

City of Salem

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*In the year Two Thousand and Twenty-Four*

An Ordinance to increase coastal flood resiliency in the City of Salem.

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

Section I. The Zoning Ordinance of the City of Salem is hereby amended by adding the following new section to Chapter 8, Special District Regulations:

**“Section 8.9 – COASTAL RESILIENCY OVERLAY DISTRICT**

**8.9.1 Purpose.** The City of Salem recognizes that the increased frequency and intensity of coastal flooding events resulting from climate change poses a threat to human health, safety, and welfare. Through the creation of this Coastal Resiliency Overlay District (C-ROD), the City hereby establishes land use rules reflective of anticipated future sea level rise and coastal flooding scenarios and aims to foster land use that is resilient to projected increased coastal flood risk. This Ordinance is informed by science and technical data available at the time of its adoption, through the Massachusetts Coast Flood Risk Model’s (MC-FRM) projected Significant Wave Weight elevation in a 100-year flood event in 2070 and is anticipated to be updated periodically as new data become available and to maintain reference to a coastal flood risk projection with an approximately fifty-year time horizon.

The goals of this Ordinance are to:

- Protect buildings from projected increased coastal flood risk, with especially high protection provided to residential dwelling units, to protect the health, safety and welfare of occupants and minimize the burden on emergency response services.
- Encourage thoughtful and strategic investment in the built environment to advance the community’s goals, in areas including but not limited to housing and economic opportunity, through resilient land use that adapts to future coastal flood risk.
- Encourage adaptations to future coastal flood risk that are appropriate to the variety of Salem’s existing building stock as well as the community’s unique historic buildings, neighborhoods, and landscapes.
- Provide consistent regulation of land uses within locations projected to be subject to increasing coastal flood risk for the benefit of the city, community, and builders.

**8.9.2 District Boundaries.** The C-ROD boundary consists of the areas as shown on the zoning map. This mapping is based on the MC-FRM’s projected Significant Wave Weight elevation in a 100-year flood event in 2070. Where interpretation of these boundaries is in question, the Building Commissioner shall make interpretations, where needed, as to the exact boundaries of the district. The precise boundaries of the C-ROD shall be based on actual site conditions, as determined by the Building Commissioner, based on elevations provided by a licensed professional surveyor. Any person aggrieved by the Building Commissioner’s determination may appeal to the Zoning Board of Appeals pursuant to G.L. c. 40A, Sections 8 and 15 and Section 9 of the Salem Zoning Ordinance. Sea Level Rise Base Flood Elevation and Use Requirements: Minimum Sea Level Rise Base Flood Elevation (“SLR BFE”): The SLR BFE shall be no lower than the corresponding MCFRM projected 100-year flood event’s Significant Wave Height in

2070 as depicted on mapping on file with the City of Salem Department of Planning & Community Development.

**8.9.3 Applicability.** A building located within the district boundary is subject to the C-ROD as show on Table 1 below:

<b>TABLE 1: C-ROD APPLICABILITY</b>		
<b>Building Type</b>	<b>Modification of Existing Buildings</b>	<b>New Construction</b>
<b>Residential 6 units or more</b>	Yes	
<b>Residential; 5 units or fewer</b>	No, unless expanding Structural Lot Coverage over 100% or by any amount that includes a new dwelling unit	Yes
<b>Detached accessory buildings</b>	No	
<b>Non-residential greater than 7,500 square feet</b>	Yes	
<b>Non-residential less than 7,500 square feet</b>	No	Yes

Notes:

1. For the purpose of the C-ROD, an Accessory Dwelling Unit (ADU) shall be considered a residential unit.
2. A mixed-use building within the C-ROD shall be subject to the requirements of this Section if any of the residential or non-residential thresholds in Table 1 are met.
3. Applicability to Central Business (B5) Zoning District: For projects in the Central Business (B5) District, this Section 8.9 shall be applicable upon approval by the Executive Office of Housing and Livable Communities of a district compliance application that includes the C-ROD district in the compliance model of the application.

**8.9.4 Limitation on Uses Below SLR BFE.** Residential dwelling units, building mechanical uses, and building electrical service uses shall be located above the SLR BFE except as allowed in the list below and subject to Section 8.9.7, C-ROD Site Plan Review:

1. Residential access and vertical circulation (including lobbies, stairs, and similar spaces)
2. Residential storage
3. Residential Multifamily Common Support and Amenity Space
4. Parking
5. All non-residential uses
6. Building Mechanical Uses and Electrical Service Uses that Cannot Practically Be Located Above SLR BFE, as defined in Section 8.9.25.

