

**CITY OF SALEM
NOVEMBER 20, 2023
JOINT PUBLIC HEARING OF THE
CITY COUNCIL AND THE PLANNING BOARD**

A Joint Public Hearing of the Salem City Council and the Planning Board was held remotely on Monday, November 20, 2023, at 6:30 P.M. for the purpose of discussing Inclusionary Housing Zoning Ordinance pursuant to Chapter 40A, Section 5, of the Massachusetts General Laws. The purpose of the public hearing is to provide interested parties with an opportunity to comment on the proposed Zoning Ordinance Amendment, summarized on the next page. See back-up documentation for full text.

Notice of this hearing was posted on November 2, 2023, at 147 P.M. and advertised in the Salem News on November 6, 2023, and November 13, 2023.

Absent were: Councillor Dominguez, Councillor Varella is remote

Councillor Megan Stott presiding.

The following Planning Board Members were present: Chair Bill Grisct, Vice Chair Kirt Rieder, Carole Hamilton, Tom Furey, Sarah Tarbet, Jonathan Berk, Zach Caunter, Helen Sides

Absent were: Josh Turiel

Also in attendance were: Elena Eimert (Senior Planner, City of Salem), Amanda Chiancola (Deputy Director of Planning and Community Development), Alexis Smith (MAPC), Councillor Elect ward 1, Cindy Jerzylo, Councillor Elect for 4, John Harvey

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SUMMARY OF INCLUSIONARY HOUSING ZONING ORDINANCE

1. Amend the Zoning Ordinance by adding Section 5.4 Inclusionary Housing and definitions related to Inclusionary Housing. The purpose is to expand the City's housing stock, especially Affordable Housing Units; leverage market-rate housing production towards the production of Affordable Housing Units; provide for housing choices for all households; increase the production of Affordable Housing Units to meet employment needs; and establish standards and guidelines. The proposed ordinance applies to subdivisions or developments creating six or more new dwelling units and requires applicants to contribute to the local stock of Affordable Housing Units. In projects of twenty (20) or fewer units, eight percent of those dwelling units are required to be affordable to households with incomes at or below sixty percent of the Area Median Income (AMI); in projects twenty-one (21) units and greater, ten percent of those dwelling units are required to be affordable to households with incomes at or below sixty percent of the AMI. 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 and provide an additional Affordable Housing Unit or convert the fraction of a unit to a cash payment to the Salem Affordable Housing Trust Fund Board (AHTF). Affordability restrictions are in force in perpetuity or maximum period allowed by law. The purchase prices or rents shall adhere to limits determined by the U.S. Department of Housing and Urban Development applicable to the City of Salem and shall comply with the Executive Office of Housing and Livable Communities' Local Initiative Program regulations. For ownership units, if applicant agent is unable to find an eligible homebuyer within 180 days of marketing the unit at or below sixty percent of the AMI, in accordance with an Affirmative Fair Housing Marketing Plan, the applicant may sell the property to a household earning up to eighty percent of the AMI upon approval of the AHTF. Affordable Housing Units must be provided on-site and be comparable to market-rate units.

Developments subject to Section 5.4 Inclusionary Housing, with the exception of those obtaining a Special Permit pursuant to Section 5.4.3.2, may incorporate the following: A by right density bonus allowing an increase of 25% of the total number of units that would normally be permitted in the applicable zoning district, an increase of one story provided it does not exceed maximum height and/or a reduction in setback requirements by a Special Permit granted by the Planning Board. Reductions in the number of required parking spaces are allowable under the following conditions: if within a half mile of a commuter rail station, a development is permitted to reduce the number of parking spaces to one parking space per dwelling unit, and if outside of a half-mile of a commuter rail station, a reduction in the number of required parking spaces by Special Permit granted by the Planning Board, if Transportation Demand Management (TDM) practices are incorporated. In the event that an adaptive reuse project in the Central Business (B5) zoning district would not be feasible with the Affordable Housing Unit requirements, these requirements may be met by a Special Permit from the Planning Board that would allow tiered affordability levels of the required Affordable units up

to eighty percent of the area median income if all criteria of Section 5.4.3(2) are met. Such adaptive reuse projects in the B5 zoning district are permitted to reduce the number of parking spaces to zero parking spaces per dwelling unit. This Amendment includes section 5.4.1 through 5.4.9.

