

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

**MEETING NOTICE AND AGENDA**

**IMPORTANT ANNOUNCEMENT**

The Salem City Council will hold a Continuation of the Joint Public Meeting with the Planning Board on Monday, April 13, 2020 at 7:00 P.M. for the purpose of continuing discussion on three (3) Zoning Ordinance Amendments via remote participation in accordance with Chapter 40A of the Massachusetts General Laws and Governor Baker's Emergency Order dated March 12, 2020.

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this Continuation of the Joint Public Hearing of the Salem City Council and the Planning Board will be conducted via remote participation to the greatest extent possible. No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means. In the event that we are unable to do so despite best efforts we will post on the City of Salem's website an audio or video recording, transcript, or other comprehensive record of proceedings as soon as possible after the meeting.

Individuals may participate remotely in the meeting via a remote participation platform called Zoom.

Members of the public and/or parties with a right and/or requirement to attend this meeting may access the remote participation meeting through any one of the following ways:

- Enter this link below into your web browser to join the meeting:  
<https://zoom.us/j/373405074?pwd=RDhTS1psSVYzbEJMdnIvcDQ0cnQ1Zz09>  
(Enter the following Password: 542154 only if prompted)

Or By Telephone:

- Participants can dial a toll-free phone number at 888-475-4499 or 877-853-5257 (Toll Free) to join the meeting.

When prompted, enter Webinar ID#: 373 405 074 and follow the instructions to join the meeting.

The Agenda for this meeting will be posted on the website. SATV will still be airing this meeting live.

Thank you for your patience and understanding as we navigate this challenging situation for our community and the world.

Very truly yours,

ATTEST:

ILENE SIMONS  
CITY CLERK

“Persons requiring auxiliary aids and services for effective communication such as sign language interpreter, an assistive listening device, or print material in digital format or a reasonable modification in programs, services, policies, or activities, may contact the City of Salem ADA Coordinator at (978-619-5630) as soon as possible and no less than 2 business days before the meeting, program, or event.”

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

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

SUMMARY OF AMENDMENTS

1. An Ordinance Amending Zoning Section 3.1 Table of Principal and Accessory Use Regulations of the City of Salem Zoning Ordinance to delete the “Accessory Living Area” Accessory Use in its entirety and inserting an “Accessory Dwelling Unit” Accessory Use in the RC, R1, R2, and R3 zoning districts.
2. An Ordinance amending the Salem Zoning Ordinance relative to accessory dwelling units in the following three ways:
  - a. Amending Zoning Ordinance Section 10 Definitions by deleting the definition of “Accessory Living Area” in its entirety and inserting the definition of “Accessory Dwelling Unit” in its place.
  - b. Amending Zoning Ordinance Section 3.2.4 Accessory Buildings and Structures by deleting paragraphs numbered 4 and 5 in their entirety and replacing them.
  - c. Amending Zoning Ordinance Section 3.2.8 Accessory Dwelling Areas by deleting the existing text in its entirety and replacing it with a new ordinance. The existing text requires accessory units to be used solely by a family member or caregiver and requires a special permit. The purpose of the proposed new ordinance is to add to the supply of rental housing to meet the needs of smaller households, to encourage efficient use of the city’s housing supply while preserving the character of city neighborhoods, to preserve family bonds, to allow the owner of an existing or proposed detached dwelling to construct one additional dwelling unit that is incidental and subordinate to the principal dwelling, and to increase the supply and diversity of rental units to the housing stock in response to demographic changes such as smaller households and older households. The ordinance allows for an accessory dwelling unit within the same property as a principal dwelling by right provided certain requirements are met, requires the property owner to reside on site, and removes the tenant restrictions of only a family member or caregiver. The Building Inspector shall administer and enforce the provisions of this section unless a special permit is required, then the Zoning Board of Appeals will be the Special Permit Granting Authority. When a waiver is required, a Building Permit shall not be issued until a Special Permit has been granted and duly recorded. The ordinance provides procedures, application process, requirements for accessory dwelling units, Special Permits, and termination of use.
3. An Ordinance amending the Salem Zoning Ordinance by adding a new Section 5.4 Inclusionary Housing and amending Section 10 Definitions by adding definitions related to the Inclusionary Housing ordinance. The purpose of the proposed new ordinance is to expand the City of Salem’s housing stock, especially its Affordable Housing Units; to leverage market-rate housing production towards the production of Affordable Housing Units; to provide for housing choices for households of all incomes, ages, and sizes; to increase the production of Affordable Housing Units to meet

