administering this Section and shall ~~may~~ promulgate Inclusionary Housing Rules and Regulations, including but not limited to submission requirements and procedures, application and review fees, minimum requirements for a marketing plan, and documentation required by the Town to qualify the Affordable Housing Units for listing on the Chapter 40B Subsidized Housing Inventory.

1. Affordable Housing Units shall be dispersed throughout the Building(s) in a development and shall be comparable to market housing units in terms of location, quality and character, room size, bedroom distribution, and external appearance.
2. The selection of qualified purchasers or qualified renters shall be carried out under a marketing plan approved by the ~~Planning Board~~ **EOHLC or its successor** and shall comply with Local Initiative Program guidelines. The marketing plan must describe how the applicant will accommodate local preference requirements, if any, established by the Board of Selectmen.
3. Developers may sell Affordable Housing Units to the Town of Hamilton, the Hamilton Housing Authority, or to any non-profit housing development organization that serves the Town of Hamilton, in order that such entity may carry out the steps needed to market the Affordable Housing Units and manage the choice of buyers.
4. Developers shall be responsible for preparing applications and other documentation required by the ~~Department of Housing and Community Development (DHCD)~~ **EOHLC or its successor** to assure that the Affordable Housing Units are eligible for listing on the Chapter 40B Subsidized Housing Inventory.

8.3.67 Timing of Construction. Unless a different schedule is approved by the Planning Board, Affordable Housing Units shall be provided in proportion to the development of market-rate units, but in no event shall the construction of Affordable Housing Units, the payment of fees in lieu of constructing Affordable Housing Units, or the provision of off-site Affordable Housing Units be delayed beyond the schedule below. Fractions shall be rounded to the nearest whole number.

<b>% Building Permits Issued for Market Rate Units</b>	<b>% Affordable Units (Building Permits, Fees, Off-Site Units, or Land, as Applicable)</b>
Up to 29%	None required
30%	At least 10%
50%	At least 30%

70%	At least 50%
85%	At least 70%
90%	100%

**8.3.78 Certificate of Occupancy.** A Certificate of Occupancy for an Affordable Housing Unit shall not be issued until the applicant submits evidence to the Building Commissioner that an Affordable Housing Restriction or a regulatory agreement for the project has been approved by the Planning Board.

**8.3.89 Preservation of Affordability; Restrictions on Resale.** An Affordable Housing Unit created in accordance with this Section shall be subject to an Affordable Housing Restriction or regulatory agreement that contains limitations on use, resale and rents. The Affordable Housing Restriction or regulatory agreement shall meet the requirements of the Town and the Local Initiative Program, and shall be in force for the maximum period allowed by law.

1. The affordable housing restriction or regulatory agreement shall be enforceable under the applicable provisions of G.L. c. 184, as amended.

2. The Planning Board shall require that the applicant comply with the mandatory provision of Affordable Housing Units and accompanying restrictions on affordability, including the execution of the Affordable Housing Restriction or regulatory agreement.

3. All documents necessary to ensure compliance with this Section shall be subject to the review and approval of the Planning Board and, as applicable, Town Counsel. Such documents shall be executed prior to and as a condition of the issuance of any Certificate of Occupancy.

**4. An Affordable Housing Unit approved under this bylaw shall be deed restricted as Affordable Housing Unit(s) in perpetuity or for so long as allowed by law.**

**III. SECTION 11.0 DEFINITIONS**

1. In the term Inclusionary Housing amend the reference to Section 8.7 as follows:

For purposes of Section ~~8.7~~**8.3**, the following terms shall have the following meanings: ...

2. Move the term and definition of “**Area Median Income (AMI):** The midpoint household gross income for a specified geographic area determined by the US Department of Housing and Urban Development (HUD) annually.” to be ordered after the definition of “Affordable Housing Restriction”.