

**CITY OF SALEM
NOVEMBER 20, 2023
JOINT PUBLIC HEARING OF THE
CITY COUNCIL AND THE PLANNING BOARD**

A Joint Public Hearing of the Salem City Council and the Planning Board was held remotely on Monday, November 20, 2023, at 6:30 P.M. for the purpose of discussing Inclusionary Housing Zoning Ordinance 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 Zoning Ordinance Amendment, summarized on the next page. See back-up documentation for full text.

Notice of this hearing was posted on November 2, 2023, at 1:47 P.M. and advertised in the Salem News on November 6, 2023, and November 13, 2023.

Absent were: Councillor Dominguez, Councillor Varella is remote

Council President Megan Stott presiding.

The following Planning Board Members were present: Chair Bill Grisct, Vice Chair Kirt Rieder, Carole Hamilton, Tom Furey, Sarah Tarbet, Jonathan Berk, Zach Caunter, Helen Sides

Absent were: Josh Turiel

Also in attendance were: Elena Eimert (Senior Planner, City of Salem), Amanda Chiancola (Deputy Director of Planning and Community Development), Alexis Smith (Metropolitan Area Planning Council), Councillor-Elect ward 1, Cindy Jerzylo, Councillor-Elect Ward 4, John Harvey

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SUMMARY OF INCLUSIONARY HOUSING ZONING ORDINANCE

1. Amend the Zoning Ordinance by adding Section 5.4 Inclusionary Housing and definitions related to Inclusionary Housing. The purpose is to expand the City's housing stock, especially Affordable Housing Units; leverage market-rate housing production towards the production of Affordable Housing Units; provide for housing choices for all households; increase the production of Affordable Housing Units to meet employment needs; and establish standards and guidelines. The proposed ordinance applies to subdivisions or developments creating six or more new dwelling units and requires applicants to contribute to the local stock of Affordable Housing Units. In projects of twenty (20) or fewer units, eight percent of those dwelling units are required to be affordable to households with incomes at or below sixty percent of the Area Median Income (AMI); in projects twenty-one (21) units and greater, ten percent of those dwelling units are required to be affordable to households with incomes at or below sixty percent of the AMI. 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 and provide an additional Affordable Housing Unit or convert the fraction of a unit to a cash payment to the Salem Affordable Housing Trust Fund Board (AHTF). Affordability restrictions are in force in perpetuity or 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 applicable to the City of Salem and shall comply with the Executive Office of Housing and Livable Communities' Local Initiative Program regulations. For ownership units, if applicant agent is unable to find an eligible homebuyer within 180 days of marketing the unit at or below sixty percent of the AMI, in accordance with an Affirmative Fair Housing Marketing Plan, the applicant may sell the property to a household earning up to eighty percent of the AMI upon approval of the AHTF. Affordable Housing Units must be provided on-site and be comparable to market-rate units.

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 Board. Reductions in the number of required parking spaces are allowable under the following conditions: if within a half mile of a commuter rail station, a development is permitted to reduce the number of parking spaces to one parking space per dwelling unit, and if outside of a half-mile of a commuter rail station, a reduction in the number of required parking spaces by Special Permit granted by the Planning Board, if Transportation Demand Management (TDM) practices are incorporated. In the event that an adaptive reuse project in the Central Business (B5) zoning district would not be feasible with the Affordable Housing 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

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to eighty percent of the area median income if all criteria of Section 5.4.3(2) are met. Such adaptive reuse projects in the B5 zoning district are permitted to reduce the number of parking spaces to zero parking spaces per dwelling unit. This Amendment includes section 5.4.1 through 5.4.9.

This amendment shall take effect as provided by City Charter. For projects in the Central Business (B5) District, the amendment shall be applicable upon approval of an Economic Feasibility Analysis by the Executive Office of Housing and Livable Communities.