**8.9.5 Exemptions.** The following are exempt from the provisions of the C-ROD.

1. Modification of an existing building where, within a 24-month period, Level 2 Alteration neither exceeds 50% of the aggregate building area below the SLR BFE nor 75% of the aggregate building area above the SLR BFE. Aggregate building area shall be as defined in the Massachusetts State Building Code.
2. New construction or modification of existing structures that do not meet the definition of “Building” per Section 10 of the Zoning Ordinance.
3. Portions of an existing building under separate ownership from a portion of the building where work subject to this Section is proposed to occur. For example, work in one condominium may not trigger the ordinance’s applicability to a separately owned condominium in the same building where work is not proposed.
4. When a modification of an existing building is subject to this ordinance, Building Mechanical Uses and Building Electrical Uses not being reconfigured or extended may remain below the SLR BFE.

**8.9.6 Relief from Dimensional Requirements.** Where the Project is subject to this C-ROD Ordinance, the design shall adhere to the following provisions:

1. Building Height: Irrespective of Sections 10.0 and 4.1.2.6 of the Salem Zoning Ordinance, Building Height shall be measured starting from the SLR BFE for Projects subject to this Section.
2. Gross Floor Area: In addition to areas excluded by other provisions of the Ordinance, the following shall be excluded from the measurement of Gross Floor Area for Projects subject to this Section: Areas devoted to interior vertical circulation from grade to the SLR BFE (such as stairs, ramps, or elevators); and areas devoted to flood protection equipment.
3. Front, Rear, and Side Yards. The following may be located within required setbacks irrespective of other provisions of the Salem Zoning Ordinances:
  - a. In Front, Rear, and Side Yards: Areas used for vertical circulation (such as stairs, ramps, or elevators) from grade to the required SLR BFE where setbacks are maintained to the maximum extent practicable; and
  - b. In Rear and Side Yards: Flood Protection Equipment, and structures housing mechanical equipment above the required SLR BFE, where setbacks are maintained to the maximum extent practicable.

**8.9.7 C-ROD Site Plan Review Required.** Projects subject to this section must undergo Site Plan Review per the provisions of this section, which are in lieu of the requirements of Section 9.5 of the Zoning Ordinance, unless 9.5.2 applies, in which case the project is subject to both CROD Site Plan Review and Site Plan Review Section 9.5. Absent special circumstances, applications under this Section 8.9 for C-ROD Site Plan Approval and under Section 9.5 for Site Plan Approval should be filed together for contemporaneous consideration by the Planning Board.

**8.9.8 C-ROD Site Plan Review Application.** An Applicant for a Site Plan Review shall file the application to the Planning Board and one (1) copy to the City Clerk. The application shall contain the following information:

- A. Any application for approval of a site plan review under this section shall be accompanied by a site plan, which shall be at a scale to be established by the Planning Board. The plan shall contain the following information, at a minimum:
1. Location and dimensions of all buildings and other construction;
  2. Location and dimensions of all parking areas, loading areas, bicycle racks or bicycle storage areas, walkways and driveways. Plans shall clearly identify pavement grade changes exceeding five (5) percent, and any vegetated slopes steeper than 1V:3H, identify all pedestrian and vehicular pavement materials;
  3. Location and dimensions of internal roadways and access ways to adjacent public roadways;
  4. Lot lines within which the development is proposed in relation to the nearest road intersection;
  5. Location, type, dimensions and quantities of landscaping and screening including retaining walls and fences;
  6. Current and proposed locations, dimensions, and screening of utilities including: water, storm water, sewer, drainage, drain inlets, drainage tanks, back flow preventers, manholes, hydrants, gas, electrical, telephone, wireless communication facilities, HVAC-related mechanicals, transformers, switchgears, generators, intake and exhaust features including: ventilation, stacks, fans, louvers, steam, and recycling and other waste disposal locations;
  7. Location of all existing natural features, including ponds, brooks, streams, wetlands, street trees, and existing vegetation up to the curb line;
  8. Topography of the site, with one foot contours;
  9. Plans depicting the property lines and physical features, including roads, for the project site;
  10. Proposed changes to the landscape of the site, grading, vegetation clearing and planting;
  11. Locations of active farmland, wetlands, permanently protected open space, Priority Habitat Areas and BioMap 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage & Endangered Species Program (NHESP) and "Important Wildlife Habitat" mapped by the DEP;
  12. Locations of local or National Historic Districts;
  13. Location, arrangement, size, and design of roof mounted and small-scale ground mounted solar energy systems;
  14. Location and elevation of existing and proposed applicable FEMA zones, structures, watercourses, applicable Base Flood Elevation mapping, drainage, and drainage easements, means of access, utilities, and sewage disposal facilities, if any;
  15. Boundaries of C-ROD overlay district and SLR BFE within the site and citation of information used to establish SLR BFE;
  16. Project design that addresses the requirements of the C-ROD Ordinance as applicable; and
  17. For buildings that are individually listed in the National Register of Historic Places or have been determined by the Salem Historical Commission to be historically significant: Application materials listed in Section 1.7 of the Salem Historical Commission Guidelines Notebook.
- B. A statement, signed and sealed by a state licensed architect or engineer, that all covered building spaces below the SLR BFE are designed to be floodproof in compliance with the requirements of this ordinance.
- C. A written narrative describing the proposed Project and how it complies with the requirements in Section 8.9.10 of this C-ROD Ordinance.

D. A list of federal, state, and other local permits required for the Project.

**8.9.9 Distribution.** The Planning Board shall, within seven (7) days after the receipt of an application pursuant to this Ordinance, transmit one (1) copy of said application to the Director of Sustainability and Resiliency, Building Commissioner, City Engineer, Head of the Fire Department or the Head of the Fire Department's designee, Board of Health, and Conservation Commission, who may at their discretion review and provide written commentary to the Planning Board.

The Planning Board shall not take final action on such application until it has received a report thereon from the Director of Sustainability and Resiliency, Building Commissioner, City Engineer, Head of the Fire Department or the Head of the Fire Department's designee, Board of Health, and Conservation Commission or until thirty-five (35) days have elapsed after distribution of such application to the listed parties.

The Salem Historical Commission shall review Projects that are individually listed in the National Register of Historic Places or have been determined by the Salem Historical Commission to be historically significant. The Historical Commission shall review the application at a public meeting and shall provide advisory comments to the Planning Board. The Historical Commission shall review the application for conformance to the Secretary of the Interior's Standards for the Treatment of Historic Properties.

The Planning Board shall not take final action on an application under this Section until it receives written confirmation from the Historical Commission that the application conforms to the Secretary of the Interior's Standards. The Planning Board may act if at least sixty (60) days have passed since delivery of the application to the Historical Commission and the Planning Board has not received any findings from the Historical Commission during the sixty (60) day period. Said sixty (60) day period may be extended by written agreement between the Applicant and Planning Board.

Nothing set forth in this section is intended to alter or amend the rights and obligations of the Historical Commission, and an Applicant's adherence thereto, pursuant to M.G.L. c. 40C.

**8.9.10 Site Plan Review Criteria.** When reviewing Projects subject to the C-ROD Ordinance, the Planning Board shall consider the following to the extent applicable. These criteria are in lieu of the general Site Plan Review Criteria in section 9.5 of the Salem Zoning Ordinance, unless the project is also subject per Section 9.5.2, in which case both C-ROD and Site Plan Review Section 9.5 both apply.

1. Adequacy of best engineering practices to eliminate or minimize flood risk or damage to covered building spaces below the SLR BFE, except unoccupied, unimproved, or unenclosed areas (such as crawlspaces) that are not intended for any uses described in this C-ROD Ordinance.
2. If project includes parking located below the SLR BFE within or beneath a building:
  - a. Adequacy of alternatives analysis to demonstrate that locating parking above the SLR BFE is infeasible; and
  - b. Adequacy of operations and management plan to remove vehicles from below the SLR BFE prior to a forecasted flood event.
3. Adequacy of flood protection for all Building Mechanical Uses and Electrical Service Uses that cannot practically be located above SLR BFE, as defined in Section 8.9.25:

4. Adequacy of convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets and sidewalks, particularly in the event of coastal floodwater rising to the SLR BFE.
5. Adequacy of project design to support pedestrian connections.
6. Adequacy of the minimization of the visual impact of utilities, building mechanicals, and flood protection equipment (see Wet and Dry Floodproofing) to the maximum extent practicable. 7. Adequacy of protection of the building's historic character and compatibility with historic character of the surrounding neighborhood.