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employment needs; and to establish standards and guidelines in order to implement the foregoing. The proposed ordinance applies to subdivisions or developments creating six (6) or more dwelling units and requires applicants to contribute to the local stock of Affordable Housing units, so that ten (10) percent of the dwelling units are affordable to households with incomes at or below sixty (60) percent of the Area Median Income (AMI) and that these affordability restrictions are in force in perpetuity or for the maximum period allowed by law. The purchase prices or rents shall adhere to limits determined by the U.S. Department of Housing and Urban Development (HUD) applicable to the City of Salem, and shall comply with the DHCD Local Initiative Program regulations. Developments subject to Section 5.4 Inclusionary Housing, with the exception of those obtaining a Special Permit pursuant to Section 5.4.3.2, may incorporate the following: A by right density bonus allowing an increase of 25% of the total number of units that would normally be permitted in the applicable zoning district, an increase of one story provided it does not exceed maximum height and/or a reduction in setback requirements by a Special Permit granted by the Planning Board, and a reduction in the number of required parking spaces by Special Permit granted by the Planning Board. In the event that an adaptive reuse project in the B5 zoning district would not be feasible with the Affordable unit requirements, these requirements may be met by a Special Permit from the Planning Board that would allow tiered affordability levels of the required Affordable units up to 80 percent of the area median income if all criteria of Section 5.4.3(2) are met. This Ordinance Amendment includes section 5.4.1 through 5.4.9 outlining respectively, Purpose and Intent, Applicability, Mandatory Provision of Affordable Units, Density and Parking, Provisions Applicable to Affordable Housing Units, Resident Selection and Marketing Plan for Affordable Units, Preservation of Affordability, Conflict with Other Sections, and Severability.

The complete text of the three (3) proposed amendments to the Zoning Ordinance are on file and available for inspection during regular business hours from the office of the City Clerk, Room 1, City Hall, 93 Washington Street, Salem, MA or the Department of Planning & Community Development, 2<sup>nd</sup> floor, City Hall Annex, 98 Washington Street, Salem, MA by emailing [jsimons@salem.com](mailto:jsimons@salem.com) or [mwells@salem.com](mailto:mwells@salem.com) or calling 978-745-9595 ext. 41202 or 978-619-5685. The complete text of these ordinances can also be found at the end of this agenda.

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

Absent were:

Councillor Robert McCarthy presiding.

Also in attendance were the following:

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

Appearing in favor:

Appearing in opposition:

Councillor                                  moved that the public hearing be closed                                  Voted

Councillor  
recommendation.                                  moved that the matter be referred to the Planning Board for their  
Voted

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**ZONING ORDINANCE RELATIVE TO ACCESSORY DWELLING UNITS –  
SEC. 10 – DEFINITIONS AND SEC. 3.2.8 – ACCESSORY DWELLING UNITS (Full text  
available at end of agenda)**

Appearing in favor:

Appearing in opposition:

Councillor

moved that the public hearing be closed

Voted

Councillor  
recommendation.

moved that the matter be referred to the Planning Board for their

Voted

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**ZONING ORDINANCE RELATIVE TO INCLUSIONARY HOUSING (Full text available  
at end of agenda)**

Appearing in favor:

Appearing in opposition:

Councillor            moved that the public hearing be closed            Voted

Councillor            moved that the matter be referred to the Planning Board for their  
recommendation.             
Voted

On the motion of Councillor            the meeting adjourned at            P.M.

