

**CITY OF SALEM**  
**MAY 28, 2020**  
**CITY COUNCIL REGULAR MEETING**

A Regular Meeting of the City Council is being held remotely on Thursday, May 28, 2020 at 7:00 P.M. for the purpose of transacting any and all business. Notice of this meeting was posted on May 26, 2020 at 1:11 P.M. This meeting is being taped and is live on S.A.T.V.

All Councillors were present.

Council President McCarthy presided.

Councillor Madore moved to dispense with the reading of the record of the previous meeting.

VOTED

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

**PUBLIC TESTIMONY**

1. Alice Merkl, 28A Federal St. - ADUs
2. Nestor Grullon, 14 Harrington Ave. - ADUs
3. Steve Kapantais, 23A Wisteria St. - ADUs
4. Pedro Fabre, 4 Border St. - ADUs
5. Erica Feldmann, 26R Chestnut St. - ADUs
6. Paige Curtin, 90C Wharf St., - ADUs
7. Tara Carpenter, 13 Forest Ave. - ADUs
8. Rosa Ordaz, 13 Forest Ave. - ADUs
9. Ellen Clark, 58 Derby St. - ADUs
10. Lorelee Stewart, 7 Barnes Rd. - ADUs
11. Milo Martinez, 78 Washington Sq. - ADUs
12. Yoleny Ynoa, 53 Clark St. - ADUs
13. Alvi Ibanez, 20 ½ Barnes Rd. - ADUs
14. Nadine hanscom, 10 Bayview Cir. - ADUs
15. Andersen Pena, 171 Marlborough Rd. - ADUs
16. Christine Derby, 73 Tremont St. - ADUs
17. Carlos Pacheco, 29 Albion St. - ADUs
18. Melissa Nierman, 26R Chestnut St. - ADUs
19. Mickey Northcutt, 18 Peabody St. - ADUs
20. Yulisa Feliz, 81 Loring Ave. - ADUs
21. Eric Papetti, 11 Symopnds St. - ADUs
22. Sarah Thomas, 51 Howard St. - ADUs
23. Jen Lynch, 38 Charles St., Inclusionary Zoning - ADUs
24. Lisa Peterson, 68 Broad St. - ADUs
25. Grayson Ocasio, 28 Goodhue St. - ADUs

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26. Nicole Lashomb, 28 Goodhue St. - ADUs
27. Pat Gozemba, 17 Sutton Ave. - ADUs
28. Cheryl Rafuse, 84 Barstow St. - ADUs
29. Jessica Kane, 201 North St. - ADUs
30. Flora Tonthat, 30 Northey St. - ADUs
31. Mary Anne Silva, 17 Sumner Rd - ADUs
32. Ann DeLuca, 10 Clark Ave. - ADUs
33. Grace Duran, 7 Champlain Rd. - ADUs
34. Jeff Cohen, 12 Hancock St. - ADUs
35. Fawaz Abusharkh, 4 Harrison Rd. - ADUs
36. Lucy Corchado, 1 Chase St. - ADUs

**(#229) – VERIZON WIRELESS TO INSTALL A SMALL CELL ANTENNA AT 198 LORING AVENUE**

A hearing was continued from the April 23, 2020 meeting for Verizon wireless to install small cell antenna at 198 Loring Ave.

Councillor Dibbler asked Verizon to withdraw these two petitions and look for alternate locations.

Dan Klasnick, an attorney representing Verizon Wireless would like to proceed forward with supplemental findings. Along with Attorney Klasnick, Sean Conway, Andrea Armstrong, Danielle Sabourin and Ramzi Farchoukh were also present. Following the April 23, 2020 Council Meeting, mailings had gone out to all the abutters and explained small cell and FCC requirements. The alternate locations were not suitable for Verizon Wireless. The company has to meet certain requirements. Requests the Council support.

Councillor Dibble thanked Verizon. If knew moving an electric line was an option, he would have thought of others. Learned 4G now but do not need Council approval to switch to 5G. Councillor Dibble spoke about the 8' ft rule from the antenna of five minutes or more impacts health. There is radiation and they have to shut off to work on it. He stands with residents and says no – look at other locations.

Councillor Dominguez echos Councillor Dibble's comments. One of the locations to approve is near his home. Would like to see another location.

Councillor Prosniewski asked if Councillor Dibble is correct about the 8ft and 5min rule. This raises concerns about shutting off the pole.

