

DECEMBER 6, 2018

CITY COUNCIL REGULAR MEETING

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A Regular Meeting of the City Council held in the Council Chamber on Thursday, December 6, 2018 at 7:00 P.M. for the purpose of transacting any and all business. Notice of this meeting was posted on December 4, 2018 at 9:58 A.M. This meeting is being taped and is live on S.A.T.V.

All Councillors were present.

Council President Gerard presided.

Councillor Madore moved to dispense with the reading of the record of the previous meeting. It was so voted.

President Gerard requested that everyone please rise to recite the Pledge of Allegiance.

PUBLIC TESTIMONY

1. Joe Magiera, 435 Highland Ave., Salem – Life Storage Flooding Problems
2. Darleen Melis, 115 Federal St., Salem – LORAX Ordinance
3. Polly Wilbert, 7 Cedar St., Salem – LORAX Ordinance
4. Jeff Cohen, 12 Hancock St., Salem – LORAX Ordinance
5. David Rowand, 109 Columbus Ave., Salem - LORAX Ordinance
6. Dale Yale, 7 Mayflower Lane, Salem – CPA Money for 211 Bridge

#717 – TAX CLASSIFICATION HEARING

A Public Hearing was held on the issue of allocating the local property tax levy among the four (4) property classes for the fiscal year 2019, and the residential, open space, and small commercial exemption options. Notice of this meeting was posted on November 21, 2018 and advertised in the Salem News on November 21, 2018 and November 29, 2018.

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Present were Deborah Jackson, Director of Assessing, James Bond, Assistant Director, Stephen Cortes, Asst. Assessor, and staff member Gloria Felix. Board of Assessors, Damian Johnson and Robert Millerick.

Also, present was Mayor Driscoll and Finance Director Laurie Giardella.

President Gerard then turned the Public Hearing over to the Mayor, Director of Assessor and the Board of Assessor for presentation and discussion. Deb Jackson explained that once a year we need to figure out what the residential factor will be for the tax classification. Once the properties have been classified and valued the public hearing is held. The percentage of the levy will be determined whether it's based on the different classes as a straight rate or a split rate, which the city has done for over twenty years.

The Power Point Presentation explained what happens at the tax classification hearing, definitions of key tax terms such as, levy, levy limit, ceiling, new growth, (condo conversions, additions, new builds) and excess levy capacity. Deb Jackson reminded the City Council what they will vote on. The four (4) votes include the residential factor, Open Space, Residential Exemption and Small Commercial exemption. Fiscal Year 2019 there was an overall 8% growth in residential property, 6% in commercial and 10% in Industrial due to the powerplant. The powerplant was valued at \$12M this year which gave us \$250,000.00 in taxes. The average overall was an 8% growth in Salem. Five new Single-Family homes and 66 condo conversions mostly on Bridge Street.

The presentation also included slides on the changes in property valuation from FY18 to FY19 and new growth. The Board informed the public that the FY19 Levy Limit was \$99,208,798.00 and the FY19 Tax Levy is \$95,083.826 which leaves an excess levy capacity of \$4,124,972. Further slides showed sales in 2017, Fy18-19 Avg. Value Change/Class 6% for single families, 9% for condos and 11% for two and three family homes. Graphs of FY19 Average Single-Family Tax increase for Salem versus surrounding communities Salem's single-family tax bill will increase on average \$230.00 (or \$19/mo.) for an average annual tax bill of \$5,800. Danvers increased by \$181 and their avg. tax bill is \$6,300. Marblehead's average increase is \$200 for a yearly bill to average \$9,000. Gloucester and Ipswich increased their average single-family tax bill by \$241 and \$308. The assessed value history was given from 1989-2019. The Board and the Mayor recommended a 1.70 CIP split or a Residential Factor of. 868770%. What this does is taxes the residential at 73.16 % instead of 84%; it increases the commercial taxes from 9.35% to 15.9%; the Industrial from 2.65% to 4% and the personal property from 3.79% to 6.44%. The rates for the residential would be \$15.10 and \$29.55 for commercial.

Councillor Dibble stated he has been receiving complaints from Condo Owners. There are a lot of Condo Complexes in Ward 7. Since they live on private roads and don't receive some city services such as maintaining or plowing their streets. What is the fairness of Single-Family homes versus condos inside a complex? Is there any consideration for condo owners to lighten their load?

