

APRIL 13, 2020
JOINT PUBLIC HEARING OF THE
SALEM CITY COUNCIL AND PLANNING BOARD

A Continuation of the Joint Public Hearing of the Salem City Council and the Planning Board was held remotely on Monday, April 13, 2020 at 7:00 P.M. for the purpose of discussing the following three (3) separate Zoning Ordinance Amendments relative to Accessory Dwelling Units and Inclusionary Zoning pursuant to Chapter 40A, Section 5, of the Massachusetts General Laws. The purpose of the public hearing is to provide interested parties with an opportunity to comment on the proposed three (3) separate Zoning Amendments.

#74 - ZONING ORDINANCE RELATIVE TO ACCESSORY DWELLING UNITS – SEC. 3.1 – TABLE OF PRINCIPAL AND ACCESSORY REGULATIONS (Full text available at end of agenda)

#75 – ZONING ORDINANCE RELATIVE TO ACCESSORY DWELLING UNITS – SEC. 10 – DEFINITIONS AND SEC. 3.2.8 – ACCESSORY DWELLING UNITS (full text can be found at end of minutes)

#142 – ZONING ORDINANCE RELATIVE TO INCLUSIONARY HOUSING (full text can be found at end of minutes)

SUMMARY OF AMENDMENTS

1. An Ordinance Amending Zoning Section 3.1 Table of Principal and Accessory Use Regulations of the City of Salem Zoning Ordinance to delete the “Accessory Living Area” Accessory Use in its entirety and inserting an “Accessory Dwelling Unit” Accessory Use in the RC, R1, R2, and R3 zoning districts.
2. An Ordinance amending the Salem Zoning Ordinance relative to accessory dwelling units in the following three ways:
 - a. Amending Zoning Ordinance Section 10 Definitions by deleting the definition of “Accessory Living Area” in its entirety and inserting the definition of “Accessory Dwelling Unit” in its place.
 - b. Amending Zoning Ordinance Section 3.2.4 Accessory Buildings and Structures by deleting paragraphs numbered 4 and 5 in their entirety and replacing them.
 - c. Amending Zoning Ordinance Section 3.2.8 Accessory Dwelling Areas by deleting the existing text in its entirety and replacing it with a new ordinance. The existing text requires accessory units to be used solely by a family member or caregiver and requires a special permit. The purpose of the proposed new ordinance is to add to the supply of rental housing to meet

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the needs of smaller households, to encourage efficient use of the city's housing supply while preserving the character of city neighborhoods, to preserve family bonds, to allow the owner of an existing or proposed detached dwelling to construct one additional dwelling unit that is incidental and subordinate to the principal dwelling, and to increase the supply and diversity of rental units to the housing stock in response to demographic changes such as smaller households and older households. The ordinance allows for an accessory dwelling unit within the same property as a principal dwelling by right provided certain requirements are met, requires the property owner to reside on site, and removes the tenant restrictions of only a family member or caregiver. The Building Inspector shall administer and enforce the provisions of this section unless a special permit is required, then the Zoning Board of Appeals will be the Special Permit Granting Authority. When a waiver is required, a Building Permit shall not be issued until a Special Permit has been granted and duly recorded. The ordinance provides procedures, application process, requirements for accessory dwelling units, Special Permits, and termination of use.

3. An Ordinance amending the Salem Zoning Ordinance by adding a new Section 5.4 Inclusionary Housing and amending Section 10 Definitions by adding definitions related to the Inclusionary Housing ordinance. The purpose of the proposed new ordinance is to expand the City of Salem's housing stock, especially its Affordable Housing Units; to leverage market-rate housing production towards the production of Affordable Housing Units; to provide for housing choices for households of all incomes, ages, and sizes; to increase the production of Affordable Housing Units to meet employment needs; and to establish standards and guidelines in order to implement the foregoing. The proposed ordinance applies to subdivisions or developments creating six (6) or more dwelling units and requires applicants to contribute to the local stock of Affordable Housing units, so that ten (10) percent of the dwelling units are affordable to households with incomes at or below sixty (60) percent of the Area Median Income (AMI) and that these affordability restrictions are in force in perpetuity or for the maximum period allowed by law. The purchase prices or rents shall adhere to limits determined by the U.S. Department of Housing and Urban Development (HUD) applicable to the City of Salem, and shall comply with the DHCD Local Initiative Program regulations. Developments subject to Section 5.4 Inclusionary Housing, with the exception of those obtaining a Special Permit pursuant to Section 5.4.3.2, may incorporate the following: A by right density bonus allowing an increase of 25% of the total number of units that would normally be permitted in the applicable zoning district, an increase of one story provided it does not exceed maximum height and/or a reduction in setback requirements by a Special Permit granted by the Planning

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Board, and a reduction in the number of required parking spaces by Special Permit granted by the Planning Board. In the event that an adaptive reuse project in the

B5 zoning district would not be feasible with the Affordable unit requirements, these requirements may be met by a Special Permit from the Planning Board that would allow tiered affordability levels of the required Affordable units up to 80 percent of the area median income if all criteria of Section 5.4.3(2) are met. This Ordinance Amendment includes section 5.4.1 through 5.4.9 outlining respectively, Purpose and Intent, Applicability, Mandatory Provision of Affordable Units, Density and Parking, Provisions Applicable to Affordable Housing Units, Resident Selection and Marketing Plan for Affordable Units, Preservation of Affordability, Conflict with Other Sections, and Severability.

Notice of this hearing was posted on Thursday, April 7, 2020 at 4:42 P.M. and advertised in the Salem News on March 16, 2020 and March 23, 2020

Councillor Robert McCarthy presiding.

All City Council Members Present.

All Planning Board Members Present with the exception of Bill Griset

Others Present: Mayor Kimberley Driscoll, Mason Wells, Senior Planner, Amanda Chiancola, Senior Planner, Tom Daniel, Director, Planning Department Maureen Fisher, Assistant City Clerk

Councilor Dibble motions to continue the meeting to May 18, 2020 given the state of emergency. He lists the same reasons presented at the last meeting: Some members of the public have not been able to weigh in via zoom platform, others not at all. ADU Ordinance may only yield 5-6 units/year, may take single family neighborhoods and make them 2 family. Developers will take advantage, Serious, permanent zoning change. Inclusionary zoning not as controversial, that one is acceptable to move forward with now The motion is seconded by Councilor Flynn.

Councilor Turiel The Council and Planning Board went through this same drama for nearly 45 minutes at the last meeting. He understands the seriousness of the state of emergency, and that everyone has lots going on. However, many people in Salem are in a difficult state, however Councilors are not on furlough, not laid off, and are still doing the jobs they are paid to do for Salem. These matters are given to the Council, which is clearly acting within the law. The City Solicitor made that clear after being challenged. The matter was presented to the Council before COVID-19 became a crisis, in a judicious manner, more than 6 weeks ago. The Council has had plenty of time to read and review the material, so starting the meeting with a dramatic attempt to halt the Council's work is unnecessary.

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Council President McCarthy Councilor Dibble is entitled to motion, but feels putting off the discussion is unnecessary.

Councilor Dominguez echoes Councilor Dibble, expressing his need to focus on a more relevant topic that will help more people like inclusionary zoning.

Councilor Prosniewski Council is here now, and that the information should be provided to those who are here. There will probably not be a vote to pass anything tonight, and all matters will still be under discussion.

Council President McCarthy clarifies that a yes vote will continue the matter to the above date certain, while a no vote means the Council will continue tonight's discussion.

