

FEBRUARY 14, 2019
CITY COUNCIL
REGULAR MEETING

“Know Your Rights Under the Open Meeting Law, M.G.L. Chapter 30A ss. 18-25, and City Ordinance Sections 2-2028 through 2-2033.”

Assistive Listening System Now Available for City Council Meetings.

Those interested in utilizing these devices for meetings at 93 Washington Street may contact the City Clerk Ilene Simons at 978-619-5610 or isimons@saalem.com.

A Regular Meeting of the City Council held in the Council Chamber on Thursday, February 14, 2019 at 7:00 P.M. for the purpose of transacting any and all business. Notice of this meeting was posted on February 12, 2019, at 8:28 A.M. This meeting is being taped and is live on S.A.T.V.

All Councillors were present.

Council President Dibble presided.

Councillor Turiel moved to dispense with the reading of the record of the previous meeting. It was so voted.

President Dibble requested that everyone please rise to recite the Pledge of Allegiance.

PUBLIC TESTIMONY

1. John Boris, 5 Bedford St. – Zoning - Municipal and Religious Adaptive Reuse Overlay District
2. William Legault, 2 Orne St. – Mother Earth Resolution
3. Emily Udy, 8 Buffum St. - Zoning - Municipal and Religious Adaptive Reuse Overlay District
4. Chief Mary Butler, Salem Police Dept., 95 Margin St. – Mother Earth Resolution
5. Steve Kapantais, 23 Wisteria St. – Recycling Material Changes – Letter from Solicitor
6. Patricia Zaido, 10 Andrew St. - Zoning - Municipal and Religious Adaptive Reuse Overlay District
7. Sarah Staats, 12 Winthrop St. - Zoning - Municipal and Religious Adaptive Reuse Overlay District
8. Tim Jenkins, 18 Broad St. - Zoning - Municipal and Religious Adaptive Reuse Overlay District
9. Richard Pabich, 35 Winter Island Rd. – Zoning - Municipal and Religious Adaptive Reuse Overlay District
10. Polly Wilbert, 7 Cedar St., Zoning - Municipal and Religious Adaptive Reuse Overlay District & Carnival at Riley Plaza and Common
11. Lorelee Stewart, 7 Barnes Rd. - Zoning-Municipal and Religious Adaptive Reuse Overlay District
12. Jennifer Firth, 3 Carpenter St. - Zoning-Municipal and Religious Adaptive Reuse Overlay District
13. Ben Winthrop, 3 Essex St. – Carnival on the Common, Mother Earth Resolution and Zoning - Municipal and Religious Adaptive Reuse Overlay District
14. Jeff Cohen, 12 Hancock St. Zoning - Municipal and Religious Adaptive Reuse Overlay District
15. Meg Twohey, 122 Federal St. – Zoning-Municipal and Religious Adaptive Reuse Overlay District
16. Gary Gill, 12 Pope St., - Zoning - Municipal and Religious Adaptive Reuse Overlay District
17. Fred Biebesheimer, 17 River St. – Zoning - Municipal and Religious Adaptive Reuse Overlay District

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18. Justin Whittier, 10 River St. - Zoning - Municipal and Religious Adaptive Reuse Overlay District and Mother Earth Resolution
19. Ellen Simpson, 2 ½ Ropes St. - Zoning - Municipal and Religious Adaptive Reuse Overlay District
20. Judith Reilly, 20 West Ave. - Zoning - Municipal and Religious Adaptive Reuse Overlay District
21. Kathleen Ingemi, 381 Highland Ave. – Carnival at Riley Plaza
22. Josiah Fisk, 358 Essex St., Zoning - Municipal and Religious Adaptive Reuse Overlay District
23. Jane Arlander, 93 Federal St. – Zoning-Municipal and Religious Adaptive Reuse Overlay District
24. Chuck Von Bruns, 3 River St. - Zoning-Municipal and Religious Adaptive Reuse Overlay District
25. Gretchen Douholuk, 68 Essex St. – Carnival on the Common
26. Elaine Wintman, 28 Beckford St. - Zoning-Municipal and Religious Adaptive Reuse Overlay District
27. Robert Zastrow, 74 Washington Sq. – Carnival locations
28. Constance Arlander, 91 Federal St. - Zoning - Municipal and Religious Adaptive Reuse Overlay District
29. Fawaz Abusharkh, 4 Harrison Rd.- Zoning - Municipal and Religious Adaptive Reuse Overlay District, Carnival Locations and Mother Earth Resolution, Blood Drive
30. Jessica Herbert, 70 Webb St. - Zoning - Municipal and Religious Adaptive Reuse Overlay District

(#50) – APPOINTMENT OF CHARITY LEZAMA TO THE HOUSING AUTHORITY

(Councillor Milo recused herself)

Held from the last meeting, the Mayor's appointment of Charity Lezama of 24 Howard St. #2, Salem to the Salem Housing Authority Board with a term to expire on September 13, 2023 was confirmed by a roll call vote of 10 yeas, 0 nays, 0 absent. Councillors Turiel, Sargent, Peterson, McCarthy, Madore, Gerard, Furey, Flynn, Dominguez and Dibble all voted in the affirmative. Councillor Milo was recorded as absent.

Councillor Madore received unanimous consent for suspension of the rules to allow Ms. Lezama to speak.

Councillor Milo returned to the Chambers

#87 – APPOINTMENT OF MIKHAELA ABREU TO THE SALEM YOUTH COMMISSION

For housekeeping purposes, the Mayor's appointment of Mikhaela Abreu, to serve on the Salem Youth Commission with a term to expire on February 14, 2020 (at the January 24, 2019 meeting, Mikhaela Abreu was submitted and approved as a reappointment and she should have been a new appointment) was held under the rules until the next meeting on February 28, 2019.

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#88 – APPOINTMENT OF TODD WALLER TO THE TRAFFIC & PARKING COMMISSION

The Mayor's appointment of Todd Waller of 148 Washington St. to serve on the Traffic and Parking Commission with a term to expire on September 29, 2019 was held under the rules until the next meeting on February 28, 2019.

