



## FREQUENTLY ASKED QUESTIONS

*Hamilton residents will be asked to consider implementing new zoning at a Special Town Meeting on July 14, 2025 that will rezone the Town Center and bring the Town into conformance with the State's MBTA Communities Act, G.L. c. 40A, § 3A, requirements discussed below. Although the new zoning is oriented to meet the state's multi-family housing requirement, the proposed zoning also includes many additional new requirements regulating the form, siting, intensity of development, accessibility, and architectural design of new development to ensure it is consistent with historical building patterns in Hamilton's Town Center area.*

*This document is designed to clarify common questions related to this effort.*

### I. SECTION 3A ZONING

- **IS THE ADOPTION OF MBTA COMMUNITIES ACT, G.L. C. 40A, §3A, COMPLIANT ZONING MANDATORY?**

**YES.** The Supreme Judicial Court in Attorney General v. Town of Milton, ruled that G.L. c. 40A, §3A is mandatory; that it is constitutional and enforceable by the Attorney General.

- **WHAT DOES §3A REQUIRE?**

**AS OF RIGHT MULTI-FAMILY HOUSING WITHIN .5 MILES OF A COMMUTER RAIL STATION AT A DENSITY OF 15 UNITS PER ACRE.** Specifically, it requires the following:

[A] zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.

- **WHAT DO THE REGULATIONS ISSUED BY THE EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES (EOHLC) REQUIRE FOR HAMILTON?**

**ZONING FOR 731 AS OF RIGHT MULTI-FAMILY UNITS, 20% OF WHICH MUST BE WITHIN .5 MILES OF THE MBTA COMMUTER RAIL STATION, AND A MINIMUM LAND AREA OF 49 ACRES.** It is critical to recognize that neither the §3A statute nor the Regulations require actual construction of any units or infrastructure. The Regulations at 760 CMR §72.05(1)(d)(2) state “Nothing in M.G.L. c, 40A, §3A or 760 CMR 72.00 should be interpreted as a mandate to construct a specified number of housing units.” Additionally, the Regulations at 760 CMR §72.05(1)(e)(1) state “Compliance with M.G.L. c, 40A, §3A does not require a municipality to install new water or wastewater infrastructure, or add to the capacity of existing infrastructure to accommodate future Multi-family housing production within the Multi-family zoning district.”

- **ARE THE REGULATIONS ISSUED BY EOHLC THAT IMPLEMENT §3A OBLIGATORY FOR MBTA COMMUNITIES LIKE HAMILTON?**

**YES, IF THE TOWN WISHES TO AVOID PENALTIES SET FORTH IN THE STATUTE AND REGULATIONS AND THE RISK OF AN ENFORCEMENT ACTION BY THE ATTORNEY GENERAL.** The Supreme Judicial Court ruled 1) that the Legislature did not delegate fundamental policy decisions to the EOHLC, 2) that it properly delegated implementation OF §3A to the EOHLC, and 3) that §3A provided adequate direction to the EOHLC for implementation; and provided safeguards so abuses of discretion can be controlled. Thus, until such time as a court of competent jurisdiction rules otherwise, the Regulations are enforceable, enabling forms of funding to be withheld, and permitting the Attorney General to enforce the statute.

- **WHAT ARE THE PENALTIES IF HAMILTON DOES NOT ADOPT §3A COMPLIANT ZONING?**

**LOSS OF ACCESS TO FUNDING.** Hamilton will lose four sources of funding set forth in G.L. c. 40A, §3A and its compliance with §3A will be taken into consideration with respect to 13 sources of discretionary funding set forth in the Regulations. Specifically. §3A states that MBTA communities who are in violation of the law will be ineligible for funds from the following State funds: 1) The Housing Choice Initiative; 2) the Local Capital Projects Fund, 3) the MassWorks infrastructure program; and 4) the Housing Works infrastructure program. In addition, the Regulations require that the following discretionary grant programs will take compliance with the law into account when making grant award recommendations:

- Community Planning Grants
- Massachusetts Downtown Initiative
- Urban Agenda
- Rural and Small Town Development Fund
- Brownfields Redevelopment Fund
- Site Readiness Program
- Underutilized Properties Program
- Collaborative Workspace Program
- Real Estate Services Technical Assistance
- Commonwealth Places Program

Land Use Planning Grants  
Local Acquisitions for Natural Diversity Grants  
Municipal Vulnerability Preparedness and Planning and Project Grants.