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**FULL TEXT OF THE 3 ZONING AMENDMENTS BELOW:**

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

*In the year Two Thousand and Twenty*

**An Ordinance** to amend an ordinance relative to accessory dwelling units.  
Be it ordained by the City Council of the City of Salem, as follows:

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

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

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

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

*In the year Two Thousand and Twenty*

**An Ordinance** to amend an ordinance relative to accessory dwelling units.  
Be it Ordained by the City Council of the City of Salem, as follows:

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

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

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

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

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

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

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

1. Purpose.

- A. To add rental units to the housing stock to meet the needs of smaller households and make housing units available to households who might otherwise have difficulty finding housing.
- B. To encourage the efficient use of the city's housing supply while preserving the character of the city's neighborhoods.
- C. To maximize privacy, dignity, and independent living among family members preserving domestic family bonds as well as to protect the stability, property values, and the residential character of the neighborhood.



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- D. To permit the owner of an existing, or a proposed, detached dwelling to construct one additional dwelling unit. Such a use is incidental and subordinate to the principal dwelling.
- E. To increase the supply of housing and the diversity of housing options, in response to demographic changes such as smaller households and older households.

2. Procedure.

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

3. Application

- A. The Application for the Special Permit and/or Building Permit, if required, shall:
  - 1. Be signed by one hundred (100) percent of the record title ownership interest of the principal dwelling and shall include a copy of the deed.
  - 2. Include a floor plan of the accessory dwelling unit, the principal dwelling where it is to be located and all elevations. All plans shall be drawn to scale and identify the existing structure and proposed modifications to create the accessory dwelling unit.

4. Requirements.

- A. The minimum parking required for the principal dwelling pursuant to Section 5.1 of this ordinance shall not count as off-street parking for the accessory dwelling unit. The accessory dwelling unit shall have one (1) dedicated off-street parking space unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.
- B. There shall not be a net loss in the caliper of private trees on the lot in which the accessory dwelling unit will be located unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.
- C. The accessory dwelling unit shall not contain less than 350 square feet of habitable space.
- D. The accessory dwelling unit shall not contain in excess of 800 square feet of gross space, unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.
- E. No more than one (1) accessory dwelling unit shall be located upon a single lot.
- F. An accessory dwelling unit shall not be permitted in a building with five (5) or more units.

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- G. At least one (1) owner of the residence in which the accessory dwelling unit is created shall reside in one (1) of the dwelling units as a principal place of residence. For the purpose of this section, the “owner” shall be one or more individuals who hold title to the property and for whom the dwelling is the primary residence as evidenced by voter registration, tax return or other documentation demonstrating primary residence...
  - H. Electricity, water and gas shall be provided by a single service to both the accessory dwelling unit and the principal dwelling.
  - I. The accessory dwelling unit may not be sold or transferred separate and apart from the principal dwelling to which it is an accessory use. The principal dwelling and the accessory dwelling unit shall remain in common or single ownership and shall not be severed in ownership.
  - J. Entry shall be located through existing entry or on the back or side of the main dwelling.
  - K. Egress access shall be located on the side or rear of the building so that visibility from public ways is minimized.
  - L. The accessory dwelling unit shall not contain more than two (2) bedrooms.
  - M. The accessory dwelling unit shall be clearly subordinate in use, size and design to the principal dwelling.
  - N. The accessory dwelling unit must be capable of being discontinued as a separate dwelling unit without demolition of any structural component of the principal dwelling.
  - O. There shall be no occupancy of the accessory dwelling unit until the Building Inspector has issued a certificate of occupancy that the principal dwelling and accessory dwelling unit shall be in compliance with all applicable health and building codes.
  - P. The Building Permit shall be revoked upon determination by the Building Inspector that any condition imposed by Section 3.2.8 and/or special permit conditions has not been fulfilled.
  - Q. By filing the Application for a Special Permit or Building Permit for an accessory dwelling unit, all owners consent to an inspection without a warrant upon reasonable notice by the Building Inspector to ensure compliance with all terms of this section and conditions imposed upon the grant of the Special Permit.
  - R. Short term rentals, as defined in Salem Code of Ordinances Chapter 15, are prohibited in the accessory living unit.
  - S. The accessory living unit shall obtain certificate of fitness subject to the provisions of Section 2-705 of the City of Salem Code of Ordinances.
5. Special Permit. A Special Permit shall be required to use an existing accessory structure that does not comply with Section 4.1 (Table of Dimensional Requirements) as an accessory dwelling unit.
6. Waivers. Upon the request of the Applicant, the Zoning Board of Appeals may grant a Special Permit pursuant to Section 9.4 to waive the following requirements in the interests of design

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flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the accessory dwelling unit ordinance.