This amendment shall take effect as provided by City Charter. For projects in the Central Business (B5) District, the amendment shall be applicable upon approval of an Economic Feasibility Analysis by the Executive Office of Housing and Livable Communities.

Amanda Chiancola, Deputy Director of Planning and Community Development introduces the Affordable Housing Roadmap and shares that Inclusionary Housing is piece number twelve (12) of thirty (30). Elena Eimert, Senior Planner, shares a slide show and defines Inclusionary Housing (IH), AKA Inclusionary Zoning (IZ):

Inclusionary Housing is a common strategy used to advance housing efforts in Massachusetts. Inclusionary Housing are developments that are not subsidized by public financing are required to provide a certain percentage of residential units at an agreed-upon level of affordability below 100% of the area median income (AMI); affordable units are “included in the market-rate developments.

In 2019-2020, a similar effort was in front of Council and included a financial feasibility analysis. The ordinance failed by one (1) vote. The ordinance requires a supermajority for adoption. The Housing Roadmap calls out IH as a strategy worth revisiting.

The city has been asked to comply with the MBTA Communities Law (Section 3A).

All municipalities that have MBTA transit stops or are adjacent to communities that have them, shall establish a district of a reasonable size that has multifamily housing allowed by right.

MBTA communities are required to zone for certain multifamily capacity, This is not a mandate to build, however. Failure to comply risks the liability under state and federal laws and not allocated federal funds

The Executive Office of Housing and Livable Communities (EOHLC) has designated Salem a “Commuter Rail” community. January 2023 applied for interim compliance, which includes how we would sketch out how we would ensure compliance with the overall laws and its requirements. The existing Central Business (B5) District is already compliant and we do not need to seek rezoning.

To be Section 3A compliant means not more than 10% of the units are required to be affordable and the affordability cap is not less than 80% AMI. The EOHLC can approve a greater percentage of affordable if a feasibility study shows it is relevant. The IH ordinance aims to produce more deeply affordable 60% AMI, below compliance level and our MAPC feasibility study would show that. This includes carve out language that exclude the B5 from implementing the elements of IH from EOHLC

Alexis Smith of the Metropolitan Area Planning Council (MAPC) is sharing her findings, an overview of the ordinance, and project goals:

- Confirm or update 2019 IH recommendations based on feasibility analysis
- Document economic feasibility for purposes of compliance with the MBTA Communities Law (Section 3A)
- Draft IH ordinance language for consideration by City Council by the end of 2023

In comparing 2019 proposal to now, larger projects (20-30 units) remains feasible. Smaller projects (less than 20 units) are less certain. The current proposal includes policy adjustments for small projects to keep them feasible. Smaller projects are important to Salem but difficult to make work.