- **WHAT DOES “AS OF RIGHT” MEAN?**

**A USE THAT IS PERMITTED AS OF RIGHT MUST BE APPROVED.** An as of right use, such as construction of a single-family home, does not require the need for a special permit, variance, or any other discretionary review. Although multi-family housing under §3A is as of right, conditions can be imposed if necessary, and there are still many rules that limit what can be built.

- **ARE THERE MEANINGFUL CONSTRAINTS ON AS OF RIGHT MULTI-FAMILY DEVELOPMENT?**

**YES.** Most land uses permitted by right – including multi-family housing and commercial development – will continue to be subject to Site Plan Review by the Planning Board. Abutting property owners will be notified if an application is filed and have an opportunity to provide their comments. The Planning Board will conduct a review to ensure the application meets the Town’s zoning requirements and can impose reasonable conditions on such applications if necessary to bring them in conformance with Town requirements. Site Plan Review differs from Special Permit applications in that the review is non-discretionary; however, land use applications are still subject to a public review process. Additionally, an applicant must get a building permit from the Building Inspector, necessitating compliance with all building codes, and rules about septic systems, availability of utilities, building near wetlands, building in water resource protection districts. In short, rules to protect natural resources will apply. As of right or “by right” does not mean that an applicant can build whatever it wants. Indeed, the Regulations list seven (7) categories of excluded land on which multi-family housing cannot be built, including wetland resource areas, together with a buffer zone.

- **DOES HAMILTON PERMIT MULTI-FAMILY HOUSING ‘BY RIGHT’ TODAY?**

**NO, EXCEPT IN THE BUSINESS DISTRICT UNDER CERTAIN CIRCUMSTANCES.** Hamilton does not permit multi-family housing by right as a stand-alone use, except in the Business District. The Town permits multi-family housing as of right in the Business District today if it is part of a Mixed-Use Development. Residential units must be located on the second floor and above of a building. The Business District encompasses approximately 26 acres in Hamilton’s Town Center. The zoning for Mixed-Use Developments is very flexible and does not limit the density of housing in such projects apart from requiring that a building not exceed 75% coverage of the lot.

## **II. HAMILTON’S PROPOSED TOWN CENTER ZONING**

- **HOW IS HAMILTON’S PROPOSED TOWN CENTER ZONING DIFFERENT FROM §3A ZONING IN OTHER TOWNS?**

**HAMILTON'S §3A ZONING INCLUDES A FORM-BASED APPROACH.** Hamilton's Town Center zoning regulations adopt a form-based approach to new construction emphasizing scale and relationships with respect to other buildings and the streetscape and public sphere.

- **HOW WAS HAMILTON'S TOWN CENTER ZONING DEVELOPED?**

**THROUGH PUBLIC ENGAGEMENT INCLUDING THREE BASIC STEPS:**

**VISIONING, ANALYSIS, AND CODE WRITING.** The Town Center Zoning was developed by the Town with the assistance of Utile following several public engagement sessions and input from a citizens' Advisory Board.

- **WHY IS THE TOWN CENTER ZONING DIVIDED INTO TWO ARTICLES?**

**BECAUSE OF REQUIREMENTS OF G.L. c. 40A, §5.** Section 5 provides for a majority vote for §3A zoning and a 2/3 vote for amendments to the Zoning Bylaws. Section 5 governs the process by which the Town may amend its Zoning Bylaw. In most instances, a two-thirds vote of Town Meeting is required to approve a zoning amendment. One exception is that a simple majority vote of Town Meeting is required to amend the Zoning Bylaw to allow multi-family housing as of right in an eligible location. In addition, Section 5 provides that "[a]ny amendment that requires a simple majority vote shall not be combined with an amendment that requires a two-thirds majority vote" and that the effective date of any Zoning Bylaw amendment is the date on which it is voted upon by Town Meeting.

- **WHAT DO THE TWO ARTICLES ADDRESS?**

**ARTICLE I CONTAINS THE §3A COMPLIANT DISTRICTS AND REQUIRES ONLY A SIMPLE MAJORITY TO PASS.** Article I includes the addition of three new Town Center Sub-Districts: 1) the Bay Road Mixed-Use Sub-District, 2) Willow Street Mixed-Use Sub-District, and 3) Downtown Residential Sub-District. These Sub-Districts would replace the existing base zoning - either Business or R-1A - on the affected parcels. A new §3A Multi-Family Overlay District, to encompass two parcels on Asbury Street outside of the Town Center, also is proposed. In these Sub-Districts and within the Overlay District, multi-family housing would be permitted as of right. Because state law does not allow other land uses to be passed by a simple majority, other land uses are not addressed under Article I and are reserved for Article II. Article I also includes site and dimensional requirements and associated regulatory language for the new districts and, if passed, would bring the Town into compliance with § 3A zoning for multi-family housing.