- A. Notwithstanding anything to the contrary herein, the minimum required amount of parking may be waived if the Zoning Board of Appeals finds it is impractical to meet the parking standards and that such waivers are appropriate by reason that it will not result in or worsen parking problems in or in proximity to the Project, and upon demonstration to the reasonable satisfaction of the Zoning Board of Appeals that a lesser amount of parking will provide positive environmental or other benefits, taking into consideration:
    - 1. The availability of surplus off-street parking in the vicinity of the use being served
    - 2. The proximity to public transportation;
    - 3. The availability of public or commercial parking facilities in the vicinity of the accessory dwelling unit;
    - 4. The impact of the parking requirement on the physical environment of the affected lot or the adjacent lots including reduction in green space, destruction of significant existing trees and other vegetation, destruction of existing dwelling units, or loss of pedestrian amenities along public ways; and
    - 5. Such other factors as may be considered by the Zoning Board of Appeals.
  
  - B. The Zoning Board of Appeals may grant a waiver to allow a net loss in the caliper of trees on a lot that has no more than three units and on which the accessory dwelling unit will be located, taking into consideration the species of the tree, health of the tree, whether a replacement tree will be planted on another property or if a contribution to a tree replacement fund will be provided.
  
  - C. The Zoning Board of Appeals may grant a waiver to allow the accessory dwelling unit to exceed 800 gross square feet, up to a maximum of 1,000 gross square feet, taking into consideration peculiarities of the layout of the primary dwelling.
7. Termination.
- A. The accessory living unit use shall terminate immediately upon any violation of any term or condition of this ordinance or of the Special Permit that the owner fails to cure, upon two (2) weeks written notice mailed to the applicant and to the occupants at the dwelling address by certified mail, return receipt requested.
  - B. Duty of Owner Upon Termination include:
    - a. The owner shall discontinue the use of the accessory dwelling unit as a separate dwelling unit.

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- b. The kitchen facilities of the accessory dwelling unit shall be removed unless determined by the Building Inspector to be incidental and subordinate as an accessory use of the principal dwelling.
  - c. Any additional exterior entrance constructed to provide access to the accessory dwelling unit shall be permanently closed, unless the Building Inspector provides a waiver. The owner shall permit an inspection by the Building Inspector without a warrant.
8. Severability. All the clauses of this ordinance are distinct and severable, and if any clause shall be deemed illegal, void, or unenforceable, it shall not affect the validity, legality, or enforceability of any other clause or portion of this bylaw.”

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

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**ZONING ORDINANCE RELATIVE TO INCLUSIONARY HOUSING**

*In the year Two Thousand and Twenty*

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

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

**5.4 - INCLUSIONARY HOUSING**

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

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

**5.4.2 Applicability.**

1. This Section §5.4 applies to any subdivision or development, whether new construction, conversion, adaptive reuse or expansion of an existing structure, involving the creation of six (6) or more dwelling units. It applies to all residential dwelling types as defined by the Salem zoning ordinance with the exception of assisted living residences, nursing or convalescent homes, and other similar uses.
  - a. A subdivision or division of land shall mean any subdivision as defined in the Subdivision Control Law, G.L. c.41, §81K-81GG, or any division of land under G.L. c.41, §81P, into lots for residential use.
  - b. Developments shall not be segmented or phased to avoid compliance with this Section. “Segmentation” shall mean any development or any division of land that would cumulatively result in an increase of six or more residential lots or dwelling units above the number existing on a parcel of land or contiguous parcels in common ownership up to twenty-four months prior to the application. Where such segmentation occurs, it shall be subject to this Section.

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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 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.

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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.
- 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.

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- 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.

**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



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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 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.

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**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.
  - 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.

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**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.

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

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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.

**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.

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**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.

*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

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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.