#89– APPOINTMENT OF KERRY NEENAN TO THE DISABILITIES COMMISSION

The Mayor's appointment of Kerry Neenan of 331 Lafayette St, to serve on the Salem Disabilities Commission with a term to expire on February 14, 2022 was held under the rules until the next meeting on February 28, 2019.

#90 – APPOINTMENT OF JOSH GILLIS TO THE BICYCLING ADVISORY COMMITTEE

The Mayor's appointment of Josh Gillis of 7 Union St, to serve on the Salem Bicycling Advisory Committee with a term to expire on February 14, 2022 was held under the rules until the next meeting on February 28, 2019.

#91 – RE-APPOINTMENT OF ANTHONY O'DONNELL TO THE CEMETERY COMMISSION

The Mayor's reappointment of Anthony O'Donnell of 35 Washington Sq. to the Cemetery Commission with a term to expire on February 14, 2022 was confirmed by a unanimous vote of 11 yeas, 0 nay, 0 absent. Councillors Turiel, Sargent, Peterson, Milo, McCarthy, Madore, Gerard, Furey, Flynn, Dominguez and Dibble all voted in the affirmative.

#92 – RE-APPOINTMENT OF PAUL VICCICA TO THE ZONING BOARD OF APPEALS

The Mayor's reappointment of Paul Viccica of 35 Broad St. to the Zoning Board of Appeals with a term to expire on February 22, 2020 was confirmed by a unanimous vote of 11 yeas, 0 nay, 0 absent. Councillors Turiel, Sargent, Peterson, Milo, McCarthy, Madore, Gerard, Furey, Flynn, Dominguez and Dibble all voted in the affirmative.

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#93 - #95 – CONSTABLES

The Mayor's reappointment of the following to serve as Constables with their following terms to expire was received and placed on file.

Name and Address:

Term to Expire On:

Terrance Wilkins, 12 Intervale Rd., Salem
Christopher Chigas, 5 Tammie Ln., Peabody
Christine Derby 73 Tremont St., Salem

January 19, 2022
October 3, 2021
February 1, 2022

#96 – APPROPRIATION FOR VACATION SICK LEAVE BUYBACK FOR NEGOTIATED TWO (2) DAY BUYBACK PROVISION

The following Order introduced by the Mayor was adopted under suspension of the rules.

ORDER: That the sum of One Hundred and Ten Thousand Dollars (\$110,000.00) is hereby appropriated in the "Retirement Stabilization Fund-Vacation/Sick Leave Buyback" Account to be expended for the negotiated 2-day sick leave buyback provision as needed in accordance with the recommendation of Her Honor the Mayor.

#97 – APPROPRIATION FOR VACATION SICK LEAVE BUYBACK FOR BRIAN BENSON, POLICE DEPARTMENT

The following Order introduced by the Mayor was adopted under suspension of the rules.

ORDER: That the sum of Twenty-Six Thousand Seven Hundred and Eighteen Dollars and Eight Cents (\$26,718.08) to be approved within the "Retirement Stabilization Fund-Vacation/Sick Leave Buyback" Account to be expended for the negotiated Fiscal Year 2019 Contractual buyback for a police department employee, Brian Benson, in accordance with the recommendation of Her Honor the Mayor.

#98 – APPROPRIATION FROM CAPITAL OUTLAY FOR HVAC SYSTEM REVIEW FOR WITCHCRAFT HEIGHTS ELEMENTARY SCHOOL

The following Order introduced by the Mayor was adopted under suspension of the rules.

ORDER: That the sum of Twenty-Six Thousand Dollars (\$26,000.00) is hereby appropriated within the "Capital Outlay Fund 2000" to be expended for an HVAC system review for Witchcraft Heights Elementary School by the School Department in accordance with the recommendation of Her Honor the Mayor.

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#99 –PAY FOR PRIOR FISCAL YEAR INVOICE FROM CURRENT FY2019 PURCHASING BUDGET

The following Order introduced by the Mayor was adopted under suspension of the rules by a unanimous roll call vote of 11 yeas, 0 nays, 0 absent. Councillors Turiel, Sargent, Peterson, Milo, McCarthy, Madore, Gerard, Furey, Flynn, Dominguez and Dibble all voted in the affirmative.

ORDER: Per MGL Chapter 44, Section 64 which allows for a municipality to pay for prior fiscal year invoices using current fiscal year appropriations by two-thirds vote of the City Council, the request is for the sum of \$279.99 of outstanding prior fiscal year Purchasing Department invoice for Konica be paid from FY2019 Purchasing Budget.

#100 –TO REDUCE THE AGE OF ELIGIBILITY FOR TAX EXEMPTION PURSUANT TO MGL CH. 59, SEC. 5, CLAUSE 41C

The following Order introduced by the Mayor was referred to the Committee on Administration and Finance co-posted with the Committee of the Whole

ORDER: Pursuant to MGL Ch. 59, Sec. 5 Clause 41C, the City of Salem hereby reduces the requisite age of eligibility to any person age 65 years or older and increases the whole estate exemption for qualifying married persons to fifty-five thousand dollars, real and personal, provided that real property occupied as their domicile shall not be included.

#101 – ORDINANCE AMENDING PROHIBITED ACTIVITIES ON THE SALEM COMMON – CARNIVALS

The following Ordinance introduced by the Mayor was referred to the Committee on Ordinances, Licenses and Legal Affairs co-posted with the Committee of the Whole.

An Ordinance amending an Ordinance relative to prohibited activities on Salem Common.

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

Section I. Chapter 26 of the Code of Ordinances is hereby amended by deleting subsection (8) of section 26-75

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

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#102 - ORDINANCE AMENDING CH. 24, SEC. 18 – RELATIVE TO CIRCUSES AND CARNIVALS WITHIN RILEY PLAZA

The following Ordinance introduced by the Mayor was referred to the Committee on Ordinances, Licenses and Legal Affairs co-posted with the Committee of the Whole.