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Pedro Fabre, 4 Border St. – Opposes. To close to family and concerned about radiation. If worker need to climb to do work and need to shut off then could be harmful to resident. Doesn't want to put a family at risk.

Dan Klasnick responded to the 8ft radius shut off if more than 5 minutes. In the initial filing and the supplemental filing, a certify compliance with FCC Standards, EPA, Food and Drug related to occupational standards. Verizon operates in compliance with these regulations. Once certified beyond local authority control. Beyond certain radius (i.e. 8 feet) no regulatory requirements. Prohibited to do anything that is not in compliance.

Ramzi Farchoukh – Engineer – received his masters at Northeastern. Explained there were two types of radiation ionize, enough energy such as Xrays, MRIs and UV Rays) and non-ionizing. Radio Frequency is non-ionizing; there is not enough energy to kick out radiation. Studies have been done and beyond 8.56 feet you are safe. 100% safe beyond that radius.

Councillor Dibble stated when Verizon was doing their research they did not take into consideration the two poles that were just approved on Loring and Lafayette Street or look at the poles in Marblehead. I would like them to take a look at them. If 8/8.5 feet for 5 minutes is a health risk, why isn't 19ft for all day?

Councillor Dibble moved the hearing be closed. It was so voted.

Councillor Dibble moved that this granting of location be denied by roll call vote. Councillors Dibble, Dominguez, Flynn and Sargent were recorded in the affirmative. Councillors Hapworth, Madore, Morsillo, Prosniewski, Riccardi, Turiel and McCarthy were recorded as voting in the negative. The denial does not carry. The Locations is granted.

**(#230) - VERIZON WIRELESS TO INSTALL A SMALL CELL ANTENNA AT 28 RAYMOND ROAD**

A hearing was continued from the April 23, 2020 meeting for Verizon wireless to install small cell antenna at 28 Raymond Rd.

Dan Klasnick, an attorney representing Verizon Wireless as well as Sean Conway, Andrea Armstrong, Danielle Sabourin and Ramzi Farchoukh were also present for this hearing.

Councillor Dominguez asked any of the Verizon Representatives if they can investigate any physical way to change or use the existing poles. Would any of the suggestions from Councillor Dibble be an option.

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Councillor McCarthy explained that this process to be FCC compliant takes a year.

Councillor Dibble asked if there was anything the Council could do to expediate this process so they can investigate further.

Councillor McCarthy spoke with Stan Usovicz and he agrees there needs to be more outreach getting documentation to the public. But Council cannot deny legally if meet FCC standards. The looked at 15 other locations and vetted them all and none of them worked.

Councillor Dibble reminded the Council that we rejected a pole at 27 Liberty Hill Ave that was 19 feet away from a home. This one is to help mostly Salem State. Why not put the antennas on their property. Ask that this be rejected. Verizon did not consider the two that were just recently approved.

Councillor Turiel stated that we did not reject the site in Ward 6, but AT&T went back to look at another location. I'm aware of the science behind them. Safety is not an issue. These are very directional in nature and very small. Only pole close by that is unburden. Not great in appearance but understand requirements. Poles in Marblehead are high voltage and not eligible to be use. This service is not just for SSU students but also residents. The City needs reliable service; people don't have land lines anymore. If cells are overloaded and you have an emergency then you can't get help you wouldn't be able to get through to 911.

Councillor Flynn stated he was glad AT&T did step up and worked with the Council. Wish Verizon would as well. Should be denied.

Councillor Dibble stated there was a guide pole on SSU – it's not a right of way but on private property.

Councillor Dibble moved that the hearing be closed. It was so voted.

Councillor Dibble moved that this granting of location be denied by roll call vote. Councillors Dibble, Dominguez, Flynn and Sargent were recorded in the affirmative. Councillors Hapworth, Madore, Morsillo, Prosniewski, Riccardi, Turiel and McCarthy were recorded as voting in the negative. The denial does not carry. The Locations is granted.

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**(#254 & #255) – APPOINTMENTS TO THE TREE COMMISSION AND SRA**

Held from the last meeting the Mayor's appointments of Susan Yochelson of 5 Eden St. to the Tree Commission with a term to expire July 18, 2022 and Cynthia Nina-Soto 6 Laurent Rd to the Redevelopment Authority with a term to expire December 8, 2021 were confirmed by a roll call vote of 11 yeas, 0 nays and 0 absent. Councillors Dibble, Dominguez, Flynn, Hapworth, Madore, Morsillo, Prosniewski, Riccardi, Sargent, Turiel and McCarthy were all recorded in the affirmative.