Councilor Dibble Yes

Councilor Dominguez Yes

Councilor Flynn Yes

Councilor Hapworth No

Councilor Madore No

Councilor Morsillo No

Councilor Prosniewski No

Councilor Riccardi No

Councilor Sargent Yes

Councilor Turiel No

Councilor McCarthy No

With 11 voting Councilors, the matter fails to carry, 7-4 against.

Council President McCarthy notes that people reached out with questions and concerns via email. Public comments have been sent to the Council that the Planning Board did not see yet, but they have been forwarded. Tom Daniel and staff have reviewed and incorporated suggested language changes.

Amanda Chiancola presents changes made to the ADU Ordinance: Outlines language changes, specific suggestions. Edits do not change intent of ordinance, just provide clarification: Recommending exception to setbacks b/c accessory structure such as a shed is allowed to be closer to the lot line than the primary structure. ADU Ordinance now specifically states that setback for ADU would be what is required of principal structure, even if principal does not comply. ADU must comply regardless. "Accessory Living Area" changed to "Accessory Dwelling Unit" (ADU), "Principal dwelling" now consistent throughout. Substantive changes previously occurred between submission last summer and now -overview of major changes is provided. ADU supplemental programs (tax reduction, loan program for owners) filed at same time as this Ordinance. Requires unit be affordable and the two supplemental programs cannot be used concurrently. Ex. if participating in loan program, homeowner is not eligible for tax incentive until loan is paid off, but this could be modified by the Council Mayor Driscoll adds that the ADU and Inclusionary Zoning (IZ) Ordinances are two separate matters for the Council to vote on.

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Councilor Turiel clarifies that the affordability provisions are in committee right now, and while they are not part of the public hearing, the Council must know what the language is.

Kirt Rieder asks about setbacks. Any ADU must conform to the underlying zoning setback, not that occupied by the principal dwelling, if that does not conform. It may be that the principal unit is not parallel to the lot, and may converge on adjacent property, but the ADU should not match it in that case but, fall under the underlying zoning.

Amanda Chiancola the language was changed to clarify this. The ADU setbacks must comply with what the Principal Dwelling unit would have to comply even if the principal dwelling unit does actually comply with the setback.

DJ Napolitano is in support of Ordinance; he hears that some councilors who are against it, and wonders about their claim that it is a “permanent change.” If zoning is permanent, why are we here discussing it? It is never permanent but is meant to change with times and will change as a City grows. That is why we are here and have Planning Staff. Councilors can’t claim in one breath that this will have a large impact on the City, that R1 zones will become R2, then say “why do it if it will only create 5 units annually?” These are two opposite ideas. As Council and Board, we must be able to walk and chew gum at the same time. When this is over, we must have appropriate policies in place so as to not leave most vulnerable residents and general residents in a bind.

Councilor Dominguez in favor of passing the ADU Ordinance but feels the Council must examine all sides of the issue, that there must be compromise and that all must be able to participate in the public hearing process. The democratic process must be preserved, and everyone should be heard.

Matt Smith agrees that the situation is unprecedented, but notes that, as last time, this platform provides a way for many to participate that could not otherwise, due to unmet needs such as childcare. Anyone can email comments or call in. Technology can be advantageous to allow people to participate; whether they choose to is another issue. Many Board members and Councilors are working from home and are more challenged but are still taking the time to participate in these meetings, so should respect other people’s time to be here. They may not otherwise be able to participate, and he asks that the Council please move on since it has been voted on.

Councilor Dibble agrees that the zoom platform should be used more, but states for the record that his voice has kicked in and out, been garbled, and he was disconnected.

Councilor Prosniowski asks about the dimensions of the ADU, which the Ordinance lists as being able to have a maximum height of 18 feet. He wonders about the footprint of an 800 square foot ADU and the distance it must be from the abutting property.

Council President McCarthy states that it would be approximately the size of an average two car garage, 20’ x 20’. Such a garage could reach 18’ tall if a unit was on

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top. Setback from a neighboring property depends on the zoning district. Front, rear and side yard setbacks for both neighbors apply. For example, if you have a 15' setback from your property line, your neighbor also has a 15' setback. Many buildings in Salem were built prior to zoning and do not comply. If someone is in R1 and has land available to build a standalone with proper setbacks, how do neighbors weigh in?

Amanda Chiancola if the proposed ADU complies with everything outlined in the zoning Ordinance and the builder is not requesting any waivers, then they can apply for a building permit as of right, with no special permit process needed. Neighbors do not have a hearing to weigh in. If they are asking for a waiver, there would be a public hearing process and neighbors would be notified.

Councilor Turiel comments that when the ADU Ordinance was originally before the Council, he thought it should be entirely within the special permit process. While he has since changed his mind for the most part, he outlines three scenarios: Using existing space within dwelling, to convert to ADU no special permit should be required. Use existing accessory structure such as carriage house, garage not changing character of lot and building a standalone ADU on a property perhaps should go through a special permit process, as it will result in significant visual change and may affect abutters.

Helen Sides an architect and Planning Board member, that she has been asked to design such things, and typically it is someone that asks, "What does it take to convert a garage to an apartment?" Even if the town allows this, the process is expensive and complicated. The ADU must tie into all City services and it is not a cost-effective thing to do. They are more likely to be a connected structure or within an existing house, and this is where the value will come from. Residents who have that amount of property and meet all those setbacks for a separate structure will be few and far between.

Councilor Flynn feels that people may not be aware that an Ordinance is already on the books allowing units for relatives and caregivers. He says that residents are concerned that R1 homes will become R2s and feels that allowing ADUs in the R1 zone should be removed. He wonders how many neighboring communities have the same type of ADU ordinance as what is proposed.

Amanda Chiancola does not have abutting town Ordinances in front of her but says there are 37 communities that allow for ADUs w/out tenant restriction, in the greater Boston area. Salem's Ordinance is unique in that we have by right and waiver options. Marblehead has that option; Salem has looked at best practices from many communities and modified them to make it best for Salem.

Councilor Flynn asked for this information.

Amanda Chiancola will send both the Council and Planning Board a letter with a link to a report referenced by Amy Dain, which outlines best practices, and lists not only those 37 communities but also others across Massachusetts, that have ADU ordinances.

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Councilor Madore says that Beverly and Swampscott allow ADUs by special permit. In Beverly, no units have been produced yet, but since the report was written in 2018, even if 2 or 3 units were produced, to be able to offer one to a homeless family, it would help them. Regardless of the number of units produced, it takes significant investment to produce one unit, however each will help someone who needs a home. She hears a

lot of the same questions and comments that both the Board and Council have discussed, in similar hearings that have been going on for more than a year. She hears, "the public doesn't get to speak/provide input." She asks that Councilors please minimize repeated comments and questions, in order to let the public speak. Some attendees have raised their hands and want to provide input.

Councilor Hapworth would like to move on to Inclusionary Zoning and feels the Council should let the public speak on the ADU Ordinance. As for neighboring towns, he notes that Portsmouth NH has ADU's. it has grown historically, responsibly, so many in Salem look there for a model of historic growth. Their ADU Ordinance is similar to what is proposed.

Councilor Turiel questions and clarifications have been answered/provided since the last meeting. He prefers to begin the process for Inclusionary Zoning, then open public comment and focus on that for the moment. Both matters will be kept open to allow everyone to process the information. Then, the Council will move into another session and get more work done, while hearing from people on both matters.

Council President McCarthy opens to public comment, saying it should be limited to commenting on the ADU Ordinance only at this time.