An Ordinance amending an Ordinance relative to circuses and carnivals within Riley Plaza

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

Section I. Chapter 24 of the Code of Ordinances is hereby amended by deleting Section 24-18

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

#103 – RESOLUTION - MSBA STATEMENT OF INTEREST FORM FOR BENTLEY SCHOOL

The following Resolution introduced by the Mayor was adopted by a unanimous roll call vote of 11 yeas, 0 nays, 0 absent. Councillors Turiel, Sargent, Peterson, Milo, McCarthy, Madore, Gerard, Furey, Flynn, Dominguez and Dibble all voted in the affirmative.

Resolution: For the submission of a Statement of Interest Form to the MSBA for the Bentley School to replace the boiler system.

BE IT RESOLVED:

Having convened in an open meeting on February 14, 2019, prior to the SOI submission closing date, the City Council of Salem, Massachusetts, in accordance with its charter, by-laws, and ordinances, has voted to authorize the Superintendent to submit to the Massachusetts School located at 25 Memorial Drive, Salem, MA which describes and explains the following deficiencies and the priority category(s) for which an application may be submitted to the Massachusetts School Building Authority in the future: Replacement of the boiler system to increase energy conservation and decrease energy related costs in a school facility.

And, hereby further specifically acknowledges that by submitting this Statement of Interest Form, the Massachusetts School Building Authority in no way guarantees the acceptance or the approval of an application, the awarding of a grant or any other funding commitment from the Massachusetts School Building Authority, or commits the City to filing an application for funding with the Massachusetts School Building Authority.

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#104 – RESOLUTION – MOTHER EARTH AS A LIVING BEING

The following Resolution introduced by Councillor Dominguez was referred to the Committee on Government Services co-posted with the Committee of the Whole. Councillor Dominguez received unanimous consent for suspension of the rules to allow Juan or Dulce Gonzalez to speak.

Resolution:

WHEREAS The Global Embassy of Activist for Peace and Dr. William Soto Santiago, promotes the worldwide recognition of Mother Earth as a living being, and as such, subject to inalienable rights that must be respected, in order to preserve the future of the human beings and other living beings in the common home we have: the planet, Mother Earth;

WHEREAS there have been numerous international instruments from the scientific community itself and the resolutions of the United Nations General Assembly where this planet is conferred the condition of MOTHER EARTH;

WHEREAS Mother Earth is a LIVING BEING which has life and gives life. And as a free and living being, Mother Earth must be entitled to rights, like all living beings; rights that must be recognized, respected and protected by all human beings, and all States ought to be committed to implement such rights in their respective countries, so that peace and security may prevail worldwide;

WHEREAS there is a global tendency and momentum for universal principles that protect the environmental rights of Mother Earth, all to ensure environmental, social, cultural and economically sustainable development in which the present generations' use of resources does not compromise the heritage of future generations;

NOW, THEREFORE BE IT RESOVLED, That the Salem City Council, hereby make this Constitutional Proclamation of the Rights of Mother Earth to be taught in formal and non-formal educational settings for the dissemination and promotion of these rights in all media outlets, so that progressive measures be established in the different countries of the world for its recognition throughout the nations of the Earth, to become binding and incorporated in their internal legislations, and effectively implemented through the relevant bodies

AND THAT IT FURTHER BE RESOLVED, That the City Council make this resolution a matter of record of these proceedings.

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#105 – RESERVED PARKING SPACES FOR BLOOD DRIVE

The following Order introduced by Councillor Dominguez was adopted as amended.

ORDER: That four parking spaces be reserved in front of 87 Washington Street in order to hold a blood drive on March 21, 2019

Amended Order:

ORDER: That three parking spaces near 87 Washington Street be reserved in order to hold a blood drive on March 21, 2019 and that the flyer contain the name of the sponsoring organization(s), the organization responsible for drawing blood, the date time and exact location of the event and that the side walk remain accessible to pedestrians (no A-frames in the way) and that the parking department be contacted to work out the details.

#106 – AD-HOC COMMITTEE BE FORMED TO REVIEW THE RULES AND ORDE OF THE CITY COUNCIL

The following Order introduced by Councillor Sargent was adopted.

ORDER: That an Ad-Hoc Committee be formed to review the rules of the City Council and that the Committee report back to the full Council with recommendations for any updates, changes and /or edits. The Committee shall consist of Councillor-At-Large, Thomas Furey, Councillor-At-Large, Elaine Milo, Councillor-At-Large, Arthur Sargent, Ward Two Councillor, Christine Madore and Ward Seven Councillor, Stephen Dibble, who shall serve as Chairperson

#107 – RESOLUTION – DOMINCAN REPUBLIC INDEPENDENCE DAY

The following Resolution introduced by Councillor Dominguez was adopted.

RESOLUTION:

WHEREAS: The Dominican Flag Committee of Salem has called the Dominican community to Lafayette Park to Celebrate the raising of the Dominican flag that marks Dominican Republic's 175th anniversary of independence; and

WHEREAS: The Dominican Community has dedicated this celebration of independence to Dominican Republic's men and women who have distinguished themselves in different disciplines in the City of Salem; and

WHEREAS: The Dominican community has established itself through the efforts of many Dominicans in business, sports, politics, education and many other disciplines

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and have exhibited their pride, passion and love of family, religion and commitment to hard work; and

WHEREAS: The Dominican community enriches the City of Salem by promoting the rich Dominican culture through music, dances and the arts; and

WHEREAS: The City of Salem recognizes that supporting the Latinx community will lead to greater continued equality for all residents and help strengthen our City;

NOW, THEREFORE, We, the Salem City Councillors and Kimberley Driscoll, Mayor of the City of Salem, do hereby proclaim February 27th, 2019 as DOMINICAN REPUBLIC INDEPENDENCE DAY and call upon our public officials, educators, librarians, and all Salem Residents to observe this month with appropriate ceremonies, activities and program here in Salem and beyond the borders of our Commonwealth.

