

MARCH 30, 2020
JOINT PUBLIC HEARING OF THE
SALEM CITY COUNCIL AND PLANNING BOARD

A Joint Public Hearing of the Salem City Council and the Planning Board was held remotely on Monday, March 30, 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 can be found at end of minutes)

#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 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

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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 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

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Affordable Units, Preservation of Affordability, Conflict with Other Sections, and Severability.

Notice of this hearing was posted on Thursday, March 26, 2020 at 3:31 P.M. and advertised in the Salem News on March 16, 2020 and March 23, 2020

All Councillors were present.

Councillor Robert McCarthy presiding.

Presiding City Councilor Bob McCarthy opens the meeting at 7:00PM. 61 members of the public are viewing the meeting. All members of the City Council are present, as well as the Planning Board, with the exception of Helen Sides who was absent. Also in attendance was The Mayor Kimberley Driscoll, Ilene Simons City Clerk, Tom Daniel Director of Planning, Amanda Chiancola Senior Planner, Mason Wells, Planner and Maureen Fisher Assistant City Clerk.

Councilor Dibble motions that the joint public hearing be continued to Monday May 18, 7PM, 2020, and is seconded by Arthur Sargent.

Those in favor of tabling JPH state that we are in the beginning of a state of emergency with the COVID 19 pandemic and zoning issues are not important right now. It will be hard to truly give the matter their complete attention. There are constituents struggling to pay bills (rent mortgages etc.) due to being out of work. The City should concentrate on that. Tom St Pierre the zoning enforcement officer has not received a copy of the proposal. It could be very difficult for members of the public to be able to operate on the new platform thus for they will be unable to voice their opinion.

Those in favor of going forward with the JPH tonight state that there is no guarantee when the crisis will end. It's important to gather information from the Planning Board and the Mayor to see what is proposed. This is not a new zoning matter. This matter was brought to the City Council in January 2020. With current crisis going on COVID-19 virus, agreed that the City needs to be at full attention, however it might not go away and will become even more urgent.

With job loss this pandemic has heightened the affordable housing crisis. There are a lot of people who rent that are one crisis away from losing their housing (homeless), this could be that crisis. There are 60 members of the public online right now who want to hear these issues and the City Council and Planning Board should take advantage of that. It's possible that more public involvement can happen with this platform (Zoom, telephone or watching SAVT), than attend traditional JPH because physical disabilities, childcare issues, or conflicting schedules.

City Clerk Ilene Simons and the Planning Board staff are praised for their efforts. There was a dry run to make sure there were no issues.

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All three matters will be continued in this public process; however, the matter of Inclusionary Zoning will be heard at a future meeting. Several of the Planning Board members agree with the councilors to want to go forward with the JPH.

Councilor Dibble motions that the joint public hearing be continued to Monday May 18, 7PM, 2020, and is seconded by Arthur Sargent.

The motion **fails** in a roll call vote with 11 members voting; four (4) in favor and seven (7) against. The meeting shall remain open.

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

11 members voting, 7 nays, 4 yeas, so the matter does not carry, and the meeting will remain open.

Mayor Driscoll opens the presentation. Tom Daniel and Amanda Chiancola will also be presenting. Both measures, Accessory Dwelling Unit (ADU) and Inclusionary Zoning, have been endorsed by Affordable Housing Trust Fund Board (AHTFB). She also wants to be clear that the tools we are looking at are policy tools on the heels of adaptive reuse. ADU and Inclusionary were two other tools identified as being desirable, in community forums. In addition to these policies, the City is exploring development projects, leveraging public lands

and spaces, housing, and utilizing developments by the North Shore Community Development Coalition (CDC). She notes that it can take a long time to get a project off the ground even when the City or a developer owns the land. While the City is excited about upcoming redevelopment CDC projects, they are still many years away from happening. ADUs can happen sooner. Individuals may have spaces that they can convert. Several ADUs already exist and are grandfathered, and the City wants to make it easier to do that going forward. The ADU ordinance previously before Council, now has 8 co-sponsors so it is well understood and supported.

For the development of Inclusionary Zoning, the City worked with the Metropolitan Area Planning Council (MAPC), to consider the formula they are applying. The Planning Board had been incorporating Inclusionary Zoning in the many projects before it, at the rate of 10% at 80%, but having an official Ordinance will better serve our community.

