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## DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

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June 12, 2019

Salem City Council  
Salem Planning Board  
Salem City Hall  
Salem, Massachusetts 01970

RE: Municipal and Religious Reuse Special Permit

Dear Ladies and Gentlemen of the City Council and Planning Board:

In response to the action taken at the May 3, 2019 City Council Subcommittee on Ordinances, Licenses, and Legal Affairs, the zoning amendment for the Municipal and Religious Reuse Special Permit was submitted to the City Council on May 7, 2019. At the Council's May 9, 2019 meeting, the matter was referred to a joint public hearing with the Planning Board. The joint public hearing will be held on June 17, 2019.

Since May 7, staff in the Planning and Community Development Department have identified three errors in the submission. Staff have also been working with members of the community, including Historic Salem Inc., to answer questions and address concerns. The result of these discussions has been two suggested changes as well as several tweaks to language that provide greater clarity and/or emphasis. I believe the corrections, changes, and language adjustments are all beneficial to the ordinance and am submitting them as part of the joint public hearing process.

I have compiled the recommended modifications in the attachment and offer the summary below.

### Three Corrections

- Correction 1 in the introductory paragraph on page 1: The special permit would only be in certain zoning districts, not all zoning districts.
- Correction 2 in the table on page 1: A special permit should not be allowed in the Industrial district. This correction also leads to the deletion of text in the first paragraph of 6.11.5 on page 3.
- Correction 3 in the first line of 6.11.2 on page 1: The word "building" should be capitalized.

### **Two Changes**

- Change 1 in 6.11.3 on page 2: Some concerns were expressed about the eligibility standard for a building being considered currently in religious use. The specific concern was that the 20 continuous years of use needed to occur at some point in the last **50 years**. The 50-year time period was felt to be too long and might include too many buildings. Given that the current focus is on two religious school buildings, we've narrowed the 50-year standard to apply to only religious school buildings. All other buildings in religious use will have the 20-year standard.
- Change 2 in 6.11.7 on page 4: There continued to be questions about the role of the Historical Commission review for buildings outside of local historic districts. We've added new language to create a standard for review (the Secretary of the Interior's Standards) and indicate that the role of the Historical Commission (and Design Review Board) is to confirm that the application conforms to the standards.

### **Language Adjustments for Clarity and/or Emphasis**

The remaining changes were all made in an effort to create greater clarity. Of particular note was emphasizing that the Special Permit applies only to Buildings and not Lots.

I encourage the Planning Board to incorporate these changes in their recommendation to the City Council and for the City Council to adopt them as amendments to the ordinance as part of their final deliberation.

I look forward to the joint public hearing on June 17 and am happy to answer questions.

Sincerely,



Tom Daniel  
Director

# City of Salem

In the year two thousand nineteen

**An Ordinance** to amend the zoning ordinance by adding “Municipal and Religious Building Reuse” as a use permitted in all certain zoning districts upon the issuance of a special permit by the Planning Board subject to the requirements of new section 6.11 of the zoning ordinance.

Commented [TD1]: Clarification/emphasis

Commented [TD2]: Correction 1

**Section 1.** Section 3.1 Table of Principal and Accessory Use Regulations of the City of Salem Zoning Ordinance (the “Zoning Ordinance”) is hereby amended by adding the following principal use under “B. Exempt and Institutional Uses”:

	R C	R 1	R 2	R 3	B 1	B 2	B 4	B 5	I	B P D	N R C C
Municipal or Religious <u>Building Reuse</u> **	P B	P B	P B	P B	n	n	n	n	<u>P B n</u>	n	n

Commented [TD4]: Correction 2 (see also first paragraph in 6.11.5)

Commented [TD3]: Clarification/emphasis

\*\* Subject to Section 6.11.

**Section 2.** Section 6 - Special Regulations of the Zoning Ordinance is hereby amended by adding the following new section:

## 6.11 Municipal or Religious Reuse Special Permit

### 6.11.1 Purpose.

The purpose of this Section 6.11 is to allow for the reuse of buildings currently in municipal or religious use into new uses that may not otherwise be allowed on those properties so as to promote historic preservation, economic development, housing production and environmental sustainability and resilience.