#108 (#80-#83) - GRANTING CERTAIN LICENSES

Councillor McCarthy offered the following report for the Committee on Ordinances, Licenses & Legal Affairs. It was voted to accept the report and adopt the recommendation

The Committee on Ordinances, Licenses & Legal Affairs to whom was referred the matter of granting certain licenses has considered said matter and would recommend that the following license be granted.

SECOND HAND Witch City Consignment 301 Essex St, Salem
 VALUABLE:

TAG DAYS: Salem VFW 5/24/2019 – 5/27/2019; 11/8/2019 – 11/11/2019
 Disables American Veterans 5/17/ – 5/19/2019; 11/1/2019 – 11/3/2019
 Salem Veterans Council 7/1/2019 – 7/4/2019

#109 (#690 of 2018) – DECLARING 252 BRIDGE ST. SURPLUS (CRESCENT SHAPE LOT ADJACENT TO MBTA STATION)

Councillor McCarthy offered the following report for the Committee on Ordinances, Licenses & Legal Affairs co-posted with the Committee of the Whole. It was voted to accept the report and adopt the recommendation. Councillor Sargent was recorded as opposed.

The Committee on Ordinances, Licenses & Legal Affairs co-posted with the Committee of the Whole to whom was referred the matter of declaring the property at 252 Bridge Street, known as the crescent lot surplus property has considered said matter and would recommend that a favorable recommendation be made to the full council.

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#110 (#706 of 2018) – CONVEYING THE LAND LOCATED AT 252 BRIDGE STREET TO THE SALEM REDEVELOPMENT AUTHORITY

Councillor McCarthy offered the following report for the Committee on Ordinances, Licenses & Legal Affairs co-posted with the Committee of the Whole. It was voted to accept the report and adopt the recommendation by a roll call vote of 10 yeas, 1 nay, 0 absent. Councillors Turiel, Peterson, Milo, McCarthy, Madore, Gerard, Furey, Flynn, Dominguez and Dibble all voted in the affirmative. Councillor Sargent voted in the negative. The matter passed by a two-thirds vote.

The Committee on Ordinances, Licenses & Legal Affairs co-posted with the Committee of the Whole to whom was referred the matter of authorizing the Mayor to execute a deed conveying the property at 252 Bridge Street, to the Salem Redevelopment Authority, has considered said matter and would recommend a positive recommendation be made to the full council contingent upon a mutually agreed cooperation agreement. And that the Council President be authorized to execute said agreement on behalf of the Council by a roll call vote.

#111- COUNCIL APPOINTMENT TO THE CPA COMMITTEE

Councillor Flynn offered the following report for the Committee on Government Services co-posted with the Committee of the Whole. It was voted to accept the report and adopt the recommendation.

The Committee on Government Services co-posted with the Committee of the Whole to whom was referred the matter of filling the vacancy of the CPA committee has considered said matter and would recommend Deb Greel to the full council to fill the vacancy. (Ms. Greel will be appointed at the February 28, 2019 meeting)

#112 – 2019 ELECTION CALENDAR

The communication from City Clerk, Ilene Simons, submitting the 2019 Election Calendar for the City Elections was adopted.

Friday, JULY 26*, 5:00 P.M., Last day and hour for taking out Nomination Papers (C. 53, S. 9A) (48 weekday hours prior to last day to certify). Candidates or designee must file signed statement of intent. Nomination papers to candidates only or to their agents appointed in writing.

Tuesday, JULY 30, 5:00 P.M., Last day and hour for filing all Nomination Papers and petitions with Board of Registrars of Voters for certification of signatures (Ch. 53, S. 7A). Registrars need not certify more names than required plus 20%. (14 days prior to last day to certify)

Tuesday, AUGUST 13**, 5:00 P.M., Last day and hour for filing certified nomination papers by the Board of Registrars of Voters with City Clerk (Ch. 53, S.10) (35 days prior to election)

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Wednesday, AUGUST 14, -----Post the list of names and addresses of candidates

Thursday, AUGUST 15, 5:00 P.M., Last day and hour for filing objections and/or withdrawals to nomination papers. (C. 55B, S. 7)

Thursday, AUGUST 15***, 5:05 P.M., Drawing for places on ballot, by lot, by City Clerk in the Council Chambers. Candidate or representative may be present.

Wednesday, AUGUST 28, 8:00 P.M. Last Day to Register Voters for Preliminary (20 Days Prior To Election)

Tuesday, SEPTEMBER 10-----Last Day to Post Warrant

Monday, SEPTEMBER 16, 12:00 P.M., Last Day and Hour to Apply for An Absentee Ballot

TUESDAY SEPTEMBER 17 PRELIMINARY ELECTION

Monday, SEPTEMBER 23, 5:00 P.M., LAST DAY & HOUR TO FILE FOR A RECOUNT. Last day & hour for filing withdrawals or objections to nominations made at preliminary and for filing written acceptances by write-in or sticker candidates who won in the preliminary with City Clerk

Monday, SEPTEMBER 23***, 5:05 P.M., Drawing for places on ballot, by lot, by City Clerk in Council Chambers. Candidate or representative may be present.

Wednesday, OCTOBER 16, 8:00 P.M., Last Day to Register Voters for City Biennial Election (20 Days Prior To Election)

Tuesday, OCTOBER 29 -----Last Day to Post Election Warrant

Monday, NOVEMBER 4, 12:00 P.M., Last Day and Hour to Apply for An Absentee Ballot

TUESDAY NOVEMBER 5 BIENNIAL ELECTION

Friday, NOVEMBER 15, 5:00 P.M., Last Day & Hour to File for A Recount

IMPORTANT: All Candidates Must Comply Fully with CAMPAIGN FINANCE LAW, (Ch. 55 of the General Laws)

* Nomination forms to candidates only or their agents appointed in writing.