Public comment

- Steve Kaptantis, 23 Wisteria St., is concerned about the instructions given for how to use the "raise hand" feature. ADU comments: He is clear that this is about ADUs not affordable housing. He understands that if the ADU Ordinance is passed, another will follow, with incentives that will lead to affordable housing. If Salem is serious put affordable housing in the ADU ordinance, and subsidize ADUs. The City Council should not pass multiple Ordinances to ensure affordability.
- Nadine Hanscom, 10 Bay View Circle, is vehemently opposed to the ADU Ordinance. She feels very strongly that the new Ordinance will take away choices from homeowners who wish to live in single family homes, by allowing them to become two families. She berates the City Councilors, stating, "Your job is to run the City, not promote your own personal beliefs" and that "No one has asked for this change." She comments that no one she spoke to would rent to someone they didn't know. A Flipper she spoke with said "It would be great if the ADU passes, my adult daughter can live in the house, then I can make the downstairs an ADU and rent it."

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- Carole Carr 7 River St., echoes Nadine Hanscom and also wonders which neighboring communities have this and how it benefits Salem. She notes lost connections.
- Farwaz Abusharkh 12 Harrison Rd this meeting was listed as an “affordable housing public meeting” by the League of Women Voters, but this is deceptive. Councilors shouldn’t be sharing misinformation or typographical errors and should take care to be accurate on their personal pages. Please be clearer and explain to constituents what it is that you are sharing. Is concerned about internet/access issues and feels that these discussions can wait. Their choice to not come/not comment, but this format takes that choice away. Changing the zoning in many places, R1 and R2 alike, concerned that SF will become 2 family homes. 800 sf is 28.5 x 28 sf and 18’ high, is a whole building. For a developer this is feasible. They will not be making these units affordable. Developer does not have to live there, just put their address there. Make affordability component here, don’t have multiple Ordinances. This was voted down before but is before us again, deal with it. It should not pass this time. Same comments because it is the same Ordinance because they will not take no for an answer for the Mayor.
- Council President McCarthy says please limit comments to Chair, must go through him, if attacking mayor or individual Councilors or planning board he will be muted. Don’t make it personal.
- Mr Abushaskh says spoke about this before: spoke about what other Cities and communities did to solve these issues, Newton, Seattle, Indianapolis, what has been happening is that they are looking again at the entire City, not spot zoning.
- Eric Duhamel 15 Symonds St. Time to get something passed on this issue, one roadblock after another, if want affordable housing must create supply or subsidize, if the latter, only giving housing to a lucky few. Once supply approaches demand, rents will become more affordable. If choke off supply, rents will increase. How to create supply with minimal impact to neighbors. Would be good in R2 - R3 already accustomed to additional density. Off street parking is always a sticking point. This must be a hard requirement. Incentivizing ADUs to be built, owner must occupy 2 years, good it is now permanent. Expensive to build unit, households grow and shrink, does not want to be forced to occupy a larger unit than needed to not have to destroy \$120K ADU.
- Pat Gozempa Salem Willows 17 Sutton Ave. Hopes planning board and City Council will take advantage of zoom to allow public to chime in. Both City Council and planning board have been at this a long time, requests that they vote on this issue tonight, don’t defer. Broad reach of availability of platform
- Bonnie Bane Massey 12 Carlton St. appreciates these meetings, expects leaders to have this conversation now, her family is in financial uncertainty, appreciates accessibility of meetings.
- Stacy Kilb 39 Northend Ave Housing crisis is valid. Ways to weigh in This does not directly address affordability, nor can it -but it will “incidental”
I don’t consider an 800 sq ft /1 bedroom apt as proposed “changing SF to 2 family” this is disingenuous

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Councillor Sargeant besides Lynn, we have most affordable housing and rental units on North Shore, ADUs should be limited to family. Cheaper to build and ADU when building a new house, we don't have 1 family left but new built are less likely to be single family.

Council President McCarthy There is concern for world matters, unprecedented, respects anyone living in an R1 and the investment, but when we look at our housing market and population trends, around great Depression Salem was at highest population, we have more housing, but our family units are getting smaller. Owners of single family, what we are doing for our seniors, not all of them, but a senior may need a phone call or shopper because family who may help them is stuck out of state, can't come visit/check in/shop, this is not going to be an opportunity that every R1 or home in Salem will put in an in-law apartment; it is a conversation we need to be thoughtful about, but in perspective of pandemic, wouldn't it be great if could socially distance in basement apt and still check on you, if live in a house by yourself because husband died and 6 kids moved on, put it in perspective. What's primarily listed as owner occupied; 50% are not owner occupied off the top, those are off the table.

Inclusionary Zoning discussion

Tom Daniels Work on inclusionary zoning has been extensive, goes back 2+ years/trying to craft a smart inclusionary zoning (IZ) Ordinance for Salem, got a grant from State, worked with MAPC since fall 2018, that process is described. Also met with the Affordable Housing trust fund Board, large public forum, also discussed other affordable housing strategies. Team of local advisors were providing information to MAPC staff. Also examined best practices and data, so the process has had extensive engagement. Ordinance is tailored to Salem's market, informed by data including local housing advocates, housing developers, etc. Thank you Amanda Chiancola for your efforts. **Councillor Dibble** says he has not been able to hear through audio, connected to phone. Points out that this is a separate matter, OK with opening during ADU but we should state and review documents to make it clear it is a separate matter. Amanda Chiancola is about to describe this.

Council President McCarthy states that we are taking up matter of Inclusionary Zoning

Councillor Turiel motions to waive reading of entire Ordinance.

Amanda Chiancola shows power point policy that requires a portion of new housing units in new developments to be affordable: costs 30% or less of household income. Subsidized housing through housing authority. Naturally occurring ADU. Income-restricted housing. Inclusionary zoning requires a portion of units to be income-restricted, meaning households may not earn over a set income level, different ordinances require different levels. Rent is based on 30% of that income level. Area Median Income used to determine a household's eligibility for income-restricted housing, based on metropolitan statistical area. AMI 2019 for Salem area is \$113,300.

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Local Median Household income (Salem 2019) is \$65,528, approximately 60% of AMI. Max Income, Rent and Sale Prices (chart). Formula changes based on household size; larger household has more expenses. 60% AMI is more reflective of Salem's needs Diff 60-80% AMI \$300 per unit, Diff between market rate and affordable is also \$300/month Local Action Units (LAUs): affordable units built by local action, e.g. Planning Board decision. 218 permitted in Salem since 2018. Planning Board had requested 10% as affordable but there is no Ordinance requiring any to be affordable. 91 LAUs built, 60 under construction, 67 permitted Inclusionary zoning basics: Requires a % of new housing units to be income restricted affordable. Relies on private developers to create affordable housing w/no public subsidy; private developers provide public good; costs just as much to build affordable housing but they make less money so...Must balance elements of policy to minimize cost, or there is a risk of increasing rents or dampening development. Inclusionary zoning Finances: "Even modest rent reductions NOT recovered through incentives significantly reduce the financing a property can secure. The "cost" of an inclusionary policy to developers depends on how many affordable units are required and the allowable rent levels for those units." i.e. if we require too much affordability they will have to raise market rate units to make project feasible or they will cancel the project if they can't get finances. Financial Model (tailored to Salem) Reviewed by Solicitor, Planning, MAPC, Affordable Housing Trust Fund. Inclusionary Zoning considerations. Consideration (Salem Ordinance). Geography (Citywide for Salem, not limited to one area). Voluntary vs. Mandatory (Salem's will be mandatory), Project Size (0-50 units; kicks in at 6 units threshold for SPR in Salem). Income Target (60% AMI), Affordable Units (10%), Affordability Length (99 years), Alternatives (No alternatives; this is unique to Salem; units must be built on site), Incentives (25% density bonus as of right; developer will be making +/- \$600 less per month than they could get if charging market rate). Special Permit Incentives: Parking reduction, Dimensional relief of 20% setback reduction, increase 1 story but no increase in height. Review of Max Income, rent and sale price. We could ask for a higher % of affordable units but would have to raise income level. could do 15% at 80% AMI. Requiring 10% at 60% AMI to provide greater affordability with no opting out.