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Mayor Driscoll reiterates the need for this. In working with homeless families, there is the realization that this is a severe need that will only get worse post-COVID-19. There will not be any votes tonight, but we may have this tool post-COVID 19 to keep people in the loop, people who may not have child care, or may not be able to sit in chambers for hours [during

an in-person meeting]. Seniors are seeking housing, families sheltering in place in motels and family shelters, so it is an urgent need. She praises Tom Daniel and Amanda Chiancola for their efforts.

Tom Daniel presents information on the Accessory Dwelling Units Ordinance amendment: Timeline is described; a grant was obtained to study implementation of ADU ordinance Worked w/MAPC in 2018, initial public meeting in March 2019; work on ADU and publicly owned land were prioritized ADU was put forth last year; this is an updated one with tools outside of the Ordinance 2019 work w/MAPC was extensive, looked at national and Mass. best practices along with data for Salem

Amanda Chiancola presents a slide show to go over ADU plan.

- **What is an ADU?**

- Self-contained within, attached, or detached generally for smaller households of 1-2 people, typically rent for less than standard apts. as they may be in an attic, basement, attached, or above a garage

- **Current Ordinance**

- “Accessory Living Areas,” which have many names, such as in-law apts etc. Limited to caretakers and family members requires a special permit and must be a self-contained residential unit that shares the same lot as another home

- **ADU recommendations**

- Amend purpose: “to add rental units to the housing stock to meet the needs of smaller households; to make housing units available to households for those who might otherwise have difficulty finding housing” Remove tenant restrictions Allow in multifamily homes of 4 or fewer units changes the process; the Zoning Board of Appeals (ZBA) currently uses specific criteria, but still requires a public hearing. The ZBA may condition, but special permits are not well received by homeowners b/c they are discretionary. The amended Ordinance aims to mitigate neighborhood concerns at front end rather than by special permit as of July 2019, 37 communities around Boston allow them

- **Proposed process**

- Performance Standards [that must be met for “by right” ADU compliance or construction]: 2 parking spaces, no net tree loss, new construction must meet the underlying dimensional standard does not exceed 800 square feet ONLY if a proposed unit meets ALL of the above performance standards, can it be constructed “by right” with a building permit only, no special permit required. Construction of an ADU requires a special permit if does not comply with any Performance Standard, in which case it requires both a special permit AND building permit

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- **ADU design**

New front door not allowed, cannot exceed 1.5 stories, cannot exceed 18' in height must comply w/same setbacks as primary home (even if primary home itself does not comply ADU must be smaller than primary home.

Accessory to primary home owner of primary home must live in primary home or ADU can never be sold separately from primary home utilities for ADU and primary home (electric, gas, water, sewer) must be on a single service

ADUs are an opportunity for private homeowners to create “naturally affordable” units, as such basement/attic units that lack some amenities, so are more affordable w/no public subsidies, but tax incentives for homeowners are offered if the unit is restricted as affordable. A loan pool is another incentive. A homeowner could take out a loan from city to create the ADU, but in exchange the unit must be affordable

Councilor Hapworth asks for clarification about setbacks; the new unit would have to comply with existing, current setbacks even if the existing home does not.

Councilor Dominguez asks about the table of income levels; this has to do more with inclusionary zoning. Under discussion now are supplemental programs which would incentivize ADUs. Tom Daniel notes the Mayor's submission from Feb. 13, a cover letter that included the entire package of the Ordinance, such as the loan program and tax exemption; this is probably the document Dominguez is referring to, re income limitations and max rent. The table is shown.

- Studio income limit 60% AMI: \$49,800, Max rent \$1,245
- 1 BR income limit 60% AMI: \$56,880, Max rent \$1,333
- 2 BR not likely for an ADU of <800 square feet, but 60% AMI: \$64,020, Max rent \$1,600

It is noted that the numbers are not part of this Ordinance but are part of the incentives. People can charge whatever they want but the property tax break ties the ADU to affordability and certifies that rent is appropriate and that the tenant is at a level of income commensurate with the ADU level; also, the loan will be an incentive.

Councilor McCarthy announces that those on the meeting should not be communicating on their personal numbers. Since the call in # is no longer on the bottom of the SATV screen, he repeats it: 1-888-475-4499, for those who want to call in. Prompt w/ID number is 447831204, then follow prompts to be in the attendee portion of the meeting.

PB Chair Ben Anderson does not have any comments but solicits them from other Board members.