** Registrars need not certify more names than required plus 20%;

*** Meeting held in Council Chambers. City Clerk will draw positions

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#113 – COMMUNICATION FROM SOLICITOR RELATIVE TO REVISED LIST OF RECYCLABLE MATERIAL

The communication from the City Solicitor relative to the revised list of recyclable material to exclude milk and juice cartons and black was received and placed on file

Dear Councilor Dibble:

I am writing to inform you that the Massachusetts Department of Environmental Protection has recently updated its Smart Recycling Guide and revised its list of recyclable material to exclude milk and juice cartons and black plastics. This change came about following reports from Materials Recovery Facilities (MRFs) that black plastic containers blend in with black conveyor belts which means the optical sorters that identify the type resin in plastic containers can't "see" the black plastic. MRFs sell plastic by resin type, separately baled PET, HDPE, polypropylene, etc. Black plastic in the wrong bale, e.g. PET or HDPE, is a contaminant. Until optical sorting technology evolves to be able to see black plastic, it will likely remain excluded from recycling. According to DEP, by conforming to the statewide Smart Recycling Guide, which doesn't include cartons and black plastic containers, Salem is helping to reduce contamination and provide a more marketable supply of materials to the MRF.

I am notifying you about this because recently a constituent raised the issue of whether or not the City Council should authorize an amendment to the Waste Management (WM) Contract and whether residents should be notified in writing by WM. In reviewing the contract, I do not believe either is required. First, Section 3-C of the Contract provides: "Communication with Residents - Unless otherwise agreed, the Contractor shall provide, at Contractor's expense, written notice of any changes in the route, schedule or collection of materials, made at the request of the Contractor, to all service recipients." Where, in this case, WM did not request the change, I do not believe they should be responsible for a direct mailing. City staff have changed the City's website, written publications and social media. Second, the contract requires WM to collect Recyclable Material and defines Recyclable Material as "Material that has the potential to be recycled and is identified, listed and accepted as such by WM and which is not commingled with non-recyclable solid waste or contaminated by significant amounts of toxic substances as per 310 CMR 19.006." As stated above, DEP has determined that these specific cartons and black plastics do not have the potential to be recycled. As such, I do not believe a contract amendment is necessary.

If you have any questions, please contact me.

Sincerely,
Elizabeth Rennard

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#114 – EXEMPTION FROM MGL 268A, SEC 20(B) TO ALLOW A POLICE DEPARTMENT EMPLOYEE TO ACCEPT A PART TIME POSITION WITH THE COUNCIL ON AGING

The Order introduced by the City Solicitor was adopted.

ORDERED: to grant an exemption from MGL Ch. 268A, Sec. 20B for Thomas Cunningham so he can accept a part-time position with Council on Aging

#115A - (#618 of 2018) – RECOMMENDATION FROM PLANNING BOARD RELATIVE TO THE MUNICIPAL AND RELIGIOUS OVERLAY DISTRICT

The communication from the Planning Board submitting their recommendation and amendments to the proposed zoning for the Municipal and Religious Overlay District be received and placed on file.

Recommendation from Planning Board

At its meeting on January 17, 2018 the Planning Board discussed the proposed Zoning Ordinance amendments adding a Municipal and Religious Adaptive Reuse Overlay District to facilitate the appropriate reuse of eligible buildings and thereby protect and advance the general public welfare within Section 8.0 - Special District Regulations by adding Section 8.7 – Municipal and Religious Reuse Overlay District. This Ordinance Amendment includes sections 8.7.1 through 8.7.11 outlining respectively, Purpose, Location, Eligibility, Dimensional Requirements, Uses Allowed by Special Permit, Site Plan Review, Historical Commission and Design Review Board Review, Affordability, Parking and Loading, Conflict, and Severability.

The Ordinance Amendment provides a tool to allow for reuse of eligible buildings that will best serve the community but will minimize impacts to surrounding neighborhoods while also facilitating historic preservation, economic development, housing production and environmental sustainability and resilience.

The Planning Board voted in favor of recommending that the City Council approve the amendments as modified below:

The recommended modifications are shown in track changes herein:

An Ordinance to amend the zoning ordinance by adding a ~~a~~ Municipal and Religious Adaptive Reuse Overlay District to facilitate the appropriate reuse of eligible buildings and thereby protect and advance the general public welfare.

Section 1. Section 8 - Special District Regulations of the City of Salem Zoning Ordinance (“Ordinance”) is hereby amended by adding the following new section:

8.7 Municipal and Religious Reuse Overlay District

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8.7.1 Purpose.

In addition to that set out in Section 1.1 of the Ordinance, it is the intent of this Section 8.7 to allow for reuse of municipal properties ("Municipal") and properties used for religious purposes and protected by G.L. c. 40A §3 ("Religious"). This overlay district provides zoning flexibility to allow for such redevelopment, ~~while also facilitating~~ historic preservation, economic development, housing production and environmental sustainability and resilience. When Buildings and Lots in Municipal or Religious use no longer serve such purposes, this Section envisions a process and zoning to allow for reuse, either by a public or private entity, which will best serve the community but will minimize impacts to surrounding neighborhoods.

8.7.2 Location

The Municipal and Religious Reuse Overlay District shall apply in all zoning districts to eligible Lots as defined in Section 8.7.3 herein.

8.7.3 Eligibility

The Municipal and Religious Reuse Overlay District shall apply to:

1. Any Lot improved with one or more Buildings currently in Municipal or Religious use;
2. Where the Building(s) in Municipal or Religious use and for which a change of use is proposed and the Building(s) is at least 3,000 square feet;
3. Where one or more of the Building(s) in Municipal or Religious use and for which a change of use is proposed is at least fifty (50) years old at the time of application under this Section and
4. Where the applicant seeks to change the use of the Lot and/or Building from Municipal or Religious use to one or more of the uses identified in Section 8.7.5.
5. Public parks and cemeteries shall not be considered in Municipal use for the purpose of this ordinance.

A Building shall be considered currently in Municipal or Religious use if the Building was actively used for at least 20 continuous years, including some point in the last 20 years, for Municipal or Religious purposes immediately preceding an Application under this section.