### 6.11.2 General

A buildingBuilding currently in municipal or religious use may be converted to one or more of the uses set forth in Section 6.11.5 upon the issuance of a special permit by the Planning Board authorizing that new use or uses. The special permit shall apply only to the Building and not to any structural extensions or alterations other than those allowed under 6.11.4. If the petitioner meets the requirements of this Section 6.11, the Planning Board may approve, or approve with conditions, an application for such special permit if the petitioner meets the requirements of this Section 6.11.

Commented [TD5]: Correction 3

Commented [TD6]: Clarification/emphasis (see also last paragraph in 6.11.4)

Commented [TD7]: Clarification/emphasis

### 6.11.3 Eligibility for Special Permit

One or more Buildings currently in municipal use or religious use shall be eligible for a special permit under Section 6.11 where:

1. the Building(s) currently in municipal or religious use and for which a change of use is proposed is at least 4,000 square feet;
2. one or more of the Building(s) currently in municipal or religious use and for which a change of use is proposed to a Building at least fifty (50) years old at the time of application under this Section 6.11 and
3. the applicant seeks to change the use of the Building from currently in municipal or religious use to one or more of the uses identified in Section 6.11.5.

A Building shall be considered currently in municipal use if substantially all of that Building was actively used for municipal purposes for at least 20 continuous years, including some point in the last 20 years immediately preceding an Application under this section.

A Building shall be considered currently in religious use if substantially all of that Building was actively used for religious purposes and protected by G.L. c. ~~40A~~ §340A §3 for at least 20 continuous years, including some point in the last 20 years immediately preceding an Application under this section provided, however, that a Building used as a religious school must have been in that use for at least 20 continuous years, including some point in the last 50 years immediately preceding an Application under this section.

Commented [TD8]: Change 1

Public parks and cemeteries, together with the Buildings thereon, shall not be considered currently in municipal use for the purpose of Section 6.11.

### 6.11.4 Dimensional Requirements

The following shall apply to any use for which a special permit is granted under Section 6.11:

There shall be no minimum lot area per dwelling unit requirement for the Building for which the Special Permit is issued.

Commented [TD9]: Clarification/emphasis

Any rooftop construction needed for Building circulation, drainage, ventilation, utilities, accessibility features or passive recreation shall be excluded from the calculation of Building height. Existing fences and bordering walls may be replaced and/or extended to a height equal to the existing fence or bordering walls or 6 feet whichever is greater.

The Planning Board may, in issuing a special permit hereunder, allow structural extensions and alterations to existing nonconforming Buildings where the Planning Board finds that: (1) those changes are necessary for purposes of public health and safety, access for disabled persons, utilities, mechanical equipment or similar code

~~compliance~~ concerns and (2) those extensions and alterations shall not be substantially more detrimental than the existing nonconformity.

**Commented [TD10]:** Clarification/emphasis

~~Any other structural extensions or alterations and any structural reconstruction or changes to any existing nonconforming Building eligible for a special permit under this Section 6.11 shall be subject to Section 3.3.3 of this Ordinance.~~

**Commented [TD11]:** Clarification/emphasis (see also second sentence in 6.11.2)

### 6.11.5 Uses Allowed by Special Permit

The Planning Board, upon a finding that a proposed use is in harmony with the purpose and intent of this Section 6.11, may grant a special permit pursuant to this Section 6.11 and Section 9.4 for one or more of the following uses in a Building that meets the eligibility requirements of Section 6.11.3; provided, however that Commercial uses may only be located within a multifamily dwelling and may not exceed 30 percent of the gross floor area of said multifamily dwelling. ~~In addition, for any Building in the I District, the Planning Board may grant such special permit only upon finding that the public good will be served and that (1) the residential use would not adversely affect the underlying district and (2) the nonresidential uses permitted in the underlying district are not noxious to the multi-family use. For in addition, for~~ any Building in the R1, R2, R3, and RC Districts, the Planning Board may grant such special permit that includes a Commercial use only upon finding that the public good will be served and that the Commercial use would not adversely affect the underlying residential district.