Kirt Rieder asks for clarification regarding parking, that it is not two additional spaces dedicated to the ADU. Only one space is required for the ADU, plus whatever additional spaces are required for the home. For example, if square footage mandates 1.5 spaces and the ADU needs an additional space, this would mean that three spaces in total are required. Also,

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Mr. Rieder notes that it is more conventional to discuss net loss of inches vs. individual trees. This can be clarified.

Councilor Dibble voices his concerns, feeling that the current Ordinance requiring that an ADU only be allowed to be installed and exist as long as it is being used by family members or caregivers, could be tweaked or changed. He is concerned that “every single-family house in Salem can now become a two-family, and two- three- and four- unit homes can add another unit.” He wonders how many eligible units could be produced, if every eligible property owner added an ADU.

Councilor McCarthy counters that this is not a fair question, as it is very complicated to figure out which homes would be able to provide parking, and accommodate the appropriate setbacks, etc. So, to make a blanket suggestion like this is not fair.

Councilor Dibble “clarifies” that his is a more specific question, not “how many houses do we have in Salem that could do this.” Amanda Chiancola will look into this, but notes that the cost of constructing an ADU is between \$40,000 and \$80,000 at a minimum, so not every home that could accommodate one, will have owners that will build one. Councilor Dibble throws out the figure of 10,000.

Tom Daniel reiterates that there is no way to estimate. Matt Smith of the Planning Board comments that the Board and Council can check with area communities who already have an ADU ordinance in place, to get a sense of what actually happens.

Councilor Dibble speculating that there may be 10,000 eligible properties in Salem and that, if each one added an ADU and two people moved in, there would be 20,000 new residents. He notes that of course the figure will be lower, however there are no taxes on ADUs, so who will pay for the services of those living in them? They will still use Salem’s resources such as schools, utilities, etc. He feels that discussion should occur regarding limiting the number of units that can be constructed.

Councilor Madore feels that these questions were answered last time the Council through this process. A report has been issued by Amy Dain, who studied all communities that allow ADUs. A June 2019 Table of all communities who adopted such Ordinances was made, to see how many ADU units were actually produced, and generally it amounted to no more than 5-6 units per year over 3-5 years, so we are exaggerating to say we will have tens of thousands of Single Family owners invest tens of thousands of dollars to create rental units, and take on a restriction on their property to provide an affordable unit to family in need. The economics don’t work

Amanda Chiancola says the list of 37 communities is pulled from the above report. One permit per 1,000 homes would lead to 1.8 units being built every three years.

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Councilor Turiel appreciates the hyperbole of Councilor Dibble, noting that, theoretically, every single family through four-family home could theoretically try to build, leading to the addition of 8,000 units. However, it is obvious that that is hyperbole, and we are looking at small numbers. Just because you can build an ADU on your property doesn't mean you are going to. Many homes will not be able to due to setbacks. These are units that max out at 1000 square feet, and may only be constructed by right at 800 square feet. They will be linked by deed forever, and may not be split into another lot. What is before us may not be perfect, but the fundamental premise is sound. There is unfilled demand for ADUs, and they will alleviate pressure on the rental market, and while it's not the only answer, it will advance the cause with minimal, if any risk. 10,000 people are not coming into a deed restricted, with tax free properties and flooding the schools. If the market demands, there might be a couple dozen a year if homeowners want to build them.

Councilor Hapworth notes that it is important to point out this is a bottom up, not top down, mandate. Thus, if 10,000 people want an ADU, that means if people are against it, they won't be built there. It is not innovative in any community, not even Salem. Housing has always adapted to demand, and currently there are so few areas that can be developed, that what gets built is too big and generates pushback against housing. This would be gentler density and a different growth pattern, and would add affordability. It's not that every single-family neighborhood will become an R2.

Councilor Flynn notes that many of his constituents with single family homes are concerned about their neighborhoods becoming R2s and asks if removing R1 zones from the Ordinance has been considered. It has not been. The current Ordinance is limited to R1 so that would be a drastic change from what is embedded. R1 will still be an R1 zone, as these are accessory, not second units. Councilor Flynn insists that his constituents do not want this, and it is not what they signed up for.

Councilor Sargent feels that the potential number of units that may be built seems like a small number to gain for such a zoning change. It may be more suited for Marblehead, Wenham, Swampscott, etc., not suited for areas with lots of rental units. Salem is 50% rental units, and while the City needs affordable housing, everyone believes Salem is already doing its fair share of affordable housing. He feels that the numbers do not reflect the claimed housing crisis.

