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May 28, 2020

Salem City Council
Salem City Hall
93 Washington Street
Salem, MA 01970

Dear Councillors,

This letter is to provide you with an overview of staff's recommended edits to the accessory dwelling unit (ADU) ordinance. The goal of these edits is to accomplish what was discussed at the May 26, 2020 Ordinance License and Legal Affairs Subcommittee—ensuring that every new ADU created as a result of this ordinance will have an affordability restriction in place. For your convenience, these recommended edits by staff are shown under the same cover as two other sets of recommendations. The first of these sets consists of the recommendations from the Planning Board that OLLA reviewed and recommended for inclusion. The second of these sets consists of recommended changes made by OLLA on its own. Each set of edits is color coded.

Also, please be advised that the rent control law prohibits requiring rent to be set below fair market rent, unless the landlord is subsidized in some way. Because we had already planned to offer a modest tax exemption to any affordably rented ADU via the special act currently before you, this will enable us to issue a below-market rent max on new ADU's. Thus, edits have also been made to the tax exemption to line up with the ordinance.

Staff's edits to the ordinance are explained herein:

1. All references to "accessory dwelling units" is revised to "affordable accessory dwelling units".
2. The definition is amended to clarify that there is a rent cap on ADUs, i.e. that the rent must be at least 25 percent below fair market rents established by the United States Department of Housing and Urban Development (HUD).
3. Section 3.A.3. was added to require the application for an ADU to include a letter of intent that certifies the rent of the accessory dwelling unit will be at least 25 percent below the established fair market rent limit determined by HUD.

4. Section 4.B was added to set the maximum rent of the accessory dwelling unit, including utilities and parking. The rent must be at least twenty-five percent below the established fair market rent (FMR) limit for the City of Salem as set annually by the United States Department of Housing and Urban Development (HUD), it could be lower. The chart below shows the 2020 FMR and what the maximum rent an ADU would be if this ordinance passes, which varies based on the number of bedrooms.

| | Studio | One bedroom | Two Bedroom |
|------------------------------------|--------------------|--------------------|--------------------|
| Fair Market Rent (FMR) Limit | \$ 1,715.00 | \$ 1,900.00 | \$ 2,311.00 |
| 25 Percent Reduction of FMR | \$ 1,286.25 | \$ 1,425.00 | \$ 1,733.25 |

Thus, affordability is achieved by establishing rent maximums.

Please do not hesitate to contact me at achiancola@salem.com if you have any additional questions.

Sincerely,

Amanda Chiancola, AICP
Senior Planner

Cc: Mayor Kimberley Driscoll
Tom Daniel, DPCD Director
Ilene Simons, City Clerk

- **+Yellow highlighted text illustrate recommended revisions from the Planning Board**
- Track changes illustrate revisions from the Ordinance License and Legal Affairs Submitted.**
- **Blue text illustrate staff recommended revisions to include a maximum rent.**

Section 3. Table of Table of Principal and Accessory Use Regulations

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

Section 10

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

“**Affordable Accessory dwelling unit:** A housekeeping unit **with a maximum rent at least 25 percent below the United States Department of Housing and Urban Development (HUD) fair market rent limit for Salem**, with its own sleeping, cooking and sanitary facilities, located **either in an existing unattached accessory structure existing as of the effective date of the affordable accessory dwelling unit ordinance’s passage**, or within or attached to a principal dwelling and 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”

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

—“4. Unattached **affordable** accessory dwelling units shall comply with all regulations set forth in Section 3.2.4 (Accessory Buildings and Structures) of this Ordinance with the exception of setbacks.

5. Unattached **affordable** accessory dwelling units shall comply with all setbacks of the principal structure, as set forth in Section 4.1 of this ordinance (Dimensional Requirements), irrespective of whether the principal structure on the property in question complies with such setbacks or not.

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

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 Affordable Accessory Dwelling Units. Affordable Accessory Dwelling Units shall be allowed as provided set forth in this section.

1. Purpose.

- A. To add **affordable** 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.
- D. To permit the owner of an existing, or a proposed, principal dwelling to construct one additional **affordable** dwelling unit per lot. 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 and the Building Inspector shall enforce the provisions of this section and of the Special Permit
- 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 and in the case of a property held by a condominium trust, all owners of all units within the condominium.
 - 2. Include a floor plan of the **affordable** 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 **affordable** accessory dwelling unit.

3. **A letter of intent signed by the homeowner(s) shall be submitted to the Department of Planning and Community Development that certifies the rent of the accessory dwelling unit will be at least 25 percent below the established fair market rent limit determined by the United States Department of Housing and Urban Development.**

4. Requirements.

- A. **The maximum rent of the accessory dwelling unit, including utilities and parking, shall be at least twenty-five percent below the established Fair Market Rent limit for the City of Salem as determined annually by the United States Department of Housing and Urban Development.**
- B. 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 **affordable** accessory dwelling unit. The **affordable** 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.
- C. There shall not be a net loss in the **total measured** caliper of private trees on the lot in which the **affordable** accessory dwelling unit will be located unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.
- D. The **affordable** accessory dwelling unit shall not contain less than 350 square feet of habitable space.
- E. The **affordable** accessory dwelling unit shall not contain in excess of 800 square feet of habitable space, unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.
- F. **The affordable accessory dwelling unit shall not be constructed within a new detached unit.**
- G. **The affordable accessory dwelling unit shall be within or attached to the principal dwelling, or within an existing unattached accessory structure, unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.**
- H. No more than one (1) **affordable** accessory dwelling unit shall be located upon a single lot.
- I. An **affordable** accessory dwelling unit shall not be permitted in a building with five (5) or more units.
- J. At least one (1) owner of the residence in which the **affordable** 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.
- K. Electricity, water and gas shall be provided by a single service to both the **affordable** accessory dwelling unit and the principal dwelling.

