



# CITY OF SALEM, MASSACHUSETTS

## DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

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Salem City Council and Salem Planning Board  
Salem City Hall  
93 Washington Street  
Salem, MA 01970

Re: Accessory Dwelling Unit (ADU) Ordinance and Inclusionary Zoning Ordinance – Response to Questions from the April 13, 2020 Joint Public Hearing

Dear City Councillors and Planning Board members:

This letter is to provide you with a response to questions from the April 13<sup>th</sup> Joint Public Hearing. Questions asked at the hearing are shown in bold, followed by a response from staff.

### Accessory Dwelling Unit Ordinance

#### 1. **What are the cities and towns that directly abut Salem doing?**

Please see the chart below to review how the abutting cities and towns handle ADUs. Please note of the three abutting communities that require tenant restrictions, two have housing production plans that recommend exploring opportunities to remove that restriction.

City or Town	ADUs allowed?	Tenant Restriction	Permit Process
<a href="#">Beverly</a>	Yes	Yes*	Special Permit
<a href="#">Lynn</a>	No	Not Applicable	
<a href="#">Peabody</a>	Yes	Yes**	Special Permit
<a href="#">Swampscott</a>	Yes	No	Special Permit
<a href="#">Marblehead</a>	Yes	No	By Right
<a href="#">Danvers</a>	Yes	Yes	By Right if certain criteria is met, if not then Special Permit

\*According to the Beverly Housing Production Plan: *Accessory apartments address many public policy benefits and the City will explore opportunities to amend their accessory apartment ordinance to better promote these units.*

\*\*According to the Peabody Housing Production Plan: *The Planning Board, with support from the Department of Community Development and Planning, will consider possible provisions for allowing occupancy of the units by non-family members.*

Inclusionary Zoning Ordinance

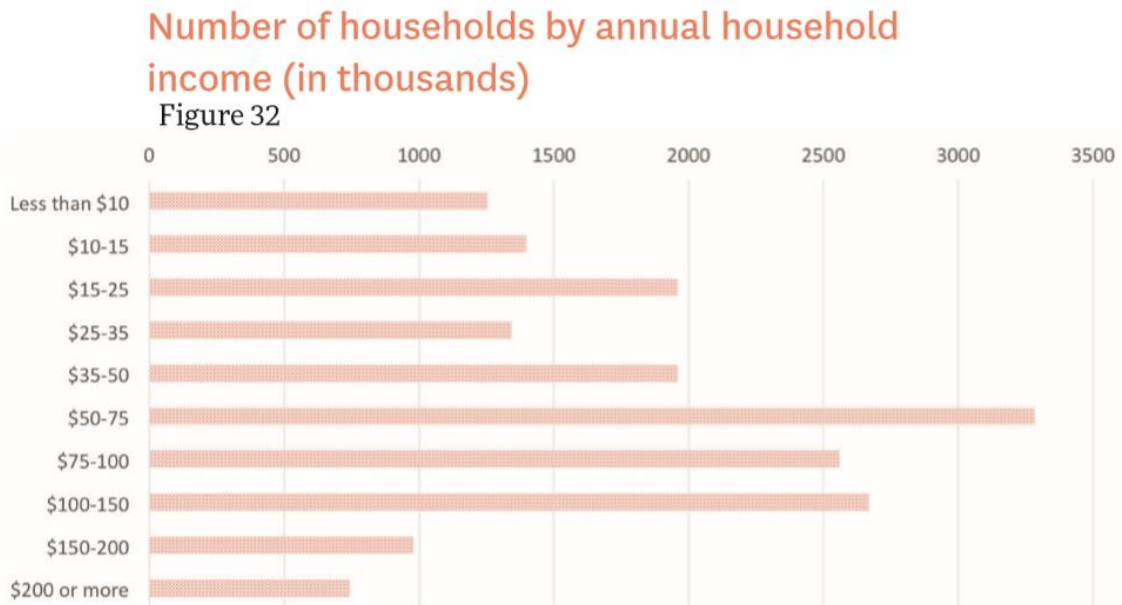
**1. Does 30% of the total household income include utilities and property taxes?**

For ownership yes. For rental, utilities are included (property taxes are absorbed into the rent).