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8.7.4 Dimensional Requirements

Table of Dimensional Requirements

	<i>Residential Uses or Mixed Use— Existing Buildings</i>	<i>Residential Uses or Mixed Use— New Construction</i>
Minimum lot area (square feet)	2,000	2,000
Minimum lot area per dwelling unit (square feet)	—	500
Minimum lot width (feet)	30	30
Maximum lot coverage by all buildings (percent)	100	standard of the underlying zone 50
Minimum width of setbacks (feet)	—	standard of the underlying zone
Maximum height of buildings (feet)	—	standard of underlying zone 55
Maximum height of buildings (stories)	—	standard of underlying zone 5
Maximum height of fences and bordering walls (feet)	As exists or 6 <u>whichever is greater</u>	6
Minimum distance between buildings if more than 1 on a lot	standard of underlying zone	

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Any rooftop construction needed for building circulation, drainage, ventilation, utilities, accessibility features or passive recreation shall be excluded from the calculation of building height. For the purpose of this ordinance, the height shall not exceed the ridge or parapet of the existing structure, whichever is greater and shall not include steeples or other ornamental features that are in no way used for living purposes.

To the extent that any eligible Lot and/or existing Building thereon does not conform to the applicable dimensional requirements, the non-conforming Lot and/or existing Building shall be considered legally existing nonconforming for purposes of an application under this Section 8.7. The Planning Board may grant a special permit pursuant to Section 9.4.1 in conjunction with an application made pursuant to this Section 8.7 to partially reconstruct, extend, alter or change a nonconforming Building if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

8.7.5 Uses Allowed by Special Permit

The Planning Board, upon a finding that a proposed use is in harmony with the purpose and intent of this Ordinance and Section 8.7, may grant a special permit pursuant to this Section 8.7 and Section 9.4 for one or more of the following uses on a Lot that meets the eligibility requirements of Section 8.7.3; provided, however that Commercial uses may only be located within a multifamily dwelling and may not exceed 30 percent of the gross floor area of said multifamily dwelling. In addition, for any Lot in the B2, B4, I and BPD Districts the Planning Board may grant such special permit only upon finding that the public good will be served and that (1) the residential use would not adversely affect the underlying ~~nonresidential~~ district and (2) the nonresidential uses permitted in the underlying ~~nonresidential~~ district are not noxious to the multi-family use. For any Lot in the R1, R2, R3, and RC Districts the Planning Board may grant such special permit that includes a Commercial use only upon finding that the public good will be served and that the Commercial use would not adversely affect the underlying residential district.

~~A project~~The Planning Board proposed under this Section 8.7 may, in addition to a change in use of a Building currently in Municipal or Religious use, authorize the construction of new and expanded Buildings, pursuant to Section 8.7.

Special Permit Uses:

1. Dwelling, Multi-family.
2. Meeting and gathering space accessory to a principal use or for use by residents or tenants of a Lot.
3. Artist lofts and living space, studios, workrooms and shops of artists, artisans and craftsmen, where products of the artistic endeavor or craft activity can be for sale on the premises or by specific off-premises commission from a sponsor or client.

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4. Banks and savings and loan institutions.
5. Barber shops and beauty parlors.
6. Books, stationery and gift stores.
7. Business and professional offices.
8. Crafts, related stores selling jewelry, crafts, etc. where production occurs on the premises.
9. Dwelling units above first floor retail, personal service, or office use.
10. Florist shops, but excluding greenhouses.
11. Galleries.
12. Laundromats/dry cleaning establishments, excluding onsite cleaning.
13. Medical and dental offices.
14. Specialty food stores, including candy store, meat market, delicatessen, or bakery, but not ~~those where food is served for consumption on the premises~~ a restaurant or fast food establishment unless permitted by the underlying zone.
15. Tailor and custom dressmaking shops.
16. Daycares.
17. Not for profit museums.
- ~~15-18.~~
- ~~16-19.~~ All uses permitted as of right or by special permit in the underlying zone or R2 zone.

8.7.6 Site Plan Review

Each project submitted hereunder shall require site plan approval under Section 9.5. Absent special circumstances, applications under Section 8.7.5 for a special permit and under 8.7.6 for site plan approval should be filed together for contemporaneous consideration by the Planning Board.

8.7.7 Historical Commission and Design Review Board Review

At the time of, or before filing, an application under this Section 8.7, the applicant shall provide a copy of this application to the City of Salem Historical Commission and the Design Review Board. The Historical Commission and the Design Review Board shall review the application at a public meeting and shall provide advisory comments to the Planning Board. The Planning Board shall not take final action on an application under this Section 8.7 until it receives written comment on the application from the Historical Commission and the Design Review Board, or at least ~~forty-fivesixty~~ (4560) days have passed since delivery by the application ~~of the application~~ to the Historical Commission and the Design Review Board. Said ~~forty-fivesixty~~ (6045) day period may be extended by written agreement between the Applicant and Planning Board. ~~For any project in which a new detached building is proposed to be constructed this paragraph shall apply to both the Historical Commission and City of Salem Design Review Board.~~

Nothing set forth in this Section 8.7.7 is intended to alter or amend the rights and obligations of the Historical Commission pursuant to the G.L. c. 40C.

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Failure of an applicant hereunder to timely deliver a copy of the application to the Historical Commission or Design Review Board may be grounds for denial of the application.

8.7.8 Affordability

Ten (10%) percent of the total units in any project proposed under this Section 8.7 shall be SHI Eligible Housing as defined by the Massachusetts Department of Housing and Community Development being affordable to a household of one or more persons whose maximum income does not exceed 80% of the area median income, adjusted for household size, or as otherwise established by DHCD guidelines for a period of 99 years as secured by a duly recorded deed restriction. When calculation of the ten (10%) percent of the total units results in a partial unit, the number of required affordable units shall be rounded up to the next whole number.

8.7.9 Parking and Loading

For new residential dwelling uses provisions shall be made for not ~~less~~ fewer than one (1) parking space per dwelling unit for existing buildings and one and one-half (1.5) parking spaces per dwelling unit for new construction.

In contrast to all other defined housing, types built under the jurisdiction of the Salem Housing Authority for elderly and/or handicapped persons shall require one-third (1/3) parking space per dwelling unit.