Amanda Chiancola, Deputy Director of Planning and Community Development introduces the Affordable Housing Roadmap and shares that Inclusionary Housing is piece number twelve (12) of thirty (30). Elena Eimert, Senior Planner, shares a slide show and defines Inclusionary Housing (IH), AKA Inclusionary Zoning (IZ):

Inclusionary Housing is a common strategy used to advance housing efforts in Massachusetts. In an Inclusionary Housing policy, market-rate developments that are not subsidized by public financing are required to provide a certain percentage of residential units at an agreed-upon level of affordability below 100% of the area median income (AMI); affordable units are “included” in the market-rate developments.

In 2019-2020, a similar IH effort was in front of Council and also included a financial feasibility analysis. The ordinance failed by one (1) vote. The ordinance requires a supermajority for adoption. The Housing Roadmap calls out IH as a strategy worth revisiting.

The City has been asked to comply with the MBTA Communities Law (a/k/a Section 3A). All municipalities that have MBTA transit stops, or are adjacent to communities that have them, shall establish a district of a reasonable size that has multifamily housing allowed by right.

MBTA communities are required to zone for certain multifamily capacity but this is not a mandate to build. Failure to comply risks the liability under state and federal Fair Housing laws and eligibility for certain funds

The Executive Office of Housing and Livable Communities (EOHLC) has designated Salem a “Commuter Rail” community. In January 2023, Salem applied for interim compliance, which included how we would sketch out how we would ensure compliance with the overall laws and its requirements. In May 2023, we submitted an application for our final determination. In our application, the City states that we feel the existing Central Business (B5) District is already compliant and we do not need to seek rezoning.

Per EOHLC guidelines, in municipalities that have IH policies, to be Section 3A compliant means not more than 10% of the units can be required to be affordable and the affordability cap is not less than 80% AMI. The EOHLC can approve a greater percentage of affordability or depth of affordability if an economic feasibility analysis (EFA) shows it is supportable and will not dampen housing development. The IH ordinance proposed in Salem aims to produce more deeply affordable units at 60% AMI, and we are working on an EFA to show Salem can support that. The feasibility analysis that supports this IH Ordinance draws from the same data analysis, conducted by MAPC, that we will

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submit for our EFA to EOHLC. This IH Ordinance includes carve out language that excludes the B5 from implementing the elements of IH until such time as we receive approval on our EFA and final compliance determination from EOHLC.

Alexis Smith of the Metropolitan Area Planning Council (MAPC) is sharing her findings, an overview of the ordinance, and project goals:

- Confirm or update 2019 IH recommendations based on feasibility analysis
- Document economic feasibility for purposes of compliance with the MBTA Communities Law (Section 3A)
- Draft IH ordinance language for consideration by City Council by the end of 2023

In comparing 2019 proposal to now, larger projects (20-30 units) remain feasible. Smaller projects (20 units and fewer) are less certain. The current proposal includes policy adjustments for small projects to keep them feasible. Smaller projects are important to Salem but difficult to make work.

Overview of elements of the proposed Inclusionary Housing ordinance:

- 10% of units required to be affordable in projects 21 units or larger; 8% required in projects of 20 or fewer units. Applies for all projects that create 6 or more new residential units.
- Affordability level is 60% of AMI
 - Salem is a lower income community than the region as a whole. Typically 80% AMI is the standard, but this is really to serve the local need.
- Affordable units must be on site units and developers cannot pay a fee instead of building the required affordable units.
- Fractional Payment Required
 - Developers must pay a fee for each fraction of an affordable unit to the Affordable Housing Trust Fund (AHTF). Example: in a 24-unit project, 2.4 affordable units are required. Two units are built and the developer can pay 0.4 x the MA qualified Allocation Plan or build the unit.
- Cost Offsets:
 - Housing Unit Bonus
 - 25% increase in the amount of housing units that can be built per the underlying zoning.
 - Increasing stories by right, so long as the resulting height complies with the requirements of the underlying zoning district.
 - Parking reduction:
 - One parking space per housing unit (combined with other Transportation Demand measures that will decrease the need for more than one car/household) if within .5 mile of a commuter rail station or via Special Permit granted by the Planning Board.
- Adaptive Reuse Projects
 - if these projects are not feasibility with required affordability, the project may pursue a special permit, issued by the Planning Board allowing for tiered affordability up to 80% AMI.