Councillor Turiel Details of density bonus? AC: Means that if the developer or zoning district allowed a parcel to be built out at 10 units on the property, for example, based on dimensional requirements, lot area per dwelling unit, it makes it so you could build 25% more; so if 10 units, could have 25% more.

Councillor Hapworth: W/in 1 mile of train station, can apply for parking reduction. Is this any train station or a specific one, South Salem one may come online? Would it also be within 1 mile of that to qualify for parking reduction? Under current draft, any train station built and running would qualify. Also 1-% at 60% He thinks 60% is impressive, 10% he is unsure about; what is the furthest we could push that forward and maintain viability for developers? The intent to the round number of 10% was to make sure the ordinance would be easy for anyone to read and calculate, the 10% is a minimum, that was the starting point. Played with financial model, one model they could get more units but would be tiered and most units would have to be at 80%. Could not

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get more units at 60% AMI without increasing the density bonus. This is the furthest she is comfortable recommending. 10% at 60% with 25% density bonus.

Councillor Madore talked about 2 different requirements rentals vs. ownership? Why just across the Board now not distinguished? Most communities who require inclusionary zoning ordinance for ownership have a higher affordability unit. We started 80% for ownership, but Affordable Housing Trust Fund Board wanted deepest levels of affordability for ownership as well, so this creates flexibility on the back end. Is a household at 60% going to qualify for a mortgage? Don't want affordable units to sit vacant b/c they cannot get approval. Sec. 5.4.6 goes to resident selection and marketing plan. If Applicant agent cannot find buyer w/in 180 days, in accordance with Fair marketing plan, can go to 80% AMA w/ Affordable Housing Trust Fund Board (AHTFB).

Councillor Madore Concerned about Salem dipping below 10% inventory after Census. Is there anything we can add to Ordinance to strengthen against 40b projects? Could add in higher density bonus, can get those numbers but when asked in focus groups and meetings, there was not support for a greater density bonus.

Tom Daniels CDC will help keep us above 10% w/ Immaculate and St. James schools, will add to inventory. Also get through other housing development partners in addition to inclusionary zoning

Carole Hamilton Is affordability based on number of units to be provided, based on before or after density bonus?

Councillor Dibble Feels that this ordinance will positively impact those who need this type of housing. Local Action Unit numbers are cited. Total of 218 so far. 10% at 80% AMI is not Salem's income level, this is the difference between region and Salem's AMI. Those 218 are not really affordable at that AMI. 60% is good. Also: does 30% of income going to housing include rent/mortgage? For Sale includes property tax, interest rate, utilities. Includes utilities for rentals, not property tax b/c that is included in rent. Threshold at 6 units to trigger for Inclusionary and SPR: Needs to say 6 or more units (please clarify). At 10% it's just not enough units we are building, we need more than 10%. We don't want our amount to go below 10% citywide. Even at 12% we are above the minimum. 25% density bonus by right concerns him. Feels it is too much. For 200 units proposed this would be an additional 50 units, parking relief and setback could also be sought, are we being too generous? Current 10% at 80% is not actually affordable. Developer will take advantage of 180 days, re-do wording otherwise he will take density bonus, market for 180 days, but may start marketing before unit is even built, does that 180 days include pre-construction marketing so could sell at 80% AMI right off the bat once built? (Wondering if he read the language and if it actually does say this Feels ADU does nothing for affordability.

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Council President McCarthy suggests Councilors put thoughts into email.

Mayor Driscoll says they worked on this for more than a year, this has been tailored to Salem. To meet our income thresholds, we need 60%. 80% units see more demand

than supply, not fair to say 80% is doing nothing, just a different income level. 60% just ensures more people can afford and pay not more than 30% of income. Looked at cost of creating a unit, cost of land, construction are biggest factors in why building housing is so expensive, land and construction costs are high. Thus, more than 10% and deeper than 60% is difficult. We did look at other communities; none of nearby cities have as strict guidelines as Salem; they do allow payment, offsite units, we do not. Our goal is to allow new housing to be created; we do have new housing, most is redevelopment of vacant, blighted sites, so don't hold up as bad for our community, this tool creates affordable housing with private developer's money, no public money will go into creating those units. This will ensure that we allow housing to be developed and allow as many affordable units as possible to be created. We would love higher % of units and lower % of income. But everything started was pre Covid 19; this may be risky in the "new normal," we don't know. Hope we don't pick away at numbers trying to find perfect and hurting overall housing development. If no new housing is created, we cannot address affordability. If not built, demand will outstrip supply even further. Once public hearings are closed, there is a long process afterward, PB recommends to CC who brings it up at 2 council meetings, looking at summer before anything gets approved. Want to get it done this fiscal year.

Councillor Madore 10%, was referring to the number that the state requires us to have Subsidized Housing Inventory. 10% in Ordinance is what we require developers to build; other communities are requiring developers to build 15-20%, a diff # than what the state requires us to have, if we dip below that 10% developers can use 40b to come in, ignore us, lose complete local control, and they can build affordable units. Thank you Amanda Chiancola for all work done so far, she was on AHTFB and AC has put in a lot of work. Done work that make these meetings effortless. We could not have gotten this far without her work.

Council President McCarthy notes no action is expected to be taken tonight.

Matt Smith Also salutes great work done, exciting to see a community looking at its own affordability level, not boilerplate. 60% AMI is progressive, meets a greater need than any Inclusionary Ordinances he has read; there is a bottom line issue, if you raise the percentage it makes it much more difficult for private developers to create a feasible project.

Councillor Dibble Would like public to weigh in.

Council President McCarthy opens to public. Amanda's intent was to do a more in-depth presentation at the next meeting, perhaps bringing in someone from the state

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- Chrissy Derby 73 Tremont St. How many units will be ADA compliant? Cost is larger, but they are a marginalized population that might be being overlooked in the 10%. Question will be taken under advisement and answered at the next meeting.
- Steve Kapantis 23 Wisteria St. In favor, well written, this is what the City needs. Geographical location of train station: where will it be in 99 years? what if it's not a train? Tough to manage that far into the future, clearly define where station is with a geographical point.
- Jennifer Lynch, President, League of Women Voters, lynch.sheehan@gmail.com reads league of women voters endorsements. Quotes Programs, policies, regs to address housing needs of Inclusionary zoning is one tool, should be built in and not good faith negotiation LWV Salem was at the table.
- Fawaz Abusharkh, at 80% most rentals are rented, this means we are not attracting the type of income level we want. We don't know what post-COVID market will look like, could be risky, why do this now when we don't know if it will backfire? Geographic/train station: please clarify. "Another tool in the box, just one aspect, not THE solution" then why are we always using tools that benefit developers and real estate, not what would actually work with our community? Feels we can do better than what is currently proposed.
- Lori Stewart, 7 Barnes Rd. In favor, echoes comments of LWV, supports all aspects of proposal.
- Pat Gozemba 17 Sutton Ave. 3:40PM in Hawaii. (address in Willows) appreciates work being done at this point despite overwhelming economic issues, Ordinance will give Salem a leg up on dealing with the issue of affordable housing. Urges CC and PB to stay positive and vote to move forward.