**2. The 218 local action units created thus far are at 80% Area Median Income (AMI). That is not Salem’s income level, it is not affordable to Salem.**

To clarify, the local action units permitted thus far include all local action units permitted. That includes affordable units created through non-profits such as the North Shore CDC and Harborlight Community Partners, which offer affordability levels much deeper than 80% AMI.

The chart below is from the Imagine Salem progress report that can be found [here](#). The data is from the American Community Survey, 2010–2014 5-year estimates. As shown in the chart, there is a very wide range of household income levels in Salem. While the largest percentage of households have incomes ranging from \$50,000–\$75,000, (which is roughly equal to 60% of the AMI), there is also a significant number of households with incomes more than \$75,000. Furthermore, approximately



eleven percent (11%) of the households with income above \$75,000 are housing cost burdened, meaning they pay more than 30% of their income on rent. Although the greatest need for affordable homes in Salem is at lower-income levels, there is also a need for households at the 80% AMI income level. However, please be advised that the proposed ordinance targets households at 60% AMI.

**3. The ordinance clearly needs to say six or more units and not six.**

Section §5.4.2 already specifically states the ordinance applies to six or more.

**4. We need more than 10%. We don't want our amount to go below 10% on the subsidized housing inventory citywide.**

The affordable units come at a cost to the developer. If we ask for too much affordability, we risk the project becoming infeasible or the developer deciding to build in a different city where they can make a greater profit. It's a balancing act. After studying market data in-depth we know that requiring more than 10% of the units to be affordable at 60% AMI with the current incentives would dampen development.

The ordinance could require a higher percentage of affordable units, but the affordability level required would need to either be higher than 60% AMI, to balance out the additional financial cost. For example, the combination could be 15% of units being affordable to 80% AMI. Staff recommends not changing the threshold or percentage that is currently proposed.

That said, inclusionary zoning is just one of several strategies that the City is working on to increase the affordable housing stock in Salem. Other proposals, such as building affordable homes on City land will increase the City's housing stock above 10% on the subsidized housing inventory.

**5. The 25% density bonus right should not be by right and 25% is too much.**

If the cost of the affordable units is too great, developers may simply choose to not build anything, which would result in no affordable units at all. The policy needs to strike a balance between meeting Salem's affordability goals and being financially feasible. Many of the developers' margins are dictated by lending requirements set by banks, or by other market conditions such as rapidly rising construction costs. In many cases they don't have complete control over their profit margins.

Based on MAPC's financial analysis, the income from the density bonus units (combined with the cost savings from the parking reduction) is what's needed to make up for the money that a developer loses from the affordable units.

**6. Two developments up on Highland Avenue recently proposed 180-220 units. Instead of 200 units the developer would be able to take advantage of this and built 250 units, and the parking relief would be too generous.**

The two highlighted developments of Highland Avenue were both proposed as Planned Unit Developments. Please be advised that a planned unit development has no lot area per dwelling unit or parking minimum. Thus, the density bonus and parking incentive are not relevant to those projects. If inclusionary zoning were passed prior to the submittal of said projects, it would not have changed the total number of units. However, inclusionary zoning would have required that ten percent of the units be affordable at 60% AMI.

**7. The language regarding the 180-day window to market the unit has to be changed significantly. The developer will be required to market the unit 180 days, they could do that before the unit is even built, so when it is ready for occupancy the developer can sell it for full price, resulting in no affordable units.**

Staff recommends not rewording the 180-day provision.