Nonresidential uses shall provide parking in accordance with Section 5.1.8 Table of Required Parking Spaces.

In mixed-use developments, ~~applicants~~ the Planning Board may ~~propose~~ consider a reduction in total parking requirements based on an analysis of peak demand for non-competing uses provided by the applicant. In such cases the parking requirement for the largest of the uses (in terms of parking spaces required) shall be sufficient as determined by the Planning Board. An applicant may use the latest peak demand analyses published by the Institute of Traffic Engineers (ITE) or other source acceptable to the Planning Board.

The parking requirements may be accommodated by either one or a combination of on-site parking and/or parking at municipal or other parking facilities in the vicinity of the Lot. All municipal or other parking facilities which are used to satisfy the parking requirement must meet the following criterion: The parking facility must be ~~less~~ fewer than one thousand (1,000) feet from the Lot as measured in a straight line from the two (2) closest points between the Lot and the parking facility. If using a municipal facility, the owner must purchase an annual parking pass to satisfy the parking requirement.

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A new loading zone shall not be required if the existing Building does not have an existing loading zone.

8.7.10 Conflict

The provisions of this zoning overlay district are intended to modify the standards otherwise applied to the Lot and Buildings thereon by the underlying district. Unless specifically modified by this Section 8.7, all other existing standards shall apply to the Lot and Buildings.

8.7.11 Severability

The provisions of this Section 8.7 are severable. The invalidity of any paragraph, subsection or provision of this Section 8.7 shall not invalidate any other paragraph, subsection or provision hereof.

The Planning Board directed staff to provide a clarification and a recommendation to the City Council regarding whether the ordinance should apply to eligible municipal and religious uses or eligible municipal and religious owners. The Planning Board recommends that the City Council discuss the eligibility in respect to “uses” versus “ownership”.

If you have any questions regarding this matter, please feel free to contact Tom Daniel, AICP, Director of Planning & Community Development, at 978-619-5685.

Yours truly,
 Ben J. Anderson, Chair

Staff Addendum: Please note that in the accompanying cover letter from Tom Daniel dated January 29, 2019, staff recommended adding “Expansion or” before “New Construction” in the Table of Dimensional Requirements column header for new construction (8.7.4). Staff also noted in the cover letter that Daycares cannot be included under 8.7.5. These two points are not shown in track changes above because they are clarifications that occurred after the Planning Board meeting.

#115B - (#618 of 2018) – COMMUNICATION FROM CITY PLANNER PROVIDING CLARIFICATION OF PLANNING BOARD’S RECOMMENDATION

The communication from the City Planner providing clarification, edits and their own recommendation on one item be received and placed on file.

Letter From City Planner:

Dear Ladies and Gentlemen of the City Council,

At its meeting on January 17, 2019, the Planning Board discussed the proposed Zoning Ordinance amendments adding a Municipal and Religious Adaptive Reuse Overlay District. As you will see in

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the attached Report to City Council, the Planning Board recommended the City Council adopt the ordinance with a number of edits that are shown in track changes. The Planning Board also directed staff to provide a clarification and make a recommendation on one item.

Planning Board Recommended Edits

Some of the Planning Board's recommended edits are wordsmithing and are self-evident. Other specific edits include:

- 8.7.3.5: The Planning Board's edit adds cemeteries to be clear they are not considered in Municipal use.
 - o Staff Comment: None.
- 8.7.4: In the Table of Dimensional Requirements for New Construction, the Planning Board recommended:
 1. Having the maximum lot coverage be 50 percent instead of the standard of the underlying zone;
 2. Having the maximum height of buildings (feet) be 55 feet instead of the standard of the underlying zone; and
 3. Having the maximum height of buildings (stories) be 5 instead of the standard of the underlying zone.
 - o Staff Comment: These three edits are consistent with the intent of what staff had originally proposed in the October 2018 draft submitted to the City Council. As you will recall, staff revised these three items in January in response to public comment. However, the Planning Board recommended returning to the original intent.
- 8.7.4: In the Table of Dimensional Requirements for Existing Buildings, the Planning Board recommended:
 1. Having the maximum height of fences and bordering walls (feet) be as exists or 6, whichever is greater.
 - o Staff Comment: The Planning Board's edit would allow existing fences that needed to be replaced or extended to remain at the existing height.
- 8.7.4: In the first paragraph after the Table of Dimensional Requirements, the Planning Board recommended additional language to clarify the height standard.
 - o Staff Comment: None.
- 8.7.5: In the list of Special Permit uses, the Planning Board recommended:
 1. Revising Laundromats/drying cleaning establishments by inserting, "excluding on site cleaning";
 2. Revising Specialty food stores by deleting, "those where food is served for consumption on the premise" and inserting, "a restaurant or food establishment unless permitted by the underlying zone";
 3. Adding not for profit museums; and
 4. Adding Daycares.

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- Staff Comment: Daycares cannot be added. Per G.L. c. 40A §3, “No zoning ordinance shall...require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility.”
- 8.7.7: The Planning Board recommended the Design Review Board review all applications and extended the comment period to 60 days.
 - Staff Comment: None.
- 8.7.9: The Planning Board recommended adding a paragraph that restates the parking requirements for housing under the jurisdiction of the Salem Housing Authority.
 - Staff Comment: This parking standard already exists in the Zoning Ordinance.

Staff Clarification and Recommendation

Use or Ownership

In considering the ordinance, the Planning Board informed staff that it was unclear whether the ordinance will apply to eligible buildings in which a religious and municipal use occurs or eligible buildings that are under a religious and municipal ownership.

Rather than providing a recommendation on whether use or ownership is preferred, the Planning Board directed staff to provide a recommendation to the City Council on whether the use or ownership should apply for the Council to consider during its discussion.

Staff recommends that the ordinance apply to use rather than ownership as currently drafted. Pursuant to Sec. 8.7.3. Eligibility, a building has to have been used actively for at least 20 continuous years to be considered a religious or municipal use. Staff advises that 20 years provides protection against unintended structures being eligible for this special permit. The 20 years also provides an incentive for religious and municipal institutions not to let buildings sit vacant.