Mayor Driscoll Wants feedback from Councilors on May 4 hearing date, in either event, is there an ability to close public hearings on that date to let people know that they have 3 more weeks to comment. If we keep hearing open again, we go into May, budget season, which will have to go on regardless. Close at least one hearing at next meeting, get to planning board, then back to Council. Amanda Chiancola can you get changes back to City Council in the next week? Amanda Chiancola yes.

Councillor Turiel Motions to continue hearings to May 4, 2020 at 7:00 P.M. Seconded by Councillor Prosniewski.

Councillor Sargent moves that the meeting be adjourned at 9:49 P.M. It was so voted.

ATTEST:

ILENE SIMONS
CITY CLERK

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FULL TEXT OF THE 3 ZONING AMENDMENTS BELOW:

**#74 – ZONING ORDINANCE RELATIVE TO ACCESSORY DWELLING UNITS –
SEC. 3.1 – TABLE OF PRINCIPAL AND ACCESSORY REGULATIONS**

In the year Two Thousand and Twenty

An Ordinance to amend an ordinance relative to accessory dwelling units.

Be it ordained by the City Council of the City of Salem, as follows:

Section 1. The City of Salem Zoning Ordinance Section 3.1 Table of Principal and Accessory Use Regulations is hereby amended by deleting the “Accessory Living Area” Accessory Use in its entirety and inserting an “Accessory Dwelling Unit” Accessory Use in the RC, R1, R2 and R3 zoning districts as follows:

E. ACCESSORY USES	RC	R1	R2	R3	B1	B2	B4	B5	I	BPD	NRCC
Accessory Dwelling Unit	Y	Y	Y	Y	N	N	N	N	N	N	-

Section 2. This Ordinance shall take effect as provided by City Charter.

**#75 – ZONING ORDINANCE RELATIVE TO ACCESSORY DWELLING UNITS –
SEC. 10 – DEFINITIONS AND SEC. 3.2.8 – ACCESSORY DWELLING UNITS**

In the year Two Thousand and Twenty

An Ordinance to amend an ordinance relative to accessory dwelling units.

Be it Ordained by the City Council of the City of Salem, as follows:

Section 1. The Salem Zoning Ordinance Section 10 Definitions is hereby amended by deleting the definition “Accessory Living Area” in its entirety and inserting the definition “Accessory Dwelling Unit” as follows:

“Accessory dwelling unit: A housekeeping unit, with its own sleeping, cooking and sanitary facilities, located within a principal dwelling that is subordinate in size to the principal unit(s), separated from it in a manner which maintains the appearance of the principal unit(s), and allowed pursuant to Section 3.2.8 of this ordinance”

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Section 2. The Salem Zoning Ordinance Section 3.2.4 Accessory Buildings and Structures is hereby amended by deleting paragraphs numbered 4 and 5 in their entirety and replacing them with the following:

“4. Unattached accessory dwelling units shall comply with all setbacks of the principal structure, as set forth in Section 4.1 of this ordinance (Dimensional Requirements).

5. Accessory structures, garages and unattached accessory dwelling units shall not exceed one-half (1.5) stories or eighteen (18) feet in height.”

Section 3. The Salem Zoning Ordinance Section 3.2.8 Accessory Dwelling Areas is hereby amended by deleting this Section in its entirety and replacing it with the following:

“3.2.8 Accessory Dwelling Units. Accessory Dwelling Units shall be allowed as provided set forth in this section.

1. Purpose.

- A. To add rental units to the housing stock to meet the needs of smaller households and make housing units available to households who might otherwise have difficulty finding housing.
- B. To encourage the efficient use of the city's housing supply while preserving the character of the city's neighborhoods.
- C. To maximize privacy, dignity, and independent living among family members preserving domestic family bonds as well as to protect the stability, property values, and the residential character of the neighborhood.
- D. To permit the owner of an existing, or a proposed, detached dwelling to construct one additional dwelling unit. Such a use is incidental and subordinate to the principal dwelling.
- E. To increase the supply of housing and the diversity of housing options, in response to demographic changes such as smaller households and older households.

2. Procedure.

- A. The Building Inspector shall administer and enforce the provisions of this section unless a Special Permit is required then the Zoning Board of Appeals shall be the Special Permit Granting Authority.
- B. When a waiver is required, a Building Permit shall not be issued until a Special Permit has been granted and duly recorded.

3. Application

- A. The Application for the Special Permit and/or Building Permit, if required, shall:
 - 1. Be signed by one hundred (100) percent of the record title ownership interest of the principal dwelling and shall include a copy of the deed.

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2. Include a floor plan of the accessory dwelling unit, the principal dwelling where it is to be located and all elevations. All plans shall be drawn to scale and identify the existing structure and proposed modifications to create the accessory dwelling unit.

4. Requirements.

- A. The minimum parking required for the principal dwelling pursuant to Section 5.1 of this ordinance shall not count as off-street parking for the accessory dwelling unit. The accessory dwelling unit shall have one (1) dedicated off-street parking space unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.
- B. There shall not be a net loss in the caliper of private trees on the lot in which the accessory dwelling unit will be located unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.
- C. The accessory dwelling unit shall not contain less than 350 square feet of habitable space.
- D. The accessory dwelling unit shall not contain in excess of 800 square feet of gross space, unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.
- E. No more than one (1) accessory dwelling unit shall be located upon a single lot.
- F. An accessory dwelling unit shall not be permitted in a building with five (5) or more units.
- G. At least one (1) owner of the residence in which the accessory dwelling unit is created shall reside in one (1) of the dwelling units as a principal place of residence. For the purpose of this section, the "owner" shall be one or more individuals who hold title to the property and for whom the dwelling is the primary residence as evidenced by voter registration, tax return or other documentation demonstrating primary residence...
- H. Electricity, water and gas shall be provided by a single service to both the accessory dwelling unit and the principal dwelling.
- I. The accessory dwelling unit may not be sold or transferred separate and apart from the principal dwelling to which it is an accessory use. The principal dwelling and the accessory dwelling unit shall remain in common or single ownership and shall not be severed in ownership.
- J. Entry shall be located through existing entry or on the back or side of the main dwelling.
- K. Egress access shall be located on the side or rear of the building so that visibility from public ways is minimized.
- L. The accessory dwelling unit shall not contain more than two (2) bedrooms.
- M. The accessory dwelling unit shall be clearly subordinate in use, size and design to the principal dwelling.