**8.9.11 Decision.** After a notice and public hearing as set in G.L. c. 40A, s. 9 and 11, the Planning Board, by a simple majority, may approve the plan provided that it meets the criteria set forth in

**Section 8.9.10. 8.9.12 Conditions.** The Planning Board may, in appropriate cases as it determines, impose further restrictions upon the development or parts thereof as a condition to granting the approval and may waive any defined restrictions provided the project meets the 8.9.16 Waiver criteria. The Planning Board may, as a condition of approval, require that the Applicant give effective notice to prospective purchasers of the flood hazard conditions associated with said premises and the steps undertaken by the Applicant to alleviate the effects of same.

**8.9.13 Relationship to Underlying Zoning.** The C-ROD constitutes an overlay district as defined in Section 2.2 of the Salem Zoning Ordinance. The provisions of the Underlying Zoning, as they may be amended from time to time, continue to apply, except as expressly superseded by this C-ROD Ordinance. Where conflicts exist between this C-ROD Ordinance and the remainder of City's Zoning Ordinance, the requirements set forth in this Section shall govern.

**8.9.14 Reconstruction After Catastrophe.** Irrespective of Section 3.3.7 of the Salem Zoning ordinance, reconstruction of buildings with greater than 5 residential dwelling units or 7,500 square feet of non-residential space shall be subject to this C-ROD ordinance.

**8.9.15 Waivers.** The Planning Board is empowered to grant a C-ROD Site Plan Review approval that includes a waiver(s) from provisions of the C-ROD Ordinance.

**8.9.16 Waiver criteria.** In rare cases, waivers may be granted by the Planning Board only upon the Applicant's demonstration that structures, their occupants, and contents are and will be protected from future flood risk per the purposes of this Ordinance without strictly meeting every provision of this Ordinance. In such cases, the Planning Board shall only grant the minimum waiver necessary. In evaluating whether a waiver from one or more of the provisions C-ROD Ordinance is appropriate, the Planning Board shall consider the following:

1. Whether the grade of the existing roadways or sidewalks from which the Property derives its frontage makes full compliance with Section 8.9.10(4) (Vehicular and pedestrian movement) of this Ordinance impractical.
2. Whether there is no practicable way to achieve vertical circulation that complies fully with both this C-ROD Ordinance and with the Americans with Disabilities Act (ADA) and Massachusetts Architectural Access Board (MAAB) standards.
3. Whether the purposes of this Ordinance can be achieved wholly or in part through innovative design approaches without strictly meeting every provision of this Ordinance.

4. Whether the purposes of this Ordinance can be achieved wholly or in part through exterior site features, including, but not limited to, flood walls, earthen berms, or grading above the SRL BFE.

**8.9.17 Historic Properties Waiver.** If a building subject to the C-ROD lies within a Local Historic District, is individually listed in the National Register of Historic Places, or has been determined by the Salem Historical Commission at a public meeting to be historically significant, the Applicant may request a waiver from one or more provisions of this ordinance provided the petitioner demonstrates that the project meets the provisions of the ordinance to the maximum extent practicable, and that full compliance with the ordinance is not feasible without degrading the structure's historic character.

**8.9.18 Waiver Request Submittal Requirements.** The Planning Board will only consider the issuance of a waiver to one or more provisions of this Ordinance if the Applicant submits a written request including all of the following:

1. A complete Site Plan Review application under this Ordinance.
2. A list of the specific provision(s) from which a waiver is sought.
3. A written narrative supporting how the waiver request meets the waiver criteria described in Section 8.9.16.
4. Any additional information or materials that may support the Planning Board's consideration of the waiver request.

**8.9.19 Peer Review.** The Planning Board may retain third-party review services by qualified individuals to assist with the review of applications filed pursuant to this C-ROD Ordinance, as may the Zoning Board of Appeals to support consideration of an appeal of the Building Commissioner's decision regarding the boundaries of the C-ROD, pursuant to MGL Ch. 44, Section 53(G).