Councillor Turiel moved and received suspension of the rules to allow both appointees to speak.

**#272 – APPOINTMENT OF PATRICIA SMALL TO COUNCIL ON AGING**

The Mayor's appointment of Patricia Small 18 Dalton Pkwy to the Council on Aging Board with a term to expire December 7, 2020 was held under the rules.

**#273 – REAPPOINTMENT OF ROBERT CALLAHAN TO PARK & RECREATION**

The Mayor's re-appointment of Robert Callahan 8 Stearns Place to the Parks and Recreation Commission with a term to expire June 1, 2025 was confirmed by a roll call vote of 11 yeas, 0 nays and 0 absent. Councillors Dibble, Dominguez, Flynn, Hapworth, Madore, Morsillo, Prosniewski, Riccardi, Sargent, Turiel and McCarthy were all recorded in the affirmative.

**#274 – APPROPRIATION OF \$32,000.00 TO PLANNING FOR BEVERLY/SALEM CLIMATE ACTION PLAN**

The following Order introduced by the Mayor was adopted under suspension of the rules by a roll call vote of 11 yeas, 0 nays and 0 absent. Councillors Dibble, Dominguez, Flynn, Hapworth, Madore, Morsillo, Prosniewski, Riccardi, Sargent, Turiel and McCarthy were all recorded in the affirmative.

ORDERED: That the sum of Thirty-Two Thousand Dollars (\$32,000.00) is hereby transferred and appropriated from the "Fund Balance Reserved for Appropriation – Free Cash" account (1-3245) to Planning for the joint Beverly-Salem Climate Action Plan in accordance with the recommendation of Her Honor the Mayor.

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**#275 – CDBG-CARES APPLICATION FOR COVID-19**

The following Order introduced by the Mayor was adopted under suspension of the rules by a roll call vote of 11 yeas, 0 nays and 0 absent. Councillors Dibble, Dominguez, Flynn, Hapworth, Madore, Morsillo, Prosniewski, Riccardi, Sargent, Turiel and McCarthy were all recorded in the affirmative.

ORDERED: That the City Council hereby approves the submittal of the City of Salem's Application for Federal Assistance to the United States Department of Housing and Urban Development (HUD) for CDBG-CARES funds in the amount of \$646,477, as well as the submittal of future applications for any additional allocation that the City of Salem may receive from HUD in response to COVID-19.

Councillor Dibble moved that this granting of location be denied by roll call vote. Councillors Dibble, Dominguez, Flynn and Sargent were recorded in the affirmative. Councillors Hapworth, Madore, Morsillo, Prosniewski, Riccardi, Turiel and McCarthy were recorded as voting in the negative. The denial does not carry. The Locations is granted.

Councillor Turiel asked for and received suspension of the rules to allow Jane Guy from Planning to speak.

Jane Guy explained that this is money on top of our regular CDBG money. There will be a comment period and notification of what the amendment was. Recently sent out RFP to agencies to use these funds. In this round, basic needs will be addressed such as, homeless prevention, business assistance, rental assistance, food, shelter, childcare, and wellness check-ins. There will be another round of CDBG but nothing on that yet.

Councillor Dominguez asked that a report showing how we are spending the \$250,000 appropriation approved for emergency related COVID-19 expenses could be sent to the Council President or the Chair of Administration and Finance.

**#276 – CLOSING OF FORT AVENUE ON JUNE 5, 2020 FOR SHS GRADUATION PARADE**

The following Order introduced by the Mayor was adopted by a roll call vote of 11 yeas, 0 nays and 0 absent. Councillors Dibble, Dominguez, Flynn, Hapworth, Madore, Morsillo, Prosniewski, Riccardi, Sargent, Turiel and McCarthy were all recorded in the affirmative.

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ORDERED: That the City Council hereby Orders that Fort Avenue, from Memorial Drive to Winter Island Road, shall be closed to thru traffic on June 5, 2020 from 5:00 P.M. to 7:00 P.M. for the purpose of holding a Salem High School Graduation care parade to honor the 2020 graduates of Salem High School. This Order shall also authorize closure on a rain date of June 6, 2020 from 1:00 P.M. to 3:00 P.M.