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- N. The accessory dwelling unit must be capable of being discontinued as a separate dwelling unit without demolition of any structural component of the principal dwelling.
 - O. There shall be no occupancy of the accessory dwelling unit until the Building Inspector has issued a certificate of occupancy that the principal dwelling and accessory dwelling unit shall be in compliance with all applicable health and building codes.
 - P. The Building Permit shall be revoked upon determination by the Building Inspector that any condition imposed by Section 3.2.8 and/or special permit conditions has not been fulfilled.
 - Q. By filing the Application for a Special Permit or Building Permit for an accessory dwelling unit, all owners consent to an inspection without a warrant upon reasonable notice by the Building Inspector to ensure compliance with all terms of this section and conditions imposed upon the grant of the Special Permit.
 - R. Short term rentals, as defined in Salem Code of Ordinances Chapter 15, are prohibited in the accessory living unit.
 - S. The accessory living unit shall obtain certificate of fitness subject to the provisions of Section 2-705 of the City of Salem Code of Ordinances.
5. Special Permit. A Special Permit shall be required to use an existing accessory structure that does not comply with Section 4.1 (Table of Dimensional Requirements) as an accessory dwelling unit.
6. Waivers. Upon the request of the Applicant, the Zoning Board of Appeals may grant a Special Permit pursuant to Section 9.4 to waive the following requirements in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the accessory dwelling unit ordinance.
- A. Notwithstanding anything to the contrary herein, the minimum required amount of parking may be waived if the Zoning Board of Appeals finds it is impractical to meet the parking standards and that such waivers are appropriate by reason that it will not result in or worsen parking problems in or in proximity to the Project, and upon demonstration to the reasonable satisfaction of the Zoning Board of Appeals that a lesser amount of parking will provide positive environmental or other benefits, taking into consideration:
 - 1. The availability of surplus off-street parking in the vicinity of the use being served
 - 2. The proximity to public transportation;
 - 3. The availability of public or commercial parking facilities in the vicinity of the accessory dwelling unit;
 - 4. The impact of the parking requirement on the physical environment of the affected lot or the adjacent lots including reduction in green space, destruction of significant existing trees and other vegetation, destruction of existing dwelling units, or loss of pedestrian amenities along public ways; and
 - 5. Such other factors as may be considered by the Zoning Board of Appeals.

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- B. The Zoning Board of Appeals may grant a waiver to allow a net loss in the caliper of trees on a lot that has no more than three units and on which the accessory dwelling unit will be located, taking into consideration the species of the tree, health of the tree, whether a replacement tree will be planted on another property or if a contribution to a tree replacement fund will be provided.
- C. The Zoning Board of Appeals may grant a waiver to allow the accessory dwelling unit to exceed 800 gross square feet, up to a maximum of 1,000 gross square feet, taking into consideration peculiarities of the layout of the primary dwelling.

7. Termination.

- A. The accessory living unit use shall terminate immediately upon any violation of any term or condition of this ordinance or of the Special Permit that the owner fails to cure, upon two (2) weeks written notice mailed to the applicant and to the occupants at the dwelling address by certified mail, return receipt requested.
 - B. Duty of Owner Upon Termination include:
 - a. The owner shall discontinue the use of the accessory dwelling unit as a separate dwelling unit.
 - b. The kitchen facilities of the accessory dwelling unit shall be removed unless determined by the Building Inspector to be incidental and subordinate as an accessory use of the principal dwelling.
 - c. Any additional exterior entrance constructed to provide access to the accessory dwelling unit shall be permanently closed, unless the Building Inspector provides a waiver. The owner shall permit an inspection by the Building Inspector without a warrant.
8. Severability. All the clauses of this ordinance are distinct and severable, and if any clause shall be deemed illegal, void, or unenforceable, it shall not affect the validity, legality, or enforceability of any other clause or portion of this bylaw.”

Section 2. This Ordinance shall take effect as provided by City Charter.

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#142 – ZONING ORDINANCE RELATIVE TO INCLUSIONARY HOUSING

In the year Two Thousand and Twenty

An Ordinance to amend the zoning ordinance by adding, “Inclusionary Housing”.

Section 1. Section 5- Regulations of the Zoning Ordinance is hereby amended by adding the following new section:

5.4 - INCLUSIONARY HOUSING

5.4.1 Purpose and Intent. The purpose of this section is to expand the City of Salem’s housing stock, especially its Affordable Housing Units; to leverage market-rate housing production towards the production of Affordable Housing Units; to provide for housing choices for households of all incomes, ages, and sizes; to increase the production of Affordable Housing Units to meet employment needs; and to establish standards and guidelines in order to implement the foregoing.

It is intended that the Affordable Housing Units that result from this section be considered as Local Action Units, in compliance with the requirements specified by the Massachusetts Department of Housing and Community Development (DHCD) Local Initiative Program.

5.4.2 Applicability.

1. This Section §5.4 applies to any subdivision or development, whether new construction, conversion, adaptive reuse or expansion of an existing structure, involving the creation of six (6) or more dwelling units. It applies to all residential dwelling types as defined by the Salem zoning ordinance with the exception of assisted living residences, nursing or convalescent homes, and other similar uses.
 - a. A subdivision or division of land shall mean any subdivision as defined in the Subdivision Control Law, G.L. c.41, §81K-81GG, or any division of land under G.L. c.41, §81P, into lots for residential use.
 - b. Developments shall not be segmented or phased to avoid compliance with this Section. “Segmentation” shall mean any development or any division of land that would cumulatively result in an increase of six or more residential lots or dwelling units above the number existing on a parcel of land or contiguous parcels in common ownership up to twenty-four months prior to the application. Where such segmentation occurs, it shall be subject to this Section.
2. This Section §5.4 does not apply to the rehabilitation, repair or reconstruction of any building or structure, all of or substantially all of which is destroyed or damaged by fire or other casualty or a natural disaster; provided, however, no rehabilitation, repair or

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reconstruction shall result in a net increase of six (6) units beyond what previously existed prior to the damage or destruction thereof except in conformance with this section.

3. No special permit or site plan review for a development requiring a special permit or site plan review, and no building permit for a use permitted as of right, shall be issued for a development subject to this Section §5.4 unless the applicant provides the percentage of the total dwelling units in the development as Affordable Housing as described herein.

5.4.3 Mandatory Provision of Affordable Units.

1. Affordable Housing requirement. As a condition of development, the applicant shall contribute to the local stock of Affordable Housing Units in accordance with the following requirements:
 - a. In any development subject to this Section §5.4, ten (10) percent of the dwelling units shall be Affordable to households with incomes at or below sixty (60) percent of AMI.
 - b. Affordable units shall be made available to eligible households with incomes at or below 60% AMI at purchase prices or rents that adhere to the income limits determined by the U.S. Department of Housing and Urban Development (HUD) applicable to the City of Salem, and shall comply with the DHCD Local Initiative Program regulations.
 - c. Nothing in this Section shall preclude the applicant from providing additional Affordable units, or greater affordability, or both, than the minimum requirements.
2. Special Permit for Tiered Affordability
 - a. Purpose. Adaptive reuse of abandoned, underutilized or functionally obsolete properties as housing enables growth in established locations while preserving or restoring the architectural fabric of Salem. In the event that an adaptive reuse project in the B5 zoning district would not be feasible with the Affordable unit requirements of Section 5.4.3, the Affordability unit requirements of Section 5.4.3 may be met by a special permit from the Planning Board that would allow tiered affordability levels of the required Affordable units up to 80 percent of the area median income if all the criteria of Section 5.4.3(2) are met.
 - b. Eligibility.
 - i. The project must be located in the B5 zoning district.
 - ii. The incentives of Section 5.4.4 are not permitted if the Affordable unit requirements of Section 5.4.3 are met by a special permit.