Deb Jackson responded that these buyers know they are on a private roads and they have to pay condo fees. The Assessor's office looks at sales and just like anybody else we need to analyze

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their sales and assess them accordingly. This is reflected in their sales price. If condo complexes received city services i.e. snow plowing then home may have been \$450,000 vs \$400,000. Also, you need to look average over time. The average condo bill last year only went up \$91.00

The rules were suspended to allow the Mayor to speak.

The Mayor thanked the assessing team and the board of assessors. Remember we set the budget in the spring and have to figure out the residential factor (how to pay for it) in December. We try to be as fair as we can be, we are all taxpayers and try to keep bills as low as possible while keeping vital city services. The Mayor stated she also received the same email and it is really important to get accurate information out there about taxes and rates and valuations. The Mayor spoke to property managers and condo owners to clarify the misinformation in the email. Everybody in Salem pays the same residential rate whether you live in a single-family, condo, multi-family, etc. The residential rate is set by the state in terms of classes of properties. Some cities and towns do not break the residential classes down like we do. They just give the Residential value and rate and the Commercial value and rate. Since Salem has a vast array of properties, we like to break it down further and be more open and transparent. There's a misconception that condo owners are paying a different rate or higher rate. This is not true everybody pays the same residential rate. Setting values are just based on the market. This year condo bills are \$1,500 less than a single-family home bill. Dept. of Revenue only has residential, commercial and industrial. Condos are hot. The increase is higher percent wise (8.9%) but not bill wise. They don't get the same city services; they pay condo fees to get their lawn maintained, but they do use all the roads around them to get to their house. They receive the same police and fire services. We pick up their trash and recycling. In order to reduce property taxes, we need new growth. Support new commercial growth. The budget went up 3.6% mostly due to fixed costs i.e. pension and health care, \$1.5M in new growth. WE need about \$1M in new growth each year to keep up with fixed costs and more services.

Councillor Dibble asked about Salem versus Peabody. It was missing on the slide show.

The Mayor responded that we try to compare Salem to similar cities with similar properties. Peabody has a substantial commercial base due to the shopping malls, centennial drive, etc. Our residential values are outpacing our commercial base so we should account for that so that's why shift to commercial.

Councillor Dibble asked what is the bottom line of the bill going to be for single family versus condos.

Mayor average over last 10 years average condo increases have only been \$106 and the average single-family homes increase has been \$164. Single family homes are paying more on their increase and their average tax bill because values are not equal; single-family homes have land that condos normally don't. Over a period of time values of condos rising much quicker than single family homes. All based on values. DOR has to approve our valuations. DOR won't let you over value will be too aggressive, if not aggressive enough the will let you know also. Residential

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assessed values below market rate. The values that the assessors look at are about 12-18 months behind. It's not by Ward it's by what the market is showing.

Councillor Milo stated we talk a lot about averages, but do we have a median.

Mayor replied – Yes, median values are important because we do talk a lot about averages but 63% of single-family homes will pay less than the average. Those tax bills will be less than the average stated today. Average Single-family home value is \$386K while the median value is \$357,600.00

Councillor Turiel – Just a point of information, one of the reasons our values are skewed is that we have areas with \$1M + homes. Most homes are lower than this.

Councillor Flynn also stated he received a lot of calls mostly from condo owners. I understand that the residential rate of \$15.10 is down from last year's rate of \$15.38. Many people questioned if the rate \$15.10 could have been set lower due to new growth and the pot shops coming in.

Mayor replied the rate is a combination of the value of real estate and how much expenditures are needed to run government. I would pay less attention to the rate than the actual bill. Although rate went down you are not paying less. Could that rate have been lower? What impacts the rate. New growth could have been more than \$1.5M and cities are not allowed to capture growth in the future years to support this year's rate. So, can't count on the money from the pot shops. We also take a portion of money that was left over from free cash, receipts reserved and surplus in overlay account which all used to reduce the gross amount raised by taxation, this year was a total of \$3.2M. We could reduce the budget, which only went up 3.6%; it was gone over line item by line item. We are a community that is trying to spend taxpayer's money wisely. Trying to be judicious with your money. We are not at our levy limit; we could tax property owners another \$4.2M, but we don't want to tax people all the way. Many communities tax to the max. Because once you leave it on the table it's gone. This rate can't change; if didn't add \$3.2M to reduce taxes the rate would be higher.