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- Parking reduction for Adaptive Reuse: projects in the B5 may provide 0 parking per unit.
- Homeownership
 - Inclusionary requirements apply.
 - If unable to find a buyer at 60% AMI, there is a mechanism to sell to a higher income (80% AMI) after 180 days of marketing the unit.
- Large Project example: 32-unit building; with 10% required affordable (3 units + .2 fractional payment). Housing unit bonus allows for an increase of 5% for 40 units.
- Small Project example: 12 unit building 1 affordable unit + 25% housing bonus for 15.

COUNCILOR COMMENTS

Councillor Merkl welcomes this proposal and sees the need to work with the private sector for affordable housing and for making this work with smaller project. Asks about the housing unit bonus and how it will affect market rates. Ms. Eimert explains that the bonus functions by allowing the additional units to be built thereby potentially allowing the developer to make up the loss of income from the affordable units elsewhere. The bonus also allows for the possibility for more affordable units. Ms. Smith says that affordable requirements will have the developer making less profit and the additional market units may allow the opportunity for rents to stabilize.

Councillor Hapworth asks about connection of the EFA to MBTA Communities compliance and the market analysis attached to this ordinance, and treatment of the B5 district. Ms. Eimert says that Section 5.4.2 in proposed IH Ordinance includes carve out language, so IH won't apply in B5 until we receive MBTA Communities compliance, essentially allows the state to say IH requirements will not deleteriously impact multifamily housing development in the B5. MAPC has created an analysis that shows the market analysis that underpins the IH findings (that the affordability requirements are supportable with cost offsets) and that draws from the same analysis that underpins the economic feasibility analysis submitted as part of the City's MBTA Compliance application. Councillor Hapworth questions the math that goes into this ordinance. Staff do not believe anything needs to change to make the B5 compliant, and the state has the draft IH ordinance, so they are aware of its potential impacts as they assess City compliance with MBTA Communities Law. Ms. Eimert says that the belief is that the B5 district is compliant but we to delay adoption of IH in the B5 until the state give us the go ahead. Ms. Chiancola say that there isn't an answer right now, the city applied back in May and we are waiting on the final determination.

Councillor Watson-Felt clarifies that this would affect the B5 until it doesn't. Ms. Eimert say that it is the opposite. Councillor Watson-Felt asks about the housing bonus sharing the load of the cost and clarifies that there is no guarantee of that - a developer can rent at any rent they want, there is no rent control. Nice to consider but there is no guarantee. Ms. Eimert confirms there is no municipal mechanism currently to stabilize rents, we rely on market forces. It would be in their best interests to set rents at a rate that people would rent from them.

Councillor Watson-Felt would like to understand the definition of feasibility for a developer. What is the percentage of profit that helps us understand the feasibility? Ms. Smith says that the developer will have to think about whether a project is profitable enough to pursue. The Internal Rate of Return (IRR) analysis. IRR varies widely, for a large development it might be 18% and for a small project, it

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might be 12%. The baseline project IRR is 14%, consistent with Salem's market. A development project can shoulder a small fraction of affordability and still be feasible, ideally resulting in less than 1% change in rate of return. Cost offsets help projects to include affordable units and maintain an IRR that is worth pursuing vs. No build.

Councillor Watston-Felt clarifies that more units do not equal more height. What are ways around that? Ms. Chiancola responds that the ordinance was crafted to avoid variance or special permits. The developer could request a variance from the Zoning Board of Appeals (ZBA), public hearing, abutters notices, legal notices, and findings. Special permit process is different.

Councillor Morsillo clarifies that this ordinance was written sourced from the findings of the feasibility analysis which shares data and analysis with the EFA to be submitted for MBTA Communities Law compliance. Is there a reason to believe the state won't accept this? Ms. Chiancola says that the state has said that only qualified third-party reviewers can conduct EFAs and that MAPC is an approved third-party reviewer. The team is confident in this analysis. Councillor Morsillo clarifies that the city doesn't currently require affordable units and asks if there are reasons to believe that creating affordable units will negatively impact the market rate rent? Ms. Smith responds that rents have been increasing independently of any IH requirements. MBTA communities are all doing this and rents increase in communities that have already had IH. In general, a developer will charge the max they can for a unit. Cost offsets serve to stabilize market rents and ensure that the development moves ahead.