**8.9.20 Severability.** If any section, provision, or portion of this C-ROD Ordinance is deemed to be unconstitutional or invalid by a court, the remainder of the Ordinance shall be effective. In areas of conflict that would prevent compliance with the MA Building Code, the Building Code shall prevail.

**8.9.21 Lapse.** Site plan approval shall lapse after two years from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Board upon the written request of the applicant.

**8.9.22 Enforcement.** No building permit or Site Plan Review approval for a Project proposed and subject to this C-ROD Ordinance shall be issued without proof of prior compliance and, as appropriate, permit issuance under this Ordinance.

**8.9.23 Fee.** The Board may adopt reasonable administrative fees and technical review fees for C-ROD site plan review.

**8.9.24 Appeal.** Any decision of the Board pursuant to this Section may be appealed in accordance with G.L. c. 40A, s. 17 to a court of competent jurisdiction.

**8.9.25 Definitions.** The defined terms in this Section are for terminology used in this C-ROD Ordinance. To the extent not defined herein, refer to Flood Hazard Overlay District (Section 8.1)

for additional definitions of terms related to this Section and Definitions (Section 10.0), notwithstanding any contrary provision(s) elsewhere in the Ordinance.

1. Building Mechanical Uses – Refers to use of a site, structure, or portion(s) thereof to house the mechanical system of a building, including heating, ventilation, air conditioning, or other like features.
2. Building Mechanical Uses and Electrical Service Uses that Cannot Practically Be Located Above SLR BFE – Refers to those Building Mechanical Uses and Electrical Service Uses that must be located below the SLR BFE in order to serve their intended purpose. For example, wiring and piping entering a building from underground must pass through the area below the SLR BFE to serve mechanical or electrical units located above the SLR BFE.
3. Building Electrical Service Use – Refers to uses of a site, structure, or portion(s) thereof to house the main electrical service equipment of a building, including main panelboards, transformers, switchgear, or other like features.
4. Floodproofing, Dry – Is the practice of sealing a space or a building up to the level of the Sea Level Rise Base Flood Elevation (SLR BFE) or higher in order to keep water from entering and strengthening structural members in anticipation of the hydrostatic and hydrodynamic pressure caused by floodwaters.
5. Floodproofing, Wet – Constructing for the movement of water through a space or a building, which equalizes hydrostatic pressure and helps prevent structural failure, and utilizing materials that will withstand flooding without damage.
6. Flood Protection Equipment - Equipment used to prevent or minimize water infiltration or flood damage. This type of equipment may include, but is not limited to, permanent or deployable flood walls and retention tanks for stormwater or floodwater.
7. Level 2 Alteration– Includes the reconfiguration of space, addition or elimination of any door or window, the reconfiguration or extension of any system, or the installation of any additional equipment. (From 2021 International Building Code).
8. Proposed Project/Project – The construction or modification of a building that is subject to this ordinance.
9. Residential Multifamily Common Amenity and Support Space - A shared area within a building that is outside dwelling units and that houses amenities or services available for the shared use or support of residents of a multifamily residential complex. This may include, but is not limited to, a swimming pool, sauna, exercise room, pet washing facility, game room, lounge, mailroom, service desk, management office, or custodial closet.
10. Sea Level Rise Base Flood Elevation (SLR BFE) –The SLR BFE shall be established by the top of the water elevation predicted by the coastal flood risk scenario depicted on the SLR BFE Map on file with the Department of Planning & Community Development.
11. Structural Lot Coverage - That portion of a lot that is covered or occupied by any building or structure, but excluding unenclosed, covered, or uncovered landings or porches (unless such covered landings or porches have habitable space directly above), steps, roof overhangs, bay



windows, chimneys and bulkheads as permitted in required setbacks, as well as outdoor fireplaces, decks, patios and pools.

12. Underlying Zoning - The zoning regulations that are otherwise applicable to a Proposed Project or Property within the C-ROD, including the regulations of any other overlay district(s) as set forth in this Ordinance.

13. Zoning Relief - Any Zoning Variance or Special Permit, exception, or zoning map or text change, or any other relief granted for a Proposed Project issued by the Zoning Board of Appeals or Salem Planning Board.”

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

In City Council March 14, 2024

Referred to the Planning Board to hold a Joint Public Hearing

ATTEST:

ILENE SIMONS  
CITY CLERK