**#277 – COMMUNICATION FROM THE MAYOR ON UPDATE OF COVID-19 RESPONSE**

The following communication introduced by the Mayor was received and filed.

May 28, 2020

Honorable Salem City Council  
Salem City Hall  
Salem, Massachusetts 01970

Ladies and Gentlemen of the City Council:

Our Health Agent David Greenbaum and I would like to request the opportunity to address you at your meeting of May 28<sup>th</sup> to provide the public and the City Council with an update on the City's response to the COVID-19 outbreak. Thank you.

Very truly yours,

Kimberley Driscoll  
Mayor  
City of Salem

David Greenbaum, City of Salem's Health Agent, gave a status update on the Covid cases for Salem. There are 589 positive cases; 206 are under investigation and 383 have cleared isolation. There have been a total of 27 deaths. The average amount of cases and recovered cases are going down, which is good to see. Facial coverings, social distancing, good hygiene and cleaning are the important steps to keep practicing so the numbers can continue to go down. Salem cases are the same percent as State wide cases per 1,000 residents. 10% or under is the key and we are now at 17.5%.

In late March early April there was a city survey taken regarding COVID health related questions. 77% more concerned about opening up to soon versus 15%. Personal behavior 70% wearing face masks outside and staying home. 47% are working from home and 16% have been laid off or furloughed. Other questions related to how satisfied are you regarding local healthcare workers 70%, First responders in Salem 56%, Salem Schools 45%, City Government 46.5%, Mass State Government 49.5% and US Federal Government 8.6%.

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Unemployment rates in April of 2020 is 18.5% and in April of 2019 it was 2.8%. In Salem, unemployment is 15.9% and # of Salem residents unemployed are 4,215.

Restarting Salem in Mid-June to reopen in phases. Dining Outdoor and lodging Phase 2 and indoor dining is end of Phase 2. Small Businesses top requests are PPE/Cleaning Supplies, Outdoor dining and shopping and marketing and cross sales promotions.

**#278 – ORDINANCE AMENDING TRAFFIC CH. 42 SEC. 50B HANDICAP PARKING - REPEAL MOFFATT ROAD**

The following ordinance introduced by Councillor Dibble was adopted for first passage by a roll call vote of 11 yeas, 0 nays and 0 absent. Councillors Dibble, Dominguez, Flynn, Hapworth, Madore, Morsillo, Prosniewski, Riccardi, Sargent, Turiel and McCarthy were all recorded in the affirmative.

***In the year two thousand and Twenty***

*An Ordinance* to amend an Ordinance relative to Traffic, Ch. 42. Sec. 50B

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

**Section 1.** Amending Chapter 42, Section 50B – “Handicap Parking, Time Limited” is hereby amended by repealing the following:

Moffatt Road, in front of #58 for a distance of eighteen (18) feet, “Handicapped Parking Only, Tow Zone.”

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

**#279 - ORDINANCE AMENDING TRAFFIC CH. 42 SEC. 50B HANDICAP PARKING – ORCHARD STREET**

The following ordinance introduced by Councillor Riccardi was adopted for first passage by a roll call vote of 11 yeas, 0 nays and 0 absent. Councillors Dibble, Dominguez, Flynn, Hapworth, Madore, Morsillo, Prosniewski, Riccardi, Sargent, Turiel and McCarthy were all recorded in the affirmative.



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*In the year two thousand and Twenty*

*An Ordinance to amend an Ordinance relative to Traffic, Ch. 42. Sec. 50B*

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

**Section 1.** Amending Chapter 42, Section 50B – “Handicap Parking, Time Limited” is hereby amended by adding the following:

Orchard Street, in front of #18 for a distance of twenty (20) feet, “Handicapped Parking Only, Tow Zone.”

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

**#280 - (#76) – HOME RULE PETITION RELATIVE TO PROPERTY TAX EXEMPTION FOR RENTAL PROPERTIES AS AFFORDABLE HOUSING**

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

The Committee on Ordinances, Licenses and Legal Affairs co-posted with the Committee of the Whole to whom it was referred the matter Home Rule Petition relative to property tax exemption for rental properties as affordable housing has considered said matter and would recommend that the matter remain in committee.

**#281- (#74) – PLANNING BOARD RECOMMENDATION RELATIVE TO ACCESSORY DWELLING UNITS SEC. 3.1 TABLE OF PRINCIPAL AND ACCESSORY USE REGULATIONS**

Councillor Madore offered the following report for the Committee on Ordinances, Licenses and Legal Affairs co-posted with the Committee of the Whole. It was voted to accept the report.