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The applicant shall obtain a letter from the Salem Historical Commission that determines:

1. The building is located on the State Register of Historic Places or that the building is significant in the history, archaeology, architecture or culture of Salem.
 2. The building is a minimum of 50 years old.
 3. The exterior work comply with the Secretary of the Interior Standards.
- iii. The applicant shall obtain a positive recommendation letter from the Affordable Housing Trust Fund Board concerning the proposed affordability tiers.
- c. Criteria for a Tiered Affordability Special Permit.
- i. Increasing the affordability level of any of the required Affordable units above 60 percent of the area median income is discouraged. The applicant shall demonstrate to the Affordable Housing Trust Fund Board that all other resources have been exhausted.
 - ii. The applicant shall provide financial pro-forma to the Affordable Housing Trust Fund Board that demonstrates the affordable unit provisions in Section 5.4.3(1) would prevent the adaptive reuse project from being financially feasible. The pro-forma shall use DHCD's Chapter 40B Guidelines for determining whether the project is "uneconomic" and related terms such as "return on total cost" and "net operating income" or other guidelines that are recognized by real estate and affordable housing industry standards that are determined to be acceptable by the Affordable Housing Trust Fund Board.
 - iii. The pro-forma will be peer reviewed by a third-party accountant chosen by the Affordable Housing Trust Fund Board and paid for by the applicant. The Affordable Housing Trust Fund Board shall include consideration of the criteria in Section 5.4.3(2)(c) i and ii in their recommendation letter to the Planning Board.
 - iv. A permanent preservation restriction mutually agreed upon between the applicant and the City of Salem Historical Commission shall be provided to the City of Salem to protect the historically significant features of the exterior of the building.

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3. Fractions. When the requirement for Affordable Housing Units results in a fraction of a unit, the applicant shall have the choice to round up to the next whole number or convert the fraction of a unit to a cash payment to the Salem Affordable Housing Trust Fund. For example, a twelve-unit project would require 1.2 Affordable units (10% of 12); the last 0.2 unit may be satisfied by providing an additional unit (for a total of 2 Affordable units) or through a cash payment equivalent to 0.2 unit.

The payment shall be based on the construction cost of an average-sized unit in the development, or the construction cost of a unit of 1000 square feet, whichever is smaller. The residential construction cost per square foot shall be determined by the construction cost reported on the project's building permit application.

$$\begin{aligned} &\text{Fractional payment} = \\ &(\text{Required fraction of a unit}) \times (\text{Construction cost per residential square foot}) \times \\ &\quad (1000 \text{ square feet or average unit size, whichever is less}) \end{aligned}$$

For mixed-use projects or projects that include structured parking, only the residential construction cost and the residential square footage will be considered to determine the construction cost per residential square foot. For projects using historic tax credits or other historic preservation incentive, the cost of the historic credit or incentive may be subtracted from the total construction cost reported on the project's building permit application.

5.4.4 Density and Parking. Developments subject to this Section 5.4, with the exception of those obtaining a special permit pursuant to Section 5.4.3.2, may incorporate either or both of the following:

1. Density Bonus. Developments in compliance with the Affordable Housing requirements of this Section §5.4 are permitted an increase of 25% of the total number of units that would normally be permitted in the applicable zoning district. The Affordable Housing requirements are calculated on the total number of new units, including units created through the density bonus.
 - a. The minimum lot area per dwelling unit normally required in the applicable zoning district shall be reduced by the amount necessary to permit the additional units. This reduction of the minimum lot area per dwelling unit shall be by right for developments in compliance with the requirements of this Section §5.4.
 - b. The number of stories normally permitted in the applicable zoning district may be increased by one story provided it does not exceed the maximum height, and all yard and setback requirements normally required in the applicable zoning district may be reduced by up to 50%, with a Special Permit granted by the Planning Board. In granting a Special Permit, the Planning Board will consider the Special Permit criteria established in Section 9.4.2 and whether the permit is necessary to provide for the additional units permitted by the density bonus.

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2. Parking Reduction Special Permit. Developments in compliance with this Section §5.4 are permitted to reduce the number of required parking spaces with a Special Permit granted by the Planning Board as follows:
 - a. In granting the Special Permit, the Planning Board will consider the criteria established in Section 9.4.2
 - b. For developments located within a half mile of the commuter rail station, the development is permitted to reduce the number of parking spaces to one parking space per dwelling unit.
 - c. For developments located further than a half mile from the commuter rail station, the development is permitted to reduce the number of parking spaces to one parking space per dwelling unit if Transportation Demand Management (TDM) practices are incorporated, as evidenced by a Transportation Demand Management Plan to reduce demand for parking, and approved by the Planning Board as a condition of project approval. The Planning Board will assess the need for TDM measures based on site location. TDM methods to reduce parking demand on site may include but are not limited to:
 - i) Shared Parking: To implement shared on-site parking, the applicant shall demonstrate that proposed uses are non-competing. In mixed-use developments, applicants may propose a reduction in parking requirements based on an analysis of peak demand for non-competing uses;
 - ii) Use off-site parking to satisfy parking requirements;
 - iii) Pay a stipend to residents without cars;
 - iv) Provide a guaranteed emergency ride home;
 - v) Provide transit pass subsidies;
 - vi) Provide covered bicycle parking and storage;
 - vii) Provide bicycle or car sharing on site;
 - viii) Other means acceptable to the Planning Board.

5.4.5 Provisions Applicable to Affordable Housing Units.

1. Location. All Affordable Housing Units must be dispersed evenly throughout the development.
2. Exterior design. The exterior of Affordable Housing Units must be indistinguishable from the market-rate units in terms of design, appearance, materials, and quality of construction.

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3. Interior size and finishes. The size and interior finishes of the Affordable Housing Units may differ from the market-rate units within the parameters described below:
 - a. Affordable Housing Units may be smaller than the market-rate dwellings, but in no event shall the gross floor area of any affordable unit be less than the minimum floor area required under the regulations or guidelines of the Local Initiative Program set forth by DHCD.
 - b. The Affordable Housing units must be supplied with the same base appliances and fixtures as the market rate units; for example, if market-rate units include a dishwasher, Affordable units must include one as well. However, the product specifications for the fixtures, appliances, and interior finishes in Affordable units may differ from those in the market-rate units, provided that such finishes and features are durable, of good quality, consistent with contemporary standards for new housing, and in compliance with the standards set forth by Local Initiative Program design and construction standards.
 - c. Affordable Housing Units must be supplied with the same mechanical systems and energy efficiency features as market-rate units, including windows, insulation, plumbing, and heating and cooling systems.
 - d. The bedroom mix in the Affordable Housing Units shall be proportionate to the bedroom mix of the market-rate units.
 - e. Residents of Affordable Housing Units shall have similar access to all building and site common areas and amenities as residents of market-rate units, including but not limited to outdoor spaces, amenity spaces, storage, parking, bicycle parking facilities, and resident services.
 - f. Compliance with Section 5.4.5 shall be determined by Salem Department of Planning and Community Development staff.
4. Timing of construction of Affordable units and payment made. Affordable Housing Units must be constructed at a proportion of one (1) affordable unit for every five (5) Market Rate Units. The payment for fractional units, if applicable, shall be made before issuance of the Certificate of Occupancy.

5.4.6 Resident Selection and Marketing Plan for Affordable Units.

1. Applicants creating new Affordable Housing Units under this Section §5.4 are required to select qualified homebuyers or renters via lottery under an Affirmative Fair Housing Marketing Plan (AFHMP) prepared and submitted by the applicant and approved by the Salem Department of Planning and Community Development and DHCD as part of the Local Initiative Program. The AFHMP must include a plan to address AFHMP requirements upon resale of ownership units. The marketing plan shall comply with

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federal and state fair housing laws and guidelines in effect on the date of filing of the special permit or other permit application with the City of Salem. No Certificate of Occupancy for a development subject to §5.4 shall be issued unless the Salem Department of Planning and Community Development has determined that the applicant's AFHMP complies with this requirement. The affirmative marketing costs for the Affordable Housing units shall be the responsibility of the applicant.

2. If the applicant agent is unable to find an eligible homebuyer within 180 days of marketing the unit, in accordance with the AFHMP, the applicant may sell the property to a household earning up to 80% of the area median income upon approval of the Affordable Housing Trust Fund Board.

