

City of Salem

In the year Two Thousand and Twenty-Three

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.

At a minimum, Affordable Housing produced through this regulation should be in compliance with the requirements set forth in G.L. c. 40B sect. 20-24 and other Affordable Housing programs developed by state, county, and local governments. 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 Local Initiative Program. Definitions pertaining to this section can be found in Section §10.0 of this ordinance.

5.4.2 Applicability.

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

2. This Section §5.4 does not apply to the rehabilitation, repair or reconstruction of any building or structure, all of or substantially all of which is destroyed or damaged by fire or other casualty or a natural disaster; provided, however, no rehabilitation, repair or reconstruction shall result in a net increase of six (6) units beyond what previously existed prior to the damage or destruction thereof except in conformance with this Section.
3. No special permit or site plan review for a development requiring a special permit or site plan review, and no building permit for a use permitted as of right, shall be issued for a development subject to this Section §5.4 unless the applicant provides the percentage of the total dwelling units in the development as Affordable Housing Units as described herein.
4. For projects in the Central Business (B5) District, this Section §5.4 shall be applicable upon approval of an Economic Feasibility Analysis by the Executive Office of Housing and Livable Communities.

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:
 - i. For developments up to twenty (20) units in size, at least eight (8) percent of the dwelling units shall be Affordable Housing Units.
 - ii. For developments twenty-one (21) units or larger in size, at least ten (10) percent of the dwelling units shall be Affordable Housing Units.
 - b. Affordable Housing Units required by this Section §5.4 shall be made available to eligible households with incomes at or below 60% of Area Median Income (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 Massachusetts 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 Central Business (B5) zoning district would not be feasible with the Affordable unit requirements of Section 5.4.3, the Affordability unit requirements of Section 5.4.3 may be met by a special permit from the Planning Board that would

allow tiered affordability levels of the required Affordable units up to 80 percent of the area median income if all the criteria of Section 5.4.3(2) are met.

b. Eligibility.

- i. The project must be located in the Central Business (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.

- 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. On-site requirement. All Affordable Housing Units shall be provided on-site.
4. 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 24-unit project would require 2.4 Affordable Housing Units (10% of 24); the last 0.4 unit may be satisfied by providing an additional Affordable Housing Unit (for a total of 3 Affordable Housing Units) or through a cash payment equivalent to 0.4 unit.

The payment shall be based on the total development cost limit for urban areas outside Metro Boston as articulated in the most current Massachusetts Qualified Allocation Plan for the Low Income Housing Tax Credit Program, issued by the Department of Housing and Community Development (DHCD), the Executive Office of Housing and Livable Communities (EOHLC), or its successor agency.

For projects using historic tax credits or other historic preservation incentives, the cost of the historic credit or incentive may be subtracted from the total development cost limit.

5.4.4 Housing Bonus and Parking Reduction. 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. Housing Bonus. Developments in compliance with the requirements of this Section §5.4 are permitted an increase of up to 25% of the total number of units that would normally be permitted in the applicable zoning district. The requirements of Section 5.4.3.1 shall be calculated based on the total number of new units, including units created through the housing bonus.
 - a. The minimum lot area per dwelling unit normally required in the applicable zoning district shall be reduced by the amount necessary to permit the additional units. This reduction of the minimum lot area per dwelling unit shall be by right for developments in compliance with the requirements of this Section §5.4.
 - b. The number of stories normally permitted in the applicable zoning district may be increased by one story provided it does not exceed the maximum height, and all yard and setback requirements normally required in the applicable zoning district may be reduced by up to 50%, with a Special Permit granted by the Planning Board. In granting a Special Permit, the Planning Board will consider the Special Permit criteria established in Section 9.4.2 and whether the permit is necessary to provide for the additional units permitted by the density bonus.

2. Parking Reduction. Developments in compliance with this Section §5.4 are permitted to reduce the number of required parking spaces as follows:

- a. For developments located within a half mile of a commuter rail station, the development is permitted to reduce the number of parking spaces to one parking space per dwelling unit. This parking reduction shall be by right for developments in compliance with the requirements of this Section §5.4. For purposes of this ordinance, the half-mile distance shall be measured by applying a half-mile radius originating from each point of entry at a commuter rail station. Any parcel that is touched by the half-mile radii shall be considered included within a half-mile distance. Distance shall be confirmed by the City of Salem's Department of Planning and Community Development.
- b. For developments located further than a half mile from a commuter rail station, the development is permitted to reduce the number of parking spaces to one parking space per dwelling unit with a Special Permit granted by the Planning Board, 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.
- c. For adaptive reuse projects located within the Central Business (B5) district, the development is permitted to reduce the number of parking spaces to zero parking spaces per dwelling unit, provided the project conforms with Section §5.4.3.(2).b.iii.

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. 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.
 - b. 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.
 - c. The bedroom mix in the Affordable Housing Units shall be proportionate to the bedroom mix of the market-rate units.
 - d. 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.
 - e. Compliance with Section 5.4.5 shall be determined by Salem Department of Planning and Community Development staff.
4. Timing of construction of Affordable units and payment made. Affordable Housing Units must be constructed at a proportion of one (1) affordable unit for every five (5) Market Rate Units. The payment for fractional units, if applicable, shall be made before issuance of the Certificate of Occupancy.

5.4.6 Resident Selection and Marketing Plan for Affordable Units.

1. Applicants creating new Affordable Housing Units under this Section §5.4 are required to select qualified homebuyers or renters via lottery under an Affirmative Fair Housing Marketing Plan (AFHMP) prepared and submitted by the applicant and approved by the Salem Department of Planning and Community Development and the Executive Office

of Housing and Livable Communities 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. For ownership units, 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 households at income levels required by this Section §5.4.

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, EOHLC, or its successor agency 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, EOHLC, or its successor agency 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 consistent with this Section §5.4, and that Affordable rental units are occupied by tenants earning incomes described in this Section §5.4 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 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 EOHLC are described in detail in the 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.

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 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.

Commuter rail station: Any Massachusetts Bay Transportation Authority (MBTA) commuter rail station with year-round, rather than intermittent, seasonal, or event-based, service.

Eligible Household: A household of one or more persons whose maximum income does not exceed the income limits 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 Executive Office of Housing and Livable Communities (EOHLC), formerly 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- or moderate-Income Household: A household with income at or below 80% 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 Massachusetts 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 Executive Office of Housing and Livable Communities (formerly 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.

In City Council October 26, 2023

Referred to the Planning Board to schedule a Joint Public Hearing by a roll call vote of 11 yeas, 0 nays, and 0 absent

Joint Public Hearing held on November 20, 2023

Referred to the Planning Board for review and recommendation by a roll call vote of 10 yeas, 0 nays and 1 absent

In City Council December 7, 2023

Amendments made to Section 5.4.4.(2).a regarding distance measurement and Section 5.4.4.(2).c adaptive reuse were adopted

Adopted as amended for first passage by a roll call vote of 10 yeas, 0 nays and 1 absent

In City Council December 21, 2023

Adopted for second passage by a roll call vote of 11 yeas, 0 nays and 0 absent

Motion for immediate reconsideration in the hopes it does not prevail was denied

Approved by the Mayor on December 26, 2023



ATTEST:

ILENE SIMONS
CITY CLERK