The Committee on Ordinances, Licenses and Legal Affairs co-posted with the Committee of the Whole to whom it was referred the matter Communication from the Planning Board regarding ordinance amendments relative to Accessory Dwelling Units Sec 3.1 table of principal and accessory use regulations, has considered said matter and would recommend that the matter be reported out to the full Council.

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Motion to table was adopted by a roll call vote of 7 yeas, 4 nays and 0 absent. Councillors Hapworth, Madore, Morsillo, Prosniewski, Riccardi, Turiel and McCarthy were all recorded in the affirmative. Councillors Dibble, Dominguez, Flynn and Sargent were all recorded in the negative.

**#282- (#75) – PLANNING BOARD RECOMMENDATION RELATIVE TO ACCESSORY DWELLING UNITS SEC. 10, SEC. 3.2.4. & SEC. 3.2.8.**

Councillor Madore offered the following report for the Committee on Ordinances, Licenses and Legal Affairs co-posted with the Committee of the Whole. It was voted to accept the report.

The Committee of the Whole to whom it was referred the matter Communication from the Planning Board regarding ordinance amendments relative to Accessory Dwelling Units Sec 10, 3.2.4, Sec 3.2.8 has considered said matter and would recommend that the matter be reported out to the full Council.

Councillor Madore moved for adoption for first passage as amended.

This ordinance does not allow for new detached ADUs. The language surrounding existing detached dwellings was not clear so new language was added.

Councillor Turiel asked instead of attached structures by right granted by special permit. There is no specific language in front of them.

Councillor Madore willing to table this to give time to review. More emphasis was put on affordable.

Councillor Dominguez stated he was in favor of ADUs that reflect affordability. It's very hard, I represent those suffering the most. This ordinance doesn't help. Sometimes I am willing to compromise, but not on this. This just puts a band aid on the issue. In favor but this one doesn't satisfy need to say this is how it is.

Councillor Dibble has read and re-read this for a long time. Researched it in the past with Councillor Milo. The in-law ordinance passed 11-0 that allows family to take care of family members. If inside one thing but outside should need special permit. Also that a special permit for detached garages that already exist. Can enlarge it by right. Motion to require special permit for both. There was no second.

Councillor Madore applauds Councillor Dominguez for more affordability. Housing Section 8 vouchers. This proposal goes further a 25% reduction from there good compromise. All open for ideas. Welcome continued discussion.

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Councillor Madore moves to table was adopted by a roll call vote of 7 yeas, 4 nays and 0 absent. Councillors Hapworth, Madore, Morsillo, Prosniewski, Riccardi, Turiel and McCarthy were all recorded in the affirmative. Councillors Dibble, Dominguez, Flynn and Sargent were all recorded in the negative.

**#283 – (#536 OF 2019) – REMOVING ROBINSON ROAD FROM ACCEPTED STREET LIST**

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

The Committee of the Whole to whom it was referred the matter of removing Robinson Rd. from the list of accepted streets has considered said matter and would recommend adoption by roll call vote subject to the Solicitor's confirmation that a certain section of the road is not city owned. The roll call vote was 11 yeas, 0 nays and 0 absent. Councillors Dibble, Dominguez, Flynn, Hapworth, Madore, Morsillo, Prosniewski, Riccardi, Sargent, Turiel and McCarthy were all recorded in the affirmative.

ORDERED: That the Salem City Council has upon the advice of the City Solicitor and confirmation that the property known as 116 Swampscott Road and Robinson Road is not owned by the City of Salem, that Robinson Road be removed from the list of accepted streets. A City Council Order adopted June 27, 1996 accepting Robinson Road as a public street was not adopted in accordance with Chapter 38 of the City Ordinance and Sections 91 and 51 through 57 of Chapter 82 of the Massachusetts General Laws and as such Robinson Road is a private way. The City Clerk is hereby directed to correct the Salem Street Directory to identify Robinson Road as a street not accepted by the City.