Councilor McCarthy asks if IH is only in the B5 district. Ms. Eimert explains that IH is city-wide but the MBTA compliance is just in the B5 district. Councillor McCarthy asks if an already approved project can take advantage of cost offsets provided via IH? Ms. Chiancola responds that any project can apply for an amendment but that this is essentially applying all over again. Councilor McCarthy is worried about projects that have been through an extensive process and wonders what happens when the project is fewer than 20-units and IH throws you to 21-units. Ms. Chiancola says that a project can come in for the amendment if they like, opens them up to a new review. An amendment is looked at with fresh eyes and is reviewed by staff and the Planning Board to meet Site Plan Review criteria.

Councillor McCarthy would like to know how the distance from a commuter rail station is calculated and if the entire property is considered if the measurement touches the boundary. Ms. Eimert responds that the measurement is taken by network distance, how the site is accessed by roadway. Properties within this one-half mile distance will be eligible for a potential parking reduction, if they implement transportation demand measures. Councillor McCarthy expresses concern about this in regard to Shetland Park and the distance to the existing commuter rail station. Ms. Chiancola responds that the redevelopment of Shetland Park would require a rezoning process. Councillor McCarthy clarifies that underlying zoning takes precedence over the transit zone. Ms. Chiancola says that IH will apply but the City Council will set the units per acre dimensional standards for one-off projects, like Shetland Park.

Councillor Stott wonders if the ordinance is worded for a future South Salem station. Also asks why are bus stops not included? Ms. Eimert responds that the IH language does contemplate a future South Salem Station, that the distances are described from "a commuter rail station" to acknowledge

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that future. Research shows as of now, bus stops do not offer the same level of service/operate as an amenity in the same way a commuter rail station does, and so are not included as eligible for reduction.

Councillor Cohen has spoken with developers and they are discouraged from building in Cambridge/ Somerville. Believes our diminishing rental stock needs to be addressed. Density bonuses and parking variances will create more naturally affordable units. Ms. Smith responds that the structure of the housing unit bonus interaction with height regulations will prompt developers to build smaller units. More multifamily housing will be more affordable market rate housing. Ms. Eimert reminds that the IH ordinance is one of thirty strategies identified in the Housing Road Map, there are others that address preservation, while this approach seeks to increase supply.

Councillor McClain would like the team to speak to the way the affordability restrictions are enforced. Ms. Chiancola says that this occurs prior to the issuance of the Certificate of Occupancy to the developer. There is a deed restriction on the property for the units to be affordable. The units must float through the property if they are rental units. The state requires an Affirmative Fair Housing and Marketing Plan that outlines the depth and term of restriction, potential increases, and outlines how the developer will ensure their marketing approach is acceptable by Fair Housing Law standards. Salem goes beyond this. Salem requires that housing applications be bilingual, our local resources are used to advertise the affordable units, lottery agent is hired by the property owner and identifies what the max rent will be and this is approved by state and city to meet guidelines. The lottery agent holds info session to explain the process. City of Salem asks all affordable units to be provided at 60 % AMI for rentals. For ownership there is a deed restriction, marketed at 60% AMI but there is a 10% window of availability – the max sale price is set 10% below the max household income size.

Councillor McClain asks if there is a floor for when fractional payments are created or when a unit is created? Ms. Chiancola says that the ordinance gives the developer the option. Anything under one whole unit, they can build the unit or pay fractional payment unit price.

Councillor McClain asks if there is an ability in the ordinance to reduce parking requirements to 0 citywide. Ms. Eimert clarifies that there are two pathways for reduction: one-half mile of commuter rail station, you can reduce to 1 if you offer Transportation demand measures and there is a special allowance for adaptive reuse projects within the B5 to reduce the required number of spaces per unit to 0, acknowledging these projects are challenging and that preservation is also a City priority. Ms. Chiancola offers a correction: further than one-half mile from the commuter rail with transportation demand management practices (i.e. commuter rail passes) then they can reduce to one spot/dwelling unit with a Special Permit from the Planning Board.