5.4.7 Preservation of Affordability. Each Affordable Housing Unit created in accordance with this Section shall have limitations governing its resale through the use of an Affordable Housing Restriction. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for low- and moderate-income households.

1. As a condition of development, all Affordable Housing Units provided under this Section §5.4 shall be subject to an Affordable Housing Restriction in a form consistent with the LIP guidelines or any other applicable guidelines issued by DHCD, acceptable to the Planning Board, that ensures Affordable units can be counted toward Salem's Subsidized Housing Inventory. The Affordable Housing restriction shall run with the land and be in force in perpetuity or for the maximum period allowed by law, and be enforceable under the provisions of MGL c. 184, § 26 or §§ 31 and 32. Affordability restrictions shall be contained in applicable Affordable Housing Restrictions, regulatory agreements, deed covenants, contractual agreements, land trust arrangements and/or other mechanisms to ensure compliance with the affordability requirements of this Section.

The applicant shall be responsible for preparing and complying with any documentation that may be required by DHCD to qualify Affordable Housing Units for listing on the Chapter 40B Subsidized Housing Inventory as Local Action Units.

2. The Affordable Housing Restriction shall contain limitations on use, occupancy, resale and rents, and provide for periodic monitoring, by the City or its designee named in the deed rider as the monitoring agent, to verify compliance with and enforce said restriction. This monitoring is intended to verify that Affordable homeownership units remain owner-occupied and are resold at a price affordable to low- or moderate-income homebuyers, and that Affordable rental units are occupied by low- or moderate-income tenants at rents they can afford. The applicant is responsible for providing ongoing monitoring through an organization qualified to serve as a monitoring agent on behalf of the City.

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3. The restriction shall establish that Affordable units created under the provisions of §5.4 shall remain affordable to the designated income group in perpetuity, or for as long as legally permissible, per Affordable Housing restrictions that comply with Local Initiative Program requirements as they may be amended for inclusion in the Chapter 40B Subsidized Housing Inventory and is enforceable under G.L. c. 184, § 26 or §§ 31-32.
4. The restriction shall grant the City of Salem or its designee the right of first refusal to purchase the property in the event that a subsequent qualified homebuyer cannot be located. In any and all instances Section 5.4.7(3) shall remain in effect.
5. The Affordable Housing Restriction shall provide that initial sales and rentals of Affordable Housing units and subsequent re-sales and rentals shall comply with federal, state and local fair housing laws, regulations and policies, and DHCD Local Initiative Program guidelines. For Affordable homeownership units, the procedure for resale and the responsibilities of the homeowner, the City and/or its monitoring agent, and DHCD are described in detail in DHCD's Local Initiative Program regulations.
6. The Affordable Housing Restriction shall provide that, in the event that any Affordable rental unit is converted to a condominium unit, the condominium unit shall be restricted in perpetuity as Affordable to the income level required for Affordable ownership units in Section 5.4.3.1.
7. No Certificate of Occupancy shall be issued until the applicant executes an enforceable agreement with the City and provides evidence acceptable to the Salem Department of Planning and Community Development that the agreement has been recorded at the Essex County Registry of Deeds. It is the applicant's responsibility to prepare a complete regulatory agreement, to obtain the necessary signatures and to record a fully executed agreement at the Registry of Deeds prior to the issuance of any Certificate of Occupancy (or in the case of a subdivision, lot releases).
8. For an Affordable homeownership unit, no Certificate of Occupancy shall be issued until the applicant submits documentation acceptable to the Salem Department of Planning and Community Development that an Affordable Housing deed rider has been signed by the homebuyer and recorded at the Essex County Registry of Deeds.

5.4.8 Conflict with Other Sections. The provisions of this Section §5.4 shall be considered supplemental of existing sections of this zoning ordinance. To the extent that a conflict exists between this Section §5.4 and others, the provisions of this Section §5.4 shall apply.

5.4.9 Severability. If any portion of this Section is declared to be invalid, the remainder shall continue to be in full force and effect.

Section 2. The Salem Zoning Ordinance Section 10 Definitions is hereby amended by following definitions:

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Affordable Housing Restriction: A deed restriction, contract, mortgage agreement, or other legal instrument, acceptable in form and substance to the City of Salem, that effectively restricts occupancy of an affordable housing unit to qualified purchaser or qualified renter, and which provides for administration, monitoring and enforcement of the restriction during the term of affordability. An affordable housing restriction shall run with the land in perpetuity or for the maximum period of time allowed by law, and be enforceable under the provisions of Chapter 184, Sections 26 or 31-32 of the Massachusetts General Laws.

Affordable Housing Unit: A dwelling unit that is affordable to and occupied by a low- or moderate-income household and meets the requirements of the Massachusetts Department of Housing and Community Development, Local Initiative Program, for inclusion on the Chapter 40B Subsidized Housing Inventory.

Area Median Income: The median income for households within the metropolitan area that includes the City of Salem, as defined in the annual schedule of low- income limits published by the U.S. Department of Housing and Urban Development, adjusted for household size.

Eligible Household: A household of one or more persons whose maximum income does not exceed 60% of Area Median Income, or other income limit established in Section 5.4.

Eligible Buyer: An individual or household certified by the Monitoring Agent to have met all of the eligibility requirements set forth in the Affordable Housing Restriction and applicable Program Guidelines to buy an Affordable unit, including limits on income and assets, suitability of financing, etc.

Local Action Unit: An Affordable Housing unit developed through a city's zoning or permit issuance process as part of the Local Initiative Program and eligible for inclusion on the Subsidized Housing Inventory.

Local Initiative Program: A program administered by the Massachusetts Department of Housing and Community Development (DHCD) pursuant to 760 CMR 56.00 to develop and implement local housing initiatives that produce low- and moderate-income housing, with or without a comprehensive permit as defined in Chapter 40B.

Low-Income Household: A household with income at or below 60% of area median income, adjusted for household size, for the metropolitan area that includes the City of Salem, as determined annually by the United States Department of Housing and Urban Development (HUD).

Market Rate Unit: All dwelling units in a development subject to Section 5.4 that are not Affordable Housing Units as defined therein.

Maximum Affordable Purchase Price or Rent: A selling price or monthly rent that does not exceed the maximum purchase price or rent guidelines of the program used to qualify Affordable Housing Units for inclusion on the DHCD Chapter 40B Subsidized Housing Inventory. For homeownership units, the maximum affordable purchase price shall account for the monthly cost

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of a mortgage payment, property taxes, insurance, and condominium fees where applicable. For rental units, the maximum affordable rent shall account for the monthly cost of rent and utilities. The household income used to compute the maximum affordable purchase price or rent shall be adjusted for household size, considering the household size for which a proposed affordable unit would be suitable under guidelines of the Local Initiative Program or any successor affordable housing program established by the state.

Monitoring Agent: The Monitoring Agent is a qualified individual or agency for the purposes of administration, monitoring and enforcement of the Affordability Requirement for a Project pursuant to the Affordability Monitoring Services Agreement.

Salem Affordable Housing Trust Fund: A fund established by the City of Salem pursuant to Massachusetts General Laws, Chapter 44, Section 55C, for the purpose of creating or preserving Affordable Housing in the City of Salem for the benefit of low- and moderate-income households.

Subsidized Housing Inventory (SHI): The Department of Housing and Community Development Chapter 40B Subsidized Housing Inventory as provided in 760 CMR 31.04.

Section 3. This Ordinance shall take effect as provided by City Charter.