**ARTICLE II CONTAINS THE BAY ROAD CIVIC AND DEPOT SQUARE SUB-DISTRICTS AND REQUIRES A 2/3 VOTE TO PASS.** Article II includes all other provisions of the proposed Town Center zoning, including new Sub-Districts which would not permit multi-family housing by right. This includes the proposed new Depot Square Sub-District and Bay Road Civic Sub-District which will replace the existing base zoning – either Business or R-1A – on the affected parcels. The existing Business District and Willow Street Overlay Districts would

be eliminated as they would be superseded by the new zoning. Article II also includes provisions related to all proposed land uses in the Town Center (apart from multi-family housing addressed in Article I), and includes additional regulatory language.

- **HOW ARE ARTICLE I AND ARTICLE II RELATED?**

**ARTICLE II ASSUMES THAT ARTICLE I HAS BEEN ADOPTED AND TREATS THE AMENDMENTS PROPOSED IN ARTICLE I AS ALREADY BEING IN PLACE.**

Although, separated on the Town Meeting Warrant, the Town Center zoning was crafted as part of a single effort and the two articles are designed to be comprehensive and synergistic to both accomplish the Town's long-term goals related to the Town Center and to meet the requirements of the state's multi-family housing mandate.

- **HOW WILL THE TOWN CENTER ZONING DIFFER FROM THE EXISTING ZONING IN PLACE IN THE DOWNTOWN?**

**IF BOTH ARTICLES PASS, THE BUSINESS DISTRICT AND THE WILLOW STREET OVERLAY DISTRICT WILL BE ELIMINATED AND REPLACED WITH FIVE NEW SUB-DISTRICTS AND REQUIREMENTS RELATED TO FORM AND SITING.** The §3A compliant zoning districts in the Town Center, including the Bay Road Mixed-Use, Willow Street Mixed-Use, and the Downtown Residential Sub-Districts, make up a total of 30 acres which is a slightly larger than the existing Business District at 26 acres. Additionally, in these districts, multi-family housing as a stand-alone use will become a permitted use, as of right, which is not the case in the Business District today where multi-family housing is only permitted in mixed-use developments.

The new zoning Sub-Districts include much more expansive requirements related to the form, siting, accessibility, and architectural design of new development than is required under Hamilton's existing Business District zoning.

### **III. FEATURES OF THE TOWN CENTER ZONING THAT WILL PROTECT THE TOWN'S EXISTING CHARACTER WHILE ACHIEVING §3A COMPLIANCE**

- **IS THE "DENSITY" IN THE PROPOSED §3A COMPLIANT SUB-DISTRICTS SUBSTANTIALLY DIFFERENT THAN WHAT EXISTS NOW?**

**NO.** Using density as defined by dwelling units per acre, there are many existing parcels in the proposed Downtown Residential and Willow Street Mixed Use Sub-Districts with similar density. In the Bay Road Mixed Use Sub-District, the density allowed using the existing zoning *exceeds* the proposed density.

- **HOW IS THE "INTENSITY" OF POTENTIAL NEW CONSTRUCTION REGULATED UNDER ARTICLE I WITH RESPECT TO THE THREE §3A COMPLIANT SUB-DISTRICTS?**

**SPECIFIC REGULATIONS APPLY SO THAT THE INTENSITY OF POTENTIAL NEW DEVELOPMENT IS COMPATIBLE WITH THE EXISTING TOWN CHARACTER.**

Intensity as a unit of square footage and building size is controlled in the new zoning regulations by several factors, including maximum height (stories), maximum building footprint, open space, and Floor Area Ratio of maximum building square footage per parcel size. A snap shot of those regulations are set forth in Table I: Table of Town Center District Site Dimensional Standards and Table 2: Table of Town Center District Building Dimensional Standards that are part of Appendix A to Article I. The Dimensional Standards, among other things, govern Building Footprint and Floor Area Ratio. The Site Standards, among other things, govern open space requirements, setbacks, and parking.