**Commented [TD12]:** **Correction 2** (see also table in Section 1)

#### Special Permit Uses:

1. Dwelling, Multi-family.
2. Meeting and gathering space incidental to a principal use or for use by residents or tenants of a Lot.
3. Artist lofts and living space, studios, workrooms and shops of artists, artisans and craftsmen, where products of the artistic endeavor or craft activity can be for sale on the premises or by specific off-premises commission from a sponsor or client.
4. Banks and savings and loan institutions.
5. Barber shops and beauty parlors.
6. Books, stationery and gift stores.
7. Business and professional offices.
8. Crafts, related stores selling jewelry, crafts, etc. where production occurs on the premises.
9. Dwelling units above first floor retail, personal service, or office use.
10. Florist shops, but excluding greenhouses.
11. Galleries.
12. Laundromats/dry cleaning establishments, excluding onsite dry cleaning.
13. Medical and dental offices.
14. Specialty food stores, including grocer, candy store, meat market, delicatessen, or bakery, but not a restaurant or fast food establishment unless permitted by the underlying zone.

15. Tailor and custom dressmaking shops.
16. Not for profit museums.

The Planning Board may issue a special permit hereunder allowing the combination of any of the uses listed in Section 6.11.5 with one or more uses permitted as of right or by special permit in the applicable zoning district or the R2 zone.

Nothing set forth in this Section 6.11 shall be construed as requiring a special permit where the owner of a property currently in municipal use or religious use seeks to convert that use to one or more uses that are allowed as of right in the applicable zoning district.

#### 6.11.6 Site Plan Review

Each project submitted hereunder shall require site plan approval under Section 9.5. Absent special circumstances, applications under Section 6.11.5 for a special permit and under 6.11.6 for site plan approval should be filed together for contemporaneous consideration by the Planning Board.

#### 6.11.7 Historical Commission and Design Review Board Review

At the time of, or before filing, an application under this Section 6.11, the applicant shall provide a copy of the application to the City of Salem Historical Commission and the Design Review Board. The Historical Commission and the Design Review Board shall each review the application at a public meeting and shall provide advisory comments to the Planning Board. Those boards may review the application at a joint meeting or separately. The Historical Commission and Design Review Board 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 6.11 until it receives written comment on the application confirmation from the Historical Commission and the Design Review Board, or that the application conforms to the Secretary of the Interior's Standards. The Planning Board may take action if at least sixty (60) days have passed since delivery of the application to the Historical Commission and the Design Review Board, and the Planning Board has not received any findings from the Historical Commission or Design Review Board 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 pursuant to the G.L. c. 40C.

Failure of an applicant hereunder to timely deliver a copy of the application to the Historical Commission or Design Review Board may be grounds for denial of the application.

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Commented [TD13]: Clarification/emphasis

Commented [TD14]: Clarification/emphasis

Commented [TD15]: Change 2

Commented [TD16]: Change 2

Commented [TD17]: Change 2

Commented [TD18]: Clarification/emphasis

#### **6.11.8 Parking and Loading**

For new residential dwelling uses, provisions shall be made for not less than one (1) parking space per dwelling unit for existing buildings.

Notwithstanding anything to the contrary, housing built under the jurisdiction of the Salem Housing Authority for elderly and/or handicapped persons shall require one-third (1/3) parking space per dwelling unit.

Nonresidential uses shall provide parking in accordance with Section 5.1.8 Table of Required Parking Spaces.

In mixed-use developments, the Planning Board may consider a reduction in total parking requirements based on an analysis of peak demand for non-competing uses provided by the applicant. In such cases the parking requirement for the largest of the uses (in terms of parking spaces required) shall be sufficient as determined by the Planning Board. An applicant shall use the latest peak demand analyses published by the Institute of Traffic Engineers (ITE) or other source acceptable to the Planning Board.

The parking requirements may be accommodated by either one or a combination of on-site parking and/or parking at municipal or other parking facilities in the vicinity of the Lot. All municipal or other parking facilities which are used to satisfy the parking requirement must meet the following criterion: The parking facility must be fewer than one thousand (1,000) feet from the Lot as measured in a straight line from the two (2) closest points between the Lot and the parking facility. If using a municipal facility, the owner must purchase an annual parking pass to satisfy the parking requirement.

Such properties will not be eligible for resident parking permits to fulfill these requirements.

A new loading zone shall not be required if the existing Building does not have an existing loading zone.

#### **6.11.9 Severability**

The provisions of this Section 6.11 are severable. The invalidity of any paragraph, subsection or provision of this Section 6.11 shall not invalidate any other paragraph, subsection or provision hereof.