Councilor Prosniewski notes that ADUs would favor seniors who will be able to stay in the City, as well as smaller families looking to move in. There is a larger aspect than numbers and population. Salem is not Rowley or Hamilton-Wenham. We have seen gentrification because the City is desirable, and allowing seniors and younger families to live here is important.

Councilor Dominguez notes the importance of affordability; to alleviate the situation, the City must adjust to make sure we meet the needs of low income, elderly, and veterans, who should have access to a solution.

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PB Member DJ Napolitano, notices the angst of several Councilors, and is hearing the same arguments as last time. Two of them are completely contradictory; one is that, “imagine every house did this, how many additional units would that be” vs. “we won’t get that many people doing this so it will not benefit the City.” He comments that it can be one or the other, not both. the arguments that either everyone will do this, and it will completely change the R1 zone, or that it’s not worth the effort because not enough people are moving into Salem to make it worthwhile are incongruous.

Presiding Councilor McCarthy opens to public comment, specific to these two matters, and the number to call in is posted on the screen as it is no longer scrolling on SATV.

John Casella 8 Beckford St. Concerns:

- Strain on infrastructure
- Increased density
- Potential number of units

Alice Merkl, 28a Federal St. notes her statement of support for this City Council meeting on the ADU and Inclusionary Zoning (IZ) Ordinances. With IZ set to 10% at 60% AMI, it will bring a solid measure of affordability into developments. The addition of ADUs creates naturally affordable living spaces but also allows homeowners to stay in their homes. There was great support of ADUs at previous Council meetings, and Salem needs to take all steps possible to alleviate the housing crisis.

Chrissy Derby, 73 Tremont St. - no comment, expresses disappointment in Councilors

Cynthia Nina-Soto, 6 Laurent Rd. Salem, President of NS Association of Realtors, represents 1200 local realtor members, and is in support of the ADU Ordinance. Allowing by right ADUs is a commonsense approach while not disturbing the existing character of the neighborhood. It allows owners to create and provide housing to a wide range of those who need it. By nature of their size, ADUs are more affordable. Many residents including seniors are looking for additional income, businesses that are hiring, and young adults who want to remain in Salem can be helped by this. She commends Salem on its efforts. Councilors please remember that we have close to 200 homeless students in our school systems, and Councilors will do their jobs if we can help them. They are our future. Every little bit counts.

Eric Duhaime, 15 Symonds St., agrees w/Councilor Flynn that residents who purchase in R1 want to be surrounded by single family houses, so why not limit ADUs to R2 and R3 zones that already have a higher density of people? Off street parking would not be adversely affected.

Jeff Cohen - Submitted email to Councilors

Jenny Lynch, 38 Charles St. submitted an email, on behalf of the League of Women Voters re ADU, and also personally supports this Ordinance.

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Josiah Fisk, 358 Essex St. with an office at 10 Derby Square, sent in a long, technical email pointing out errors and ambiguities. He supports the intent of both Ordinances and approves of how the ADU one is written. Some loopholes exist, which may be intentional, but this is unclear; they are pointed out in the email. However, they could result in not having owner occupancy. Regarding the potential number of new ADUs, he has heard that in the past there has been low activity in other towns, in our City the ordinance we have right now is very restrictive. Having an accurate projection is crucial. He is glad there is support for continuing the hearing, as others will want to comment.

Fred Biebesheimer, 17 ½ River St. is disappointed that this meeting happened, and feels it was inappropriate given all that is going on. Councilor Madore raised the fact that this will

add only 5-6 units per year, so why are we bothering? He feels that, since the Planning Department does not have facts for how many units could actually be created, this shows the Ordinance has not been thought through. This number needs to be known before making this decision. He is also concerned about enforcement, noting the case of an AirBnB where it has been more than a year dealing with one renegade landlord. Another example would be investors who claim to live there, etc.

Meg Twohey, 122 Federal St., seconds Fred Biebershemer and feels that Tim Jenkins's special permit ideas are good, especially given AirBnBs. She notes that the Ordinance is attached to the Agenda, but the website says a full text of Ordinance will be provided soon, and wonders if what is attached to the Agenda is correct or if there is more information for residents to review. She also requests that the meeting be continued. Everything on the agenda is before residents. Ilene Simons clarifies that on Thursday documents were not ready, and other items were posted afterward.