- L. The **affordable** 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.
 - M. Entry shall be located through existing entry or on the back or side of the main dwelling.
 - N. Egress access shall be located on the side or rear of the building so that visibility from public ways is minimized.
 - O. The **affordable** accessory dwelling unit shall not contain more than two (2) bedrooms.
 - P. The **affordable** accessory dwelling unit shall be clearly subordinate in use, size and design to the principal dwelling.
 - Q. The **affordable** accessory dwelling unit must be capable of being discontinued as a separate dwelling unit without demolition of any structural component of the principal dwelling.
 - R. There shall be no occupancy of the **affordable** accessory dwelling unit until the Building Inspector has issued a certificate of occupancy that the principal dwelling and **affordable** accessory dwelling unit shall be in compliance with all applicable health and building codes.
 - S. 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.
 - T. By filing the Application for a Special Permit or Building Permit for an **affordable** 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.
 - U. Short term rentals, as defined in Salem Code of Ordinances Chapter 15, are prohibited in the accessory dwelling unit.
 - V. The **affordable** accessory dwelling 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 flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the **affordable** 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 **total measured** caliper of trees on the lot in 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 the tree replacement fund will be provided.
- C. The Zoning Board of Appeals may grant a waiver to allow the **affordable** accessory dwelling unit to exceed 800 square feet of habitable space, up to a maximum of 1,000 square feet, taking into consideration peculiarities of the layout of the principal dwelling.
- D. The Zoning Board of Appeals may grant a waiver to allow an existing unattached accessory structure to be expanded to accommodate the **affordable** accessory dwelling unit.
7. Termination.
8. The **affordable** accessory dwelling 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.
- A. Duty of Owner Upon Termination include:
- a. The owner shall discontinue the use of the **affordable** accessory dwelling unit as a separate dwelling unit.
 - b. The kitchen facilities of the **affordable** 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.

7. 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.”



CITY OF SALEM

In City Council, February 13, 2020

Ordered:

That a petition to the General Court, accompanied by a bill for authorization to provide tax exemptions for affordable accessory dwelling unit rental properties in the City of Salem restricted as affordable housing as set forth below, be filed with an attested copy of this Order be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that the following legislation be adopted, except for amendments by the Senate or House of Representatives which conform to the intent of this home rule petition:

AN ACT authorizing the City of Salem to provide tax exemptions for affordable accessory dwelling unit rental properties in the City restricted as affordable housing.

Be it enacted by the Senate and House of Representatives in General Court Assembled, and by the authority of the same as follows:

AN ACT RELATIVE TO PROPERTY TAX EXEMPTIONS FOR AFFORDABLE ACCESSORY DWELLING UNIT RENTAL PROPERTIES IN THE CITY OF SALEM. RESTRICTED AS AFFORDABLE HOUSING.

SECTION 1. Notwithstanding the provisions of any general or special law to the contrary, upon the approval by the Salem City Council of Salem's Affordable Accessory Dwelling Unit Ordinance, an Accessory Dwelling Unit in the City of Salem ~~which is rented to and occupied by a household of low income, at a rental amount not exceeding the standards of the United States Department of Housing and Urban Development for low income persons~~, shall be exempt from taxation under Chapter 59 of the General Laws.

SECTION 2. Such exemption shall be equal to the tax otherwise owed on the property based on the assessed value of the entire property, including the accessory dwelling unit multiplied by the square feet of the living space of the accessory dwelling unit on the property that is restricted to occupancy by low income households, divided by the total square feet of all structures on the property. For purposes of determining the assessed value of the entire property, if by income approach to value, such assessment shall assume that all housing units are rented at fair market value.

SECTION 3. Households leasing ~~and occupying~~ the affordable dwelling unit shall upon initial application and annually thereafter, on September first, submit to the City of Salem or its agent, documentation necessary to confirm their eligibility for the affordable accessory dwelling unit.

~~Affordable accessory dwelling units shall be rented to those meeting the guidelines for low income household.~~

SECTION 4. ~~Maximum rents shall not exceed~~ For the purposes of this act, seventy-five percent of the established Fair Market Rent limit ~~low income households shall have an income 60 percent of the area median income or less,~~ as established by the United States Department of Housing and Urban Development for the Boston Metropolitan Statistical Area for the most recent year.

SECTION 5. Households who have received a loan administered by the City of Salem for the purpose of building the Accessory Dwelling Unit shall not be eligible for the tax incentive for the term of the loan.

SECTION 46. This act shall take effect upon its passage.