As written, the ordinance applies to use not ownership. Section 8.7.1 of the proposed ordinance described the purpose of the ordinance as:

In addition to that set out in Section 1.1 of the Ordinance, it is the intent of this Section 8.7 to allow for reuse of municipal properties (“Municipal”) and properties used for religious purposes and protected by G.L. c. 40A §3 (“Religious”).

The statement “to allow for reuse...” means that eligible building must be a municipal or religious use. Further, religious properties protected by G.L. c. 40A §3 refers to religious purposes on land *owned or leased* by a religious sect or denomination. Thus, an eligible building has to be used for religious use; however, religious ownership is not required.

New Construction

Staff also recommends that the Table of Dimensional Requirements column header for new construction be revised to insert “Expansion or” before “New Construction”. As presented at the Joint

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Public Hearing, the intent is for the dimensional standards to apply to all new construction, whether it is free standing or an addition.

Lastly, staff would like to reiterate the importance of adopting this ordinance in order to provide a permitting path for the immediate and near-term reuse opportunities at the former Council on Aging building at 5 Broad Street and the Archdiocese's school buildings. Without any zoning changes, the only residential uses allowed would be as a single-family or two-family residence.

Suggestions have been made that this overlay is not needed because applicants could apply for a special permit to change a non-conforming use to another or apply for a use variance. Neither of these suggested options is possible.

- Change in non-conforming use: Although the current municipal and religious uses are exempt uses, they are listed in the Table of Principal Uses as allowed by right in every zoning district in the City. As such, a special permit to change the non-conforming use is not possible because the use is, in fact, conforming. It is not possible to change a conforming use to a non-conforming use.
- Use variance: Per Mass General Law, use variances are only permitted when they are explicitly allowed by city ordinance. Salem does not allow use variances.

Reusing historic properties rather than tearing them down is part of what makes Salem the great place it is. The zoning overlay provides a means to allow the reuse of a subset of historic properties to proceed.

We look forward to your consideration of the recommendations and are happy to answer questions.
Sincerely,
Tom Daniel, Director

(#618) – ZONING ORDINANCE RELATIVE TO MUNICIPAL AND RELIGIOUS OVERLAY DISTRICT

Councillor McCarthy made a motion not to adopt the Planning Board's recommendation relative to Table of Dimensional Requirements Section 8.7.4. Councillor Gerard seconded the motion. It was so voted.

Councillor McCarthy referred the zoning ordinance as amended to the Committee on Ordinances, Licenses and Legal Affairs co-posted with the Comm. of the Whole. It was so voted.

#116 – ROAD RACE

The request from B&S Fitness to hold their annual Black Cat 10/20 mile road race and use of city streets on March 9, 2019 was granted

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#117- BUILDING PERMIT REFUND REQUEST

The request from Dan Botwinik of Salem Waterview Developments LLC for reimbursement of \$1,650.00 of building permit fees was granted.

#118 -- #119 LICENSE APPLICATIONS

The Following License Applications were granted.

PUBLIC GUIDES

Cynthia Shapiro 24 Glendale St.#2, Salem
David Pszenny 21 Thomas Cir., Salem
Mark Scalia Jr. 29 RR Upham St., Salem
Ellen Damsky 10 Hodges Ct., Salem
Kristin MacKenzie 557 Hancock St., Quincy
Karen Scalia 29 RR Upham St., Salem
Joan Marie Pagliuca 31 Winthrop St., Dedham
Daniel Minkle Fury 126 Federal St.#1, Salem
Kathleen Ward 3 Sutton Terr., Salem
Raymond Swartz 30 Ocean Ave., Salem
Cynthia Geller 42 Northey St., Salem
Adrianna Neefus 1 Daniels St. Ct., Salem
Jeffrey Horton 31 Sculpin Way, Swampscott
James Morfis-Gass 123 Lynn St., Peabody
Rita Parisi 43 Merrimac St., Amesbury
Julia Gleason 28 Stockbridge St., Cohasset
Blake Campbell 16 Roslyn St., Salem
Jonathan Reardon 14A Pope St., Salem
Molly Marrow 29 Hanson St.#2, Salem
Joyce Harrington 49 Valiant Way, Salem
Cynthia Haigh 4 Brackett St., Milton
Tim Maguire 127 Essex St., Salem
Kathryn Rutkowski 2 Essex St., Salem
PJ Maguire 102 Shanley Dr., Attleboro
Amey Butler 14 Hunt St., Danvers

TAXI OPERATORS

Pedro Sanchz 138 Allen Ave. #2, Lynn
Alberto Guerrero 12 Cherry St. #1, Salem
Luis Toribio 2 Park St. #2, Salem
Franklin Pimentel 300 Washington St. #15, Salem
Edwin Ventura 47 Harbor St. #4, Salem

The Following License Applications were referred to the Committee on Ordinances, Licenses & Legal Affairs.

The matter of second and final passage of an Ordinance Amending an Ordinance relative to Mooring Permits, was then taken up. The Ordinance was adopted for second and final passage.

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(#72) - SECOND PASSAGE ORDINANCE AMENDING TRAFFIC HANDICAP PARKING

The matter of second and final passage of an Ordinance Amending an Ordinance relative to Traffic Ch. 42 Sec. 50B, Handicap Parking, two (2) spaces in front of #73 Grove Street, was then taken up. The Ordinance was adopted for second and final passage.

(#73) - SECOND PASSAGE ORDINANCE AMENDING TRAFFIC HANDICAP PARKING

The matter of second and final passage of an Ordinance Amending an Ordinance relative to Traffic Ch. 42 Sec. 50B, Handicap Parking, in front of #70 Hathorne Street, was then taken up. The Ordinance was adopted for second and final passage.

On the motion of Councillor Furey the meeting adjourned at 10:47 P.M.

ATTEST:

ILENE SIMONS
CITY CLERK