Proposed Inclusionary Housing

- **10% affordability in projects 21 units or larger; 8% affordability is required to provide fee for fractional units. Any project that creates 6 or more new units is subject to the proposal.**
- Affordability level is 60% of AMI
 - Salem is a lower income community than the region as a whole. Typically 80% AMI is the standard, but this is really to serve local residents.
- Affordable units must be on site units and developers cannot pay a fee instead of building the required affordable units.
- **Fractional Payment Required**
 - **Developers must pay a fee for each fraction of an affordable unit to the Affordable Housing Trust Fund (AHTF). Example: in a 24-unit project, 2.4 affordable units are required. Two units are built and the developer can pay 0.4 x the MA qualified Allocation Plan or build the unit.**
- Housing Unit Bonus
 - 25% increase in the amount of housing units that can be put on the built property.
 - Increasing stories by right, so long as the resulting height complies with the requirements of the underlying zoning district.
 - One parking space per housing unit (combined with other measures that will decrease the need for more than one car/household).
- Adaptive Reuse Projects
 - if these projects are not feasibility with required affordability, the project may pursue a special permit, issued by the Planning Board allowing for tiered affordability up to 80% AMI. Parking reduction for Adaptive Reuse in the B5 may provide 0 parking per unit.
- Homeownership
 - Inclusionary requirements apply.
 - If unable to find a buyer at 60% AMI, there is a mechanism to sell to a higher income (80% AMI).
- **Large Project example: 32-unit building; with 10% required affordable (3 units + .2 fractional payment). Housing unit bonus allows for an increase of 5% for 40 units.**
- **Small Project example: 12 unit building 1 affordable unit + 25% housing bonus for 15.**

COUNCILOR COMMENTS

Councillor Merkl welcomes this proposal and sees the need to work with the private sector for affordable housing and for making this work with smaller project. Asks about the housing unit bonus and how it will affect market rates. Ms. Eimert explains that the bonus functions by allowing the additional units to be built and allowing the developer to make up the loss of income elsewhere. The bonus also allows for the possibility for more affordable units. Ms. Smith say that this will have the developer making less profit and the additional market units allow rents to stabilize.

Councillor Hapworth ask regarding the B5 district and the feasibility analysis. Ms. Eimert says that Section 5.4.2 in Ordinance Subsection 4, the carve out is to go through the two simultaneous issues. The B5 is an existing district that allows multifamily development by right. MAPC has created an analysis that shows the market analysis draws from the same source of the economic feasibility analysis. Councillor Hapworth questions the math that goes into this ordinance. There is not much to change to comply with the state law. Ms. Eimert says that the belief is that it would be compliant but we to lay adoption of IH of B5 Inclusionary Housing before they give us the go ahead. Ms. Chiancola say that there isn't an answer right now, the city applied back in May.

Councillor Watson-Felt clarifies that this would affect the B5 until it doesn't. Ms. Eimert say that it is the opposite. Councillor Watson-Felt ask about the density bonus sharing the load of the cost and clarifies that there is no guarantee of that. A developer can rent at any rent they want, there is no rent control. Nice to consider but there is no guarantee. Ms. Eimert say that there is no guarantee outside of market forces. It would be in their best interests to set rents at a rate that people would rent from them. Councillor Watson-Felt would like to understand the definition of feasibility for a developer. What is the percentage of profit that helps us understand the feasibility? **Ms. Smith says that the developer will have to think about whether a project is profitable enough to pursue. The Internal Rate of Return (IRR) analysis. IRR varies widely, big development it might be 18%, for a small project, it might be 12%. The baseline project IRR is 14%, consistent with Salem's market. If there is not IZ, and looking for 14% IRR, this will reduce a projects IRR. A development project can shoulder a small fraction of affordability and still be feasible. Less than 1% change in rate of return. Feasibility is the sum of the affordable units along the benefits of the cost offsets not decreasing a projects IRR of 1% on large project and .5% on small projects. Councillor Watston-Felt clarifies that more units do not equal more height. What are ways around that? Ms. Chiancola responds that the ordinance was crafted to avoid variance or special permits. The developer could request a variance form the Zoning Board of Appeals (ZBA), public hearing, abutters notices, legal notices, and findings. Special permit process is different.**

Councillor Morsillo clarifies that this ordinance was written with the feasibility study. Is there a reason to believe the state won't accept this? Ms. Chiancola says that the state has said that only qualified third-party reviewers can do that study, MAPC is a third-party reviewer. The team is confident in this analysis. Councillor Morsillo clarifies that the city doesn't currently force affordable units and asks if there are reasons to believe that creating affordable units will negatively impact the market rate rent? Ms. Smith responds that rents have been increasing independently of any IH requirements. MBTA communities are all doing this and rents increase in communities that have already had IH. In general

a developer will charge the max they can for a unit. Cost offsets serve to stabilize market rents and ensure that the development moves ahead.