Councillor Madore asked Deb Jackson – Is the increase in Industrial due to the power plant. Deb Jackson replied yes and overall commercial value is based on income and sales. Councillor Madore stated that she noticed the overall commercial values increased which are based on rent and sales. Does that mean our commercial properties doing very well this year as opposed to the previous year and that's why the value has increased?

Deb Jackson responded that we have seen an increase in commercial rents and sales. Last ten years commercial was flat no increase in rent no sales. We have a stronger downtown so rents have increase.

Councillor Madore asked Deb Jackson if she knew if the increase in rents were from retail or office.

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Deb Jackson stated downtown has a higher capacity of offices not as many vacancies. Vacant Offices are no longer vacant. Average Commercial Value \$630,700. Average tax bill \$18,630 with the proposed shift it is an increase of \$400.00 from last year.

Councillor McCarthy – Every Year Councillor O’Keefe would make a motion to the max shift of 1.75. When I first started it was around 1.64 -1.65. Propose tonight is a shift of 1.70. What if the shift was 1.69? How much would the bill go up? Deb Jackson replied the bill would have gone up \$242 for single family homes an average of \$12.00 more. If higher shift what would that do to the bills, \$100 per shift to commercial and \$12 per point to residential per. Understand that with the shift, you are moving money from one to another from residential to commercial more burden on the commercial so it’s a balance. He asked the Mayor the social media outlets say we are giving away the downtown to developers i.e. HDIP when in fact we are getting them back on the tax rolls. A tool provided by the State to gateway communities to use. These properties are not even on the tax roll. It’s helping bring the property back onto the tax roll. Not giving anything away at a local level it helps or gives incentives on the state level.

Mayor- When people hear the word tax incentive, people believe that others are paying more and developers or commercial owners are paying less at their expense. State of MA allows cities and towns to take into account tax incentives i.e. TIFs for Commercial property owners or HDIP. The bottom line, taxes remain in place, any incentive is off the increase they would pay. For example, the Court house right now is paying zero dollars, we are not getting any taxes on that building right now. Let’s say they redevelop it and the new tax bill \$100,000, the first year not pay \$100,000 but may only pay \$95,000 or \$90,000. The Commercial value remains the same and the taxes don’t go up as fast with a TIF but State gives larger credits only if city supports project and gives tax break. Only done so we don’t collect zero dollars.

Councillor Peterson thanked the Mayor for explaining about condos. Understand that the assessed values look back 1 ½ years, is this the same on commercial? Mayor responded yes. Councillor Peterson asked when we are able to look back at retail pot shops do you have any plans to affect for our tax rate?

Mayor responded we may be able to offset our existing costs, another source of revenue, new growth. Revenues due to Community Agreements. We have ATG and Seagrass and we have 4 others applied and only 3 licenses left. The CBA we have negotiated are fairly consistent so not to undercut one versus another. So far, state allows there is a 3% excise tax, 3% Community Benefit Agreement and an additional 1% for transportation, intra-city to reduce congestion. Array of donations that agreed to make to nonprofits some targeted for city. If 5 license holders hard to say what they will mean in actually sales. Medical Marijuana last year brought in \$380,000 at 3%. Money going into general fund first. State disburse their money to us.

Councillor Peterson – Do you see it more going to roadways/sidewalks or towards taxes. What will we be doing with the revenue going forward?

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Mayor when we do our financial forecasting we will prioritize, 3% excise goes into general fund then gets disbursed offset budget increases, prioritize projects we think are important. 1% is targeted for transportation. All the money comes into one pie then see where it will be spent depending on where the needs to go. More revenues to help offset costs. It's a positive. Thinking about forecasting revenues going forward, we already have an agreement with the powerplant and the more the powerplant gets online then more dollars to us. This will help our commercial tax base and revenues. Mayor we are a community that maximizes all our exemptions i.e. seniors, veterans, disabled fair amount of people who qualify for exemptions to try to help those you need it i.e. Senior Tax work off program.

Councillor Turiel – Footprint is phasing in their revenue over time 2021 or 2022 to full value. Increase revenue coming in and if budgets don't increase dramatically then that will help.

