

# City of Salem

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*In the year Two Thousand and Twenty*

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

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

## **5.4 - INCLUSIONARY HOUSING**

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

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

### **5.4.2 Applicability.**

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

iii. The applicant shall obtain a letter from the Salem Historical Commission that determines:

1. The building is located on the State Register of Historic Places or that the building is significant in the history, archaeology, architecture or culture of Salem.
2. The building is a minimum of 50 years old.
3. The exterior work comply with the Secretary of the Interior Standards.

iv. The applicant shall obtain a positive recommendation letter from the Affordable Housing Trust Fund Board concerning the proposed affordability tiers.

c. Criteria for a Tiered Affordability Special Permit.

i. Increasing the affordability level of any of the required Affordable units above 60 percent of the area median income is discouraged. The applicant shall demonstrate to the Affordable Housing Trust Fund Board that all other resources have been exhausted.

ii. The applicant shall provide financial pro-forma to the Affordable Housing Trust Fund Board that demonstrates the affordable unit provisions in Section 5.4.3(1) would prevent the adaptive reuse project from being financially feasible. The pro-forma shall use DHCD's Chapter 40B Guidelines for determining whether the project is "uneconomic" and related terms such as "return on total cost" and "net operating income" or other guidelines that are recognized by real estate and affordable housing industry standards that are determined to be acceptable by the Affordable Housing Trust Fund Board.

iii. The pro-forma will be peer reviewed by a third-party accountant chosen by the Affordable Housing Trust Fund Board and paid for by the applicant. The Affordable Housing Trust Fund Board shall include consideration of the criteria in Section 5.4.3(2)(c) i and ii in their recommendation letter to the Planning Board.

iv. A permanent preservation restriction mutually agreed upon between the applicant and the City of Salem Historical Commission shall be provided to the City of Salem to protect the historically significant features of the exterior of the building.

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.

to one parking space per dwelling unit if Transportation Demand Management (TDM) practices are incorporated, as evidenced by a Transportation Demand Management Plan to reduce demand for parking, and approved by the Planning Board as a condition of project approval. The Planning Board will assess the need for TDM measures based on site location. TDM methods to reduce parking demand on site may include but are not limited to:

- i) Shared Parking: To implement shared on-site parking, the applicant shall demonstrate that proposed uses are non-competing. In mixed-use developments, applicants may propose a reduction in parking requirements based on an analysis of peak demand for non-competing uses;
- ii) Use off-site parking to satisfy parking requirements;
- iii) Pay a stipend to residents without cars;
- iv) Provide a guaranteed emergency ride home;
- v) Provide transit pass subsidies;
- vi) Provide covered bicycle parking and storage;
- vii) Provide bicycle or car sharing on site;
- viii) Other means acceptable to the Planning Board.

#### **5.4.5 Provisions Applicable to Affordable Housing Units.**

1. Location. All Affordable Housing Units must be dispersed evenly throughout the development.
2. Exterior design. The exterior of Affordable Housing Units must be indistinguishable from the market-rate units in terms of design, appearance, materials, and quality of construction.
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.

Restriction. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for low- and moderate-income households.

1. As a condition of development, all Affordable Housing Units provided under this Section §5.4 shall be subject to an Affordable Housing Restriction in a form consistent with the LIP guidelines or any other applicable guidelines issued by DHCD, acceptable to the Planning Board, that ensures Affordable units can be counted toward Salem's Subsidized Housing Inventory. The Affordable Housing restriction shall run with the land and be in force in perpetuity or for the maximum period allowed by law, and be enforceable under the provisions of MGL c. 184, § 26 or §§ 31 and 32. Affordability restrictions shall be contained in applicable Affordable Housing Restrictions, regulatory agreements, deed covenants, contractual agreements, land trust arrangements and/or other mechanisms to ensure compliance with the affordability requirements of this Section.

The applicant shall be responsible for preparing and complying with any documentation that may be required by DHCD to qualify Affordable Housing Units for listing on the Chapter 40B Subsidized Housing Inventory as Local Action Units.

2. The Affordable Housing Restriction shall contain limitations on use, occupancy, resale and rents, and provide for periodic monitoring, by the City or its designee named in the deed rider as the monitoring agent, to verify compliance with and enforce said restriction. This monitoring is intended to verify that Affordable homeownership units remain owner-occupied and are resold at a price affordable to low- or moderate-income homebuyers, and that Affordable rental units are occupied by low- or moderate-income tenants at rents they can afford. The applicant is responsible for providing ongoing monitoring through an organization qualified to serve as a monitoring agent on behalf of the City.
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.

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 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.