Councilor McCarthy asks if IH is only in the B5 district. Ms. Eimert explains that IH is city-wide but the compliance is just in the B5 district. Councilor McCarthy asks if an already approved project can do this? Ms. Chiancola responds that any project can apply for an amendment but that this is essentially applying all over again. Councilor McCarthy is worried about projects that have been through an extensive process and wonders what happens when the project is fewer than 20-units and IH throws you to 21-units. Ms. Chiancola says that a project can come in for the amendment if they like. An amendment is looked at with fresh eyes, is reviewed by staff and the Planning Board to meet Site Plan Review criteria. Councilor McCarthy would like to know how the distance from MBTA is calculated and if the entire property is considered if the measurement touches the boundary. Ms. Chiancola replies that IH will apply city-wide, not just B5. The ordinance specifies how it measure the distance for MBTA Communities. **Ms. Eimert responds that the measurement is taken by roadways, how the site is accessed. That this is the one-half mile radius for the potential parking reduction. Properties touched by the radius will be eligible for inclusion if they can offer transportation demand.** Councilor McCarthy expresses concern about this in regard to Shetland Park and the distance to the MBTA station. We would be able to reduce the parking requirement but the potential is to create a bunch of units without a lot of parking. Ms. Chiancola responds that in regard to Shetland Park, they would need to seek a zoning amendment for a parking reduction. Councilor McCarthy clarifies that underlying zoning takes precedence over the transit zone. Ms. Chiancola says that IH will apply but the City Council will set the units per acre dimensional standards for one-off projects, like Shetland Park. Ms. Eimert clarifies that the measurement is one-half mile, not 1-half mile radius.

Councilor Stott wonders if the ordinance is worded for a future South Salem station. As a Commuter Rail Community designation, why are bus stops not included? Ms. Eimert offers that MTBA Community requires us to use the commuter rail stop. Bus stops not considered as they are not reliable or an amenity v. a commuter rail station.

Councilor Cohen has spoken with developers and they are discouraged from building in Cambridge/Somerville. Believes our diminishing rental stock needs to be addressed. Density bonuses and parking variances will create more naturally affordable units. Ms. Smith responds that the structure of the housing unit bonus interaction with height regulations will prompt developers to build smaller units. More multifamily housing will be more affordable market rate housing. Ms. Eimert reminds that the IH ordinance is one of thirty strategies identified in the Housing Road Map.

Councilor McClain would like the team to speak to the way the affordability restrictions are enforced. Ms. Chiancola says that this occurs prior to the issuance of the Certificate of Occupancy to the developer. There is a deed restriction on the property for the units to be affordable. The units must float through the property if they are rental units. The state requires affirmatively fair housing and marketing plan that has set standard we must follow this. Salem goes beyond this. Salem requires that applications be bilingual, our local resources are used to advertise the affordable units, lottery agent is hired by the property owner and identifies what the max rent will be and this is approved by state and city to meet guidelines. The lottery agent holds info session to explain the process. 60 % AMI for rentals. For ownership there is a deed restriction, marketed at 60% AMI but there is a 10% window

of availability – the max sale price is set 10% below the max household income size. Councillor McClain asks if there is a floor for when fractional payments are created or when a unit is created? Ms. Chiancola says that the ordinance gives the developer the option. Anything under one whole unit, they can build the unit or pay fractional payment unit price. Councillor McClain asks if there is an ability to reduce parking requirements to 0 citywide. Ms. Eimert clarifies that there are two pathways for reduction: one-half mile of commuter rail station, you can reduce to 1 if you meet other transportation demands. The B5 is special and hard to accommodate parking. Ms. Chiancola adds that further than one-half mile from the commuter rail with transportation demand management (i.e. commuter rail passes) then they can reduce to one spot/dwelling unit. Adaptive Reuse cannot be used elsewhere. Councillor McClain asks what happens if you don't get state approval. Do we have deeper affordable citywide and not just in the B5? Ms. Chiancola says that until the ordinance is passed, the Planning Board will enforce 10% available units at 60% AMI but once this is passed, we will have this request with the B5. If this isn't in compliance with the state, it would be a piece and something that needs to be tweaked.