Mayor – There is also 45 acres around power plant that will be redeveloped into something. Come online over 12-18 months before part of valuation. Also, with the building of Flynnntan, Salem Oil and Grease will put these properties back on the tax rolls and pay us more than they did as factories.

Councillor Gerard – How healthy is our mix? How would you like to see it developed?

Mayor – In the past, manufacturing, leather companies, we are a different place now. Can't get to 128. Those sorts of businesses are not looking to relocate here, so will get mixed use, but mostly residential. Even though 10% affordability mostly market rate. Although rather have a much bigger commercial piece of the pie don't want the same old type of manufacturing back here. Highland Ave is the best area for commercial activity but not always supported.

Councillor Gerard opened the hearing up to the public. No one from the public spoke.

Councillor Turiel moved to close the Public Hearing. It was so voted.

(#666) – APPOINTMENT OF CATHERINE MILLER TO THE DESIGN REVIEW BOARD

Held from the last meeting, the Mayor's appointment of Mayor's appointment of Catherine R. Miller of 15 Warren St., Salem to the Design Review Board with a term to expire on March 1, 2021 was confirmed by a roll call vote of 11 yeas, 0 nays, and 0 absent. Councillors Dibble, Dominguez, Flynn, Furey, Madore, McCarthy, Milo, Peterson, Sargent, Turiel and Gerard were all recorded as voting in the affirmative. Councillor Madore requested and received unanimous consent to suspend the rules to allow Ms. Miller to speak.

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(#667) – APPOINTMENTS TO THE SALEM YOUTH COMMISSION

Held from the last meeting, the Mayor’s appointments of the following to the Salem Youth Commission were confirmed by a roll call vote of 11 yeas, 0 nays, and 0 absent. Councillors Dibble, Dominguez, Flynn, Furey, Madore, McCarthy, Milo, Peterson, Sargent, Turiel and Gerard were all recorded as voting in the affirmative. Councillor Dominguez requested and received unanimous consent to suspend the rules to allow these members to speak.

<u>Name</u>	<u>Term to Expire</u>
Shantel Alix Fernandez (Adult Member) 6 Hart St. #1 Lynn	Term to Expire: May 26, 2019
Luis Matos De Los Santos	Term to Expire: May 10, 2019
Diana Alushaj	Term to Expire: May 10, 2019
Abigail Clark	Term to Expire: May 11, 2020

(#668) – APPOINTMENT OF JIMMI HEISERMAN TO THE ZONING BOARD OF APPEALS

Held from the last meeting, the Mayor’s appointment of Jimmi Heiserman of 51 Lafayette St., Salem to the Zoning Board of Appeals with a term to expire on May 1, 2020 was confirmed by a roll call vote of 11 yeas, 0 nays, and 0 absent. Councillors Dibble, Dominguez, Flynn, Furey, Madore, McCarthy, Milo, Peterson, Sargent, Turiel and Gerard were all recorded as voting in the affirmative. Councillor McCarthy requested and received unanimous consent to suspend the rules to allow Mr. Heiserman to speak.

#718 – APPOINTMENT OF CYNTHIA NINA-SOTO TO THE SCHOLARSHIP & EDUCATION COMMITTEE

The Mayor’s appointment of Cynthia Nina-Soto, 6 Laurent Rd., Salem to serve as a member of the Scholarship and Education Committee with the term to expire on June 1, 2019 was held under the rules.

#719 – APPROPRIATION FROM FREE CASH TO REDUCES TAXATION FOR FY2019

The following Order recommend by the Mayor was adopted under suspension of the rules.

ORDERED: That the sum of One Million Seven Hundred Thousand (\$1,700,000.00) is hereby appropriated from the “Fund Balance – Free Cash” account to reduce the gross amount to be raised by taxation when Fiscal Year 2019 tax rate is set in accordance with the recommendation of Her Honor the Mayor.

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#720 – APPROPRIATION FROM RECEIPTS RESERVED TO REDUCE TAXATION

The following Order recommend by the Mayor was adopted under suspension of the rules.

ORDERED: That the sum of One Million, Three Hundred and Thirty-Seven Thousand and Fifty-Eight Dollars (\$1,337,058.00) is hereby appropriated from the following “Receipts Reserved for Appropriation” accounts to reduce the gross amount to be raised by taxation when Fiscal Year 2019 tax rate is set in accordance with the recommendation of Her Honor the Mayor.