Nichole McLaughlin, 4 Roosevelt Rd., supports the ADU Ordinance. She lives in an R1 neighborhood, and is not concerned that this will change its character if passed. She is concerned about the change in character in Salem if affordable housing is not created by any means available to us. There will be changes to our character and density if affordable housing is not available. She does not believe there will be a huge rush to build units; some arguments/calls for numbers of how many could possibly be built she sees as a scare tactic and does not appreciate it.

Melissa Stockbridge, 2 Oakland St, in favor, is a single-family homeowner, who has an unbuildable lot attached to her property w/carriage house on that lot, and would consider putting in an ADU b/c affordable housing is important to her. She volunteers a lot for such causes, and also, she is in an R2 zone surrounded by multifamilies but hers is a single family. She believes in affordable housing, and would like to have the opportunity to provide it

Steve Kapantais 23 A Wisteria St. is opposed to the ADU Ordinance.

- Income limits only enforceable if homeowner takes advantage of tax credits
- As written does not promote affordable housing, rather at or above market rate

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- Tax abatements or subsidized home loans are less than renting a market rate unit so homeowners will not take advantage of them
- A 1 BR ADU in a single-family neighborhood will fetch higher rent than a 1 BR in a multi-family neighborhood
- Tax abatements will be taken advantage of. If taking advantage of ADUs for a family member, homeowners will take advantage, if family member meets income criteria, using public tax dollars
- Also, someone considering early retirement could take out a home loan, abatement, move into the ADU and rent the house at market rate
- Ordinance is an attempt to create affordability but will create market rate housing, ADUs built for family members will be subsidized by taxpayer dollars

Andrew Meegan, 65 Dearborn St., opposed, feels that this is not going to solve the housing crisis, and opens up too many doors for opportunistic people to attach \$250,000 additions to their houses. By right requirements are too loose, and the neighbors have no control over what is built; this needs more work

Lorelee Stewart, 7 Barnes Rd., is in favor of ADUs. Notes prior issues re ensuring that (*inaudible, feedback*). She feels that the incentives address concerns that came up last time, and that any gains in affordable housing are critical

Tim Jenkins, 18 Broad St. In support, however, he feels ADUs should be by special permit as it is difficult to build “one size fits all” and ADUs could be impacting tight suburban neighborhoods. If 1-2 dozen/year are built, it will not overload the ZBA or PB to determine suitability. He is concerned about the loss of green space. Having ADUs be by right puts the onus on the homeowner to see if they comply w/underling requirements

Carole Carr 7 River St. Concerns:

- Enforcement of ADU rules, not only building of units but demolition of units once no longer used
- Who will make sure the principal owner is residing in one of those buildings?
- Will pit neighbor against neighbor. R1 residents want to keep it that way. Concerned about density, infrastructure, R2’s becoming R3’s, etc.
- What about the process in place for people to do something similar? Cites current sites under development as being required to provide more affordable housing
- Concerned about character of neighborhood
- Wants hearing to be continued, more study needed

Mary Whitney, 356 Essex St. Unit 2. Concerned about public participation in the meeting, as she had technical difficulties. She supports continuing the meeting, Concerns: ordinance needs more work, questions why we don’t ask current developers to include affordable housing rather than have existing residential neighborhoods solve the problem

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Councilor McCarthy thanks all Board members and members of the public who participated. The intent was to let everyone be heard and to process the information. He also thanks Mason Wells and Ilene Simons for working out the technology. He feels the process was handled well despite objections to starting the meeting and allowing presentations. He recommends a motion to continue.

Councilor Turiel motions to continue the meeting to 7PM on Monday April 13, to hear all 3 items, starting with inclusionary zoning.

All matters will be kept open until they are complete.

Councilor Dibble is concerned that not everyone who wanted to speak was able to. He also feels that the two ADU items should be handled together but Inclusionary Zoning should be heard separately as it is a separate issue.

Council President McCarthy comments that the issues will be kept together for now, but if in 2 weeks there is no progress, they will be separated.

The above motion is seconded by Councilor Dibble, and the motion carries.
A motion to adjourn is made by Councilor Sargent, and the motion carries.

The meeting ends at 9:50PM

ATTEST:

ILENE SIMONS
CITY CLERK

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:

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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”

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.”

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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.
 - 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.

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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.
- 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.

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- 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

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other casualty or a natural disaster; provided, however, no rehabilitation, repair or 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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- iii. 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.
 - iv. 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

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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 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.