**#284 – (#265) – EASEMENT AGREEMENT WITH VAVEL LLC FOR PARKING AND ACCESS AT 633 LORING AVENUE**

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

The Committee on Ordinances, Licenses and Legal Affairs co-posted with the Committee of the Whole to whom it was referred the matter of an Easement agreement with Vavel LLC for parking and access at 633 Loring Ave., has considered said matter and would recommend adoption by roll call vote. The roll call vote was 11 yeas, 0 nays and 0 absent. Councillors Dibble, Dominguez, Flynn, Hapworth, Madore, Morsillo, Prosniewski, Riccardi, Sargent, Turiel and McCarthy were all recorded in the affirmative.

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**#285 – (#142) – PLANNING BOARD RECOMMENDATION RELATIVE TO INCLUSIONARY ZONING**

The following communication from the Planning Board regarding the Inclusionary Zoning Ordinance was received and placed on file.

Report to City Council  
May 22, 2020

At its meeting on May 21, 2020 the Planning Board voted eight (8) in favor (Ben Anderson, Matt Veno, Carole Hamilton, Helen Sides, Kirt Rieder, Noah Koretz, and Bill Griset) and none opposed to recommend that the City Council approve the amendment relative Section 5 of the Salem Zoning Ordinance by adding Section 5.4, Inclusionary Housing as proposed and amending the definitions in Section 10 as proposed.

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 Chairman  
CC: Ilene Simons, City Clerk

**(#142) – ZONING ORDINANCE RELATIVE INCLUSIONARY ZONING**

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

*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.

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

**5.4.2 Applicability.**

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

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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.
  - 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.

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- 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.
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.

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

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.

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**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.
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



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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.
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.

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- 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 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.

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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.
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.

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**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:

*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.

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

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

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

**#286 – NATIONAL GRID TO INSTALL CONDUIT ON CROSS STREET**

A hearing was ordered for June 11, 2020 on a petition from National Grid to install a Conduit on Cross St.

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**#287 - NATIONAL GRID TO INSTALL CONDUIT ON RIVERWAY ROAD**

A hearing was ordered for June 11, 2020 for a petition from National Grid to install a Conduit on Riverway Rd.

**#288 - NATIONAL GRID TO INSTALL CONDUIT ON WASHINGTON STREET.**

A hearing was ordered for June 11, 2020 on a petition from Comcast to install a Conduit on Washington St.

**#289 – PUBLIC GUIDE**

The Following Public Guide License Application was referred to the Committee on Ordinances, Licenses and Legal Affairs.

PUBLIC GUIDE: Olivia Girouz-Galpin 15 Orne St., North Attleboro

**#290 – PUBLIC GUIDES**

The Following Public Guide License Applications was granted.

PUBLIC GUIDE: Jeffrey Horton 10 Summer St., Salem

**#291 – DRAINLAYER/CONTRACT OPERATOR**

The Following Drainlayer/Contract Operator License Application was granted.

Nardone Inc. 45 Outlook Rd., Wakefield

**#292 - CLAIM**

The Following Claim was referred to the Committee on Ordinances, Licenses & Legal Affairs:

Ian HYTE 17 Alden Rd., Marblehead, MA

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**(#739 of 2018) – SECOND PASSAGE TRAFFIC ORDINANCE RELATIVE TO SIDEWALKS**

The Second Passage of an Ordinance amending Traffic relative to Crosswalks was held until the next meeting.

Councillor Sargent asked how many spaces may be los.

Councillor Prosniewski requested to see a list of the names of the streets.

In the year two thousand and twenty

An Ordinance to amend and Ordinance relative to Traffic, Chapter 42, - crosswalks Including Section 50 – Prohibited in certain specified places: Section 74 – General prohibition towing zones; and Section 17A – Schedule of Fines re: Penalties

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

**SECTION 1.**

Amending Section 50, Prohibited in certain specified places by adding to the end of the section: “P. **CROSSWALKS** – Within ten (10) feet of a crosswalk on the side from which traffic approaches, or except where a sign requiring a greater distance has been erected.”

Amending Section 74, General Prohibition Towing Zones by adding to the end of the section: “Upon any way within ten (10) feet of a crosswalk on the side from which traffic approaches, or except where a sign requiring a greater distance has been erected.”

Amending Section 17A, Schedule of Fine re: Penalties by adding to the end of the section: “Upon any way within ten (10) feet of a crosswalk on the side from which traffic approaches, or except where a sign requiring a greater distance has been erected” ....Section 50 and Section 74

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

On the motion of Councillor Sargent the meeting adjourned at 11:03 P.M.

ATTEST:

ILENE SIMONS  
CITY CLERK