Councillor McClain asks what happens if you don't get state approval on the MBTA Communities Compliance application. Do we have deeper affordable citywide and not in the B5? Ms. Chiancola says that until the ordinance is passed, the Planning Board will enforce 10% of units at 60% AMI but once this is passed, the ordinance would apply city-wide except for the B5 District until we get approval from EOHLIC on MBTA Compliance. If this ordinance isn't in compliance with the state, we would need to adjust it and possibly pursue an amendment.

Councillor Watson-Felt asks about historic renovation project reference. How do we define historical renovation projects? Will it match the Demolition Delay? Ms. Chiancola says that in

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the B5, the building is maintained and you are using an existing building. Ms. Eimert says that the historic renovation projects does not have a definition. We can bring it back to the council.

Councillor Hapworth ask if it is fair to say that this wouldn't before us if staff did not feel confident it will comply with state requirements? If we changed something, do you think it would be out of compliance? Ms. Chiancola says that it depends on what has changed and we would look at feasibility analysis.

Councillor McCarthy revisits the one-half mile from commuter rail station and asks if there is anticipation that bus routes will being included? Ms. Chiancola says that, considering MBTA Communities compliance, each community has to have one multifamily district. We already have an existing district, the B5, that meets these requiremnts, so we will not need to add to that. Councillor McCarthy clarifies that if we wanted to add another district? Ms. Chiancola says that the city is only required to have one district where multifamily housing is permitted by right. Councillor McCarthy asks what happens if we want to add another district. This wouldn't happen automatically? Ms. Chiancola says that Section 3A has a process that allows multifamily zoning by right of commuter rail station. It would require a simple majority vote needed to change the zoning of any other district to make a similar allowance. You don't need a second station for that, a developer can already request this.

PLANNING BOARD COMMENTS

Mr. Rieder asks where the measurement for the commuter rail station is from on the parcel. The site is vast. Ms. Eimert will look into this and return to Council with an answer. Mr. Rieder follows that if part of a parcel is deemed part of this then entire parcel is – this is a different approach than how the Flood Hazard Overlay District (FHOD) is applied, with a portion of the parcel being subject to tighter regulations.

PUBLIC COMMENT

Filipe Zamborlini
19 Linden Street
Chair of AHTF

In favor of the policy as drafted tonight and feels this is a good and evidence-based approach to address housing needs. Density bonuses will support affordability and encourage affordable housing.

Josh Nagle
35 Washington Square U2

In favor and would like to incentive further by lowering the parking minimum to less than 1 space/unit. We should make it more lucrative to build here.

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Katie Hallett
17 Winter St. U8
OBO League of Women Voters
Endorses this ordinance. Affordability housing is critically needed.

Judith Reilly
20 West Avenue U3
Supports the ordinance and agrees with the comments of Katie Hallet and Filipe Zamborlini

Jason Sydoriak
20 Hathorne Street
AHTF member
Economist and transportation planner.
In favor of the ordinance. Many communities are pursuing this type of zoning. Research shows that it does help with affordability. Density bonuses and parking reduction are key incentives.

Emmett Costen
190 Bridge Street U3213
Supports the ordinance. Would like to see parking minimums reduced and there to be a review of R1 zoning.

Killian O'Connell
190 Bridge Street
Urge passages ASAP. Critical for economic prosperity and equality

No one appeared in opposition

Councillor Morsillo Moved that the matter be referred to the Planning Board for their recommendation by RCV 10 Yeas, 0 Nays, 0 Abs

Councillor Morsillo Moved that the public hearing be closed by roll call 10 Yeas, 0 Nays, 0 Abs

On the motion of Councillor McCarthy the meeting adjourned at 8:36 P.M. by roll call
10 Yeas 0 Nays 0 Abs

ATTEST:

ILENE SIMONS
CITY CLERK