Councillor Watson-Felt asks about historic renovation project reference. How do we define historical renovation projects? Will it match the Demolition Delay? Ms. Chiancola says that in the B5, the building is maintained and you are using an existing building. Ms. Eimert says that the historic renovation projects does not have a definition. We can bring it back to the council.

Councillor Hapworth ask if it is fair to say that this wouldn't before us if it wasn't in compliance. If we changed something, do you think it would be out of compliance? Ms. Chiancola says that it depends on what has changed and we would look at feasibility analysis. Ms. Eimert say that we don't want tweaks that would negatively impact affordable housing bonuses. Ms. Chiancola says that separating out districts would be challenging.

Councillor McCarthy revisits the one-half mile from public transit and ask if there is anticipation that bus routes will being included? Ms. Chiancola says that each community has to have one multifamily district. It is moot to Salem as we meet this with the B5. Councillor McCarthy clarifies that if we wanted to add another district? Ms. Chiancola says that the city is required to have one multifamily zoning district. Councillor McCarthy asks what happens if we want to add another district. This wouldn't happen automatically? Ms. Chiancola says that Section 3A has a process that allows multifamily zoning by right of commuter rail station. It would require a simple majority vote needed to change that. You don't need a second station for that, a developer can already request this.

PLANNING BOARD COMMENTS

Mr. Rieder asks where the measurement for the commuter rail station is from. The site is vast. Ms. Eimert will look into this and return to the Planning Board with an answer. Mr. Rieder follows that if part of a parcel is deemed part of this then entire parcel is. The Flood Hazard Overlay District (FHOD) is applied with a portion of the parcel being subject to tighter regulations. Would this be advantageous to only base on distance and not snippet of a parcel.

PUBLIC COMMENT

[Written Public Comment is here](#)

Filipe Zamborlini

19 Linden Street

Chair of AHTF

In favor of the policy as drafted tonight and feels this is a good and evidence-based approach to address housing needs. Density bonuses will support affordability and encourage affordable housing.

Josh Nagle

35 Washington Square U2

In favor and would like to incentive further by lowering the parking minimum to less than 1. We should make it more lucrative to build here.

Katie Hallett

17 Winter St. U8

League of women Voters

Endorses this ordinance. Affordability is critical to development.

Judith Reilly

20 West avenue U3

Supports the ordinance and agrees with the comments of Katie Hallet and Filipe Zamborlini

Jason Sedoriak

20 Hathorne Street

AHTF member

Economist and transportation planner.

In favor of the ordinance. Many communities are pursuing this type of zoning. Research shows that it does help with affordability. Density bonuses and parking reduction are key incentives.

Emmett Costen

190 Bridge Street U3213

Supports the ordinance. Would like to see parking minimums reduced and there to be a review of R1 zoning.

Killian O'Connell

190 Bridge Street

Urge passages ASAP. Critical for economic prosperity and equality.

Councillor Morsillo Moved that the public hearing be closed by roll call 10 Yeas, 0 Nay, 0 Abs

Councillor Morsillo Moved that the matter be referred to the Planning Board for their recommendation by RCV

10 Yeas, 0 Nays, 0 Abs

On the motion of Councillor McCarthy the meeting adjourned at 8:36 P.M. by roll call

10 Yeas 0 Nays 0 Abs

Minutes Approved by the Planning Board on January 19, 2024.