- **WHAT ARE EXAMPLES OF SAFEGUARDS IN TOWN CENTER ZONING LIMITING THE INTENSITY OF DEVELOPMENT?**

**MINIMUM OPEN SPACE, MAXIMUM FOOTPRINT, AND FLOOR AREA RATIO REQUIREMENTS.** In the existing zoning, there are virtually no safeguards in place limiting the intensity of development on a parcel apart from a requirement that a building not exceed 75% of the land area of a parcel. Because the Business District permits buildings up to three-stories by right, this means that a building up to 98,010 square-feet could be constructed on a one-acre parcel, and the Town would have no recourse to deny such an application for its size. The proposed zoning includes minimum open space and Floor Area Ratio requirements that ensure development will not overwhelm a parcel and be out of place with its surroundings. For example, the total amount of building in the three Town Center Sub-Districts permitted on a one-acre parcel would be between 17,800 and 18,300 square-feet depending on the Sub-District, an order of magnitude *smaller* than what is permitted under today's requirements. Additionally, the proposed zoning includes maximum footprints of buildings, limiting the size of individual buildings, representing a new requirement than what is in place today. This requirement will limit a single building to no larger than 9,000 square-feet in two of the Sub-Districts and between 15,000 to 20,000 square-feet in the third.

- **WILL THE TOWN CENTER ZONING IMPROVE THE FUNCTIONALITY OF THE TOWN CENTER?**

**YES.** The Depot Square Sub-District ties the existing Shoppes at Hamilton Crossing with Railroad Avenue. Parking and setback requirements are intended to reduce curb cuts and remove parking from the front of buildings, thereby promoting walkability. Additionally, standards relating to building materials, landscaping, and lighting will promote more inviting public spaces which in turn will promote more activity in the Town Center.

#### **IV. KEY ASPECTS OF THE TOWN CENTER ZONING**

- **DO I HAVE TO IMMEDIATELY MAKE MY PROPERTY CONFORM TO THE NEW ZONING AND, IF NOT, WHEN AND UNDER WHAT CIRCUMSTANCES WOULD I HAVE TO MAKE MY PROPERTY CONFORM TO THE TOWN CENTER ZONING?**

**NO.** Nonconforming uses and structures may continue in accordance with Section 5.1 of the Zoning Bylaw. Regulations in the Town Center zoning provide for circumstances such as repair and maintenance, reconstruction after catastrophe or demolition, and other modifications or alterations.

- **IS IT POSSIBLE THAT THE NEW ZONING WILL LEAD TO A NET INCREASE OF 731 NEW HOUSING UNITS IN HAMILTON?**

**IT IS UNLIKELY TO LEAD TO A NET INCREASE OF 731 UNITS.** Section 3A requirements mandate that municipalities develop zoning that can accommodate a minimum unit capacity on the land that is part of the eligible zoning. In Hamilton's case, this figure is 731 housing units. Unit capacity, however, does not consider or account for existing uses on the parcels. In Hamilton's case, the Town is proposing to rezone areas that are already densely settled. In the Town Center, 109 housing units are located on the parcels proposed to be re-zoned to meet the §3A requirements. In the area proposed for the §3A compliant Overlay District on Asbury Street, 68 housing units are existing or have previously been approved. Use of the State's Compliance Model in EOHLC's Regulations shows that a maximum of 732 housing units could be developed on the land proposed for re-zoning; however, this does not include the 177 housing units already in place or approved on those parcels. Moreover, there are several conditions in place in Hamilton which will likely reduce the likelihood of a large number of multi-family residential developments in Hamilton, most notably the lack of a municipal sewer system.

- **IS IT LIKELY THAT THE NEW ZONING, IF APPROVED, WILL LEAD TO A BUILDING BOOM OF MULTI-FAMILY HOUSING IN HAMILTON?**

**NO.** While it is impossible to make entirely accurate forecasts of future circumstances, there are several conditions in place that make the Town less well-suited for multi-family development than other areas. Notably, Hamilton does not have municipal sewer system to serve new uses. This means that new developments will need to include construction of on-site systems to accommodate septage needs. Because building new systems represents a greater expense than simply connecting into existing sewer systems and requires additional land area to accommodate those systems, the density of development likely will be significantly reduced. Multi-family development tends to congregate in areas with more developed infrastructure including municipal sewer facilities.

- **HOW MANY ONE-ACRE PARCELS EXIST IN THE TOWN CENTER?**

**FIVE.** Hamilton's Town Center is made up almost entirely of very small land parcels. In fact, there are just five parcels that are one acre or larger and no parcels larger than two acres. Small parcels are less well suited for more intensive land uses like multi-family housing because the number of units produced will be much smaller. Although it is possible for a potential developer to acquire contiguous parcels and merge them into a single parcel for development purposes, this represents much higher up-front expense and can take much more time for negotiations and acquisitions.

- **CAN THE EHOHC JUST REJECT OUR TOWN CENTER ZONING BECAUSE IT HAS PROVISIONS IN ADDITION TO THOSE REQUIRED UNDER §3A AND THE REGULATIONS?**

**NO.** Article I if adopted complies with all the EOHLC Regulations.