Requiring affordability at a higher level for ownership is common in inclusionary zoning. While there is unquestionably need for housing at lower income levels, it is difficult for lower-income residents to qualify for a mortgage. This makes the eligible applicant pool for these units small and makes marketing and sales very difficult. The last thing we want is for an affordable home to be built but sit vacant as a result of the developer being unable to find an income qualified buyer who has been approved by a financial institution to purchase the home.

MAPC looked at mortgage denial rates at various income levels to determine whether households at 60% AMI would qualify for a mortgage. The findings from that data analysis are discussed in detail below under the Mortgage Application Denial Rate heading. In summary, there is a very limited applicant pool who would qualify for a deed restricted unit at 60% area median income. As such, two best practices have been incorporated into the ordinance in the event an eligible buyer cannot be found for the unit; 1. the City or its designee has the first right of refusal<sup>1</sup> if the owner is unable to find an eligible buyer; and 2. if the developer is unable to find a eligible buyer for the unit, then the unit can be increased to 80% area median income (not market rate).

#### Mortgage Application Denial Rate

As noted above, MAPC conducted data analysis on mortgage denial rates in Salem and found that Salem’s low-income applicants are much more likely to be denied when applying for a mortgage. As shown in the chart below, the denial rate for loans similar to the cost of a deed-restricted unit for a 1- or 2-person household purchasing a condo at 80% AMI (about \$213,000) was 12% whereas the denial rate for loans similar to the cost of deed-restricted units for household earning 60% AMI (about \$119,000) is much greater at 34%.

Annual Applicant Income	Total Applications		Denial Rate		Median Approved Mortgage Cost	
	2010-2013	2014-2017	2010-2013	2014-2017	2010-2013	2014-2017
<b>Lowest Income</b> (\$0-\$35,000)	58	38	29%	34%	\$110,000	\$119,000
<b>Lower Income</b> (\$35,000-\$74,999)	830	874	13%	12%	\$184,000	\$213,000
<b>Moderate Income</b> (\$75,000-\$124,999)	693	1,044	11%	7%	\$242,000	\$289,000
<b>High Income</b> (\$125,000+)	347	730	10%	6%	\$295,500	\$327,000
<b>Overall, All Incomes</b>	1,928	2,686	12%	8%	NA	NA

<sup>1</sup> The first right of refusal means the City, or its designee can purchase the affordable unit. The City’s designee could be a non-profit or the Salem Housing Authority. Regardless of who purchases the unit, it would still be restricted to a maximum area median income of 60%.

Furthermore, there are safeguards in place to ensure developers do not “wait out” the 180-day window. First, all affordable units must comply with their Affirmative Fair Housing Marketing Plan (AFHMP). An AFHMP is a plan for marketing the local action units. It includes provisions for a lottery agent that is certified by the Department of Housing and Community Development (DHCD). It must also provide effective outreach methods to protected groups underrepresented in the City. The goal of this plan is to cast the widest possible net. The plan must be approved by both the City and DHCD. As such, the City will ensure that the affordable units are marketed appropriately.

If there is no eligible buyer, including the right of first refusal, then the developer will have to demonstrate to the Affordable Housing Trust Fund Board that they were unable to find an eligible buyer within the 180-days of advertising the unit. If the Affordable Housing Trust Fund Board finds that the developer could not locate an eligible buyer, then the developer can increase the sale price to 80% of the area median income, not full price or market rate.

Lastly, ownership units at the 80% AMI income level still fill an unmet need because units for sale at this level are rare. Most communities require for sale affordable units to be affordable to households between 80% and 100% AMI and provide developers a 90-day window to find an eligible buyer before allowing a developer to sell the unit at market rate. Salem’s ordinance is proposing double that window at 180-days, starting with a deeper affordability level at 60% AMI and only allowing the developer to increase the price to 80% AMI rather than market rate. Thus, even if an affordable unit ultimately sold to a household at 80% AMI, it is still meeting the purpose of the ordinance, to expand Salem’s stock of homes, especially affordable homes. Therefore, staff strongly suggests that the 180-day provision remain in the ordinance.