Receipts Reserve – Witch House	\$272,058.00
Receipts Reserve- Golf Course	\$780,000.00
Receipts Reserve – Harbormaster	<u>\$285,000.00</u>
TOTAL	\$1,337,058.00

#721 – APPROPRIATION FROM THE OVERLAY SURPLUS ACCT. TO REDUCE TAXATION

The following Order recommend by the Mayor was adopted under suspension of the rules.

ORDERED: That the sum of Two Hundred Thousand Dollars (\$200,000.00) is hereby appropriated from the Overlay Surplus account to reduce the gross amount to be raised by taxation when Fiscal year 2019 tax rate is set in accordance with the recommendation of Her Honor the Mayor.

Councillor suspension of the rules Councillor object

#722 – APPROPRIATION FOR ENGINEERING SEWER REPLACEMENT ON HERBERT ST.

The following Order recommend by the Mayor was adopted under suspension of the rules.

ORDERED: That the sum of One Hundred and Fifty Thousand Three Hundred and Three Dollars and Twenty-five Cents (\$150,303.25) is hereby appropriated from the “Retained Earnings – Water/Sewer Fund” account to the “Engineering Utility Service Repair and Maintenance” for the Sewer Replacement on Herbert St. in accordance with the recommendation of Her Honor the Mayor.

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#723 – APPROPRIATION TO THE “DPS – VEHICLE REPAIR AND MAINTENANCE ACCT.

The following Order recommended by the Mayor was adopted under suspension of the rules.

ORDERED: That the sum of Thirty-Four Thousand Dollars (\$34,000.00) is hereby appropriated from the “Fund Balance Reserved for Appropriation – Free Cash” account to the “DPS- Vehicle Repair Maint.” Account in accordance with the recommendation of Her Honor the Mayor.

#724 – APPROPRIATION TO THE DPS BURIAL ACCOUNT

The following Order recommended by the Mayor was adopted under suspension of the rules.

ORDERED: That the sum of Thirty Thousand Dollars (\$30,000.00) is hereby appropriated from the “Receipt Reserved” funds listed below to the “DPS Burial” account in accordance with the recommendation of Her Honor the Mayor.

<u>From</u>	<u>To</u>	<u>Amount</u>
R/Res Sale of Lots	DPS Burial	\$20,000.00
R/Res Sale of Vaults	DPS Burial	\$10,000.00
	<u>TOTAL</u>	\$30,000.00

#725 – APPROPRIATION FROM CAPITAL OUTLAY TO REPAIR DPW DOOR AND ROOF

The following Order recommended by the Mayor was adopted under suspension of the rules.

ORDERED: That the sum of Twenty-Four Thousand One Hundred Dollars (\$24,100.00) is hereby appropriated within the “Capital Outlay Fund 2000” to be expended for door and roof replacement/repairs at DPW facility on Jefferson Ave in accordance with the recommendation of Her Honor the Mayor. (This is part of the \$39,100.00 approp. see \$15,000.00 grant below)

#726 – APPROPRIATION FOR EMERGENCY PLUMBING REPAIRS IN THE MUSEUM PLACE PARKING GARAGE

The following Order recommended by the Mayor was adopted under suspension of the rules.

ORDERED: That the sum of Twenty-three Thousand Eight Hundred and Sixty-nine Dollars and Twenty-Five Cents (\$23,869.25) is hereby appropriated within the “Capital Outlay Fund 2000” to be expended for emergency plumbing repairs in the Museum Place Parking Garage in accordance with the recommendation of Her Honor the Mayor.

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#727 – APPROPRIATION TO DPS CONTRACTED SERVICES FOR REPAIRS OF DPW FACILITY

The following Order recommended by the Mayor was adopted under suspension of the rules.

ORDERED: That the sum of Fifteen Thousand Dollars (\$15,000.00) is hereby appropriated from the “Fund Balance Reserved for Appropriation – Free Cash” account (1-3245) to the “DPS Contracted Services” Account (14112-5320) in accordance with the recommendation of Her Honor the Mayor. (second part of \$39,100.00 approp.)

#728 – APPROPRIATION FOR ENGINEERING VEHICLE PARTS AND REPAIR

The following Order recommended by the Mayor was adopted under suspension of the rules.

ORDERED: That the sum of Nine Thousand Five Hundred Dollars (\$9,500.00) is hereby appropriated from the “Retained Earnings – Water/Sewer Fund” to the Engineering Vehicle Parts and Repair Fund for the repair of DPS Equipment in accordance with the recommendation of Her Honor the Mayor.

#729 – DONATION TO THE PARK & REC. DEPARTMENT FOR A BENCH

The following Order recommended by the Mayor was adopted.

ORDERED: To accept the donation of One Thousand Nine Hundred and Fifty Dollars (\$1,950.00) from Linda Tull to the Park & Rec. Dept for the dedication of a bench in accordance with the recommendation of Her Honor the Mayor.

#730 – PAYMENT OF FY2018 INVOICE FROM FY2019 POLICE BUDGET

The following Order recommended by the Mayor was adopted by a Roll Call Vote of 11 yeas, 0 nays, 0 absent. Councillors Dibble, Dominguez, Flynn, Furey, Madore, McCarthy, Milo, Peterson, Sargent, Turiel and Gerard were all recorded as voting in the affirmative.

ORDERED: Per MGL Chapter 44 Section 64 which allows for a municipality to pay for prior fiscal year expenses using current fiscal year appropriations by two-thirds vote of the City Council we request the sum of Four Hundred and Forty-Seven Dollars and Fifty-Seven Cents (\$447.57) of outstanding Fiscal Year 2018 Police Department salaries are hereby allowed to be paid from the Fiscal Year 2019 Police budget as listed below in accordance with the recommendation of Her Honor the Mayor.

Police	OT/Holiday/Stipend/Differential	\$447.57
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#731 – ACCEPT PROVISIONS OF SECTION 4, CH. 73 ACTS OF 1986 FOR FY2019 FOR ADDITIONAL EXMPTIONS GRANTED BE 100%

The following Order recommended by the Mayor was adopted.

ORDERED: That the Mayor and City Council accept the provision of Section 4, Chapter 73 of the Acts of 1986 for Fiscal Year 2019, and that such additional exemptions granted be 100% of the statutory exemption amounts, provided all other qualifications specified in said Section 4, Chapter 73 of the Acts of 1986 are met.

#732 – TEMPORARY PARKING RESTRICTIONS NEAR ATG (RECREATIONAL MARIJUANA)

The following Order recommended by the Mayor was adopted.

ORDERED: That there are hereby established emergency temporary parking restrictions allowing Salem Resident Only parking on the following streets and parking lots:

Beaver Street from Silver Street to Goodhue Street
 Mason Street from Flint Street to Grove Street
 Two off-street lots on Mason Street, one at Flint and Mason Streets and one adjacent to 115 Mason Street
 Two off-street lots on Flint Street at Oak Street

Be it further Ordered that this Order shall remain in effect until notice is provided to the City Council by the Chief of Police that this emergency measure is no longer necessary. At such time, this Order shall be automatically rescinded.

#733 – RESOLUTION TO FILE AND ACCEPT GRANT FOR IMPROVEMENTS TO GALLOWS HILL PARK (PARC PROGRAM)

The following Resolution recommended by the Mayor was adopted.

RESOLUTION: TO FILE AND ACCEPT GRANTS WITH AND FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS FOR THE PARC PROGRAM FOR IMPROVEMENTS TO GALLOWS HILL PARK

Whereas: Gallows Hill Park is by and far a community wide asset and the preservation and improvements to this facility are a City priority as evidenced in the most recent Open Space and Recreation Plan; and

Whereas: The Gallows Hill Park renovation will greatly enhance this facility with a renovated skate park, upgraded athletic field, and improved trail network, etc.;

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Whereas: This overall cost and fiscal budget constraints prevented the City from proceeding forward with implementation of the project; and

Whereas: The project was instead viewed as feasible only when fiscal resources were available, with the intention of securing grant funding, when and if available, to assist in this effort; and

Whereas: The Executive Office of Energy and Environmental Affairs (EOEEA) is offering reimbursable grants to cities and towns to support the preservation and restoration of urban parks through the PARC Program, Chapter 933 Acts of 1977, as amended; and

Whereas: The project will cost a total of \$851,877.00

NOW, THEREFORE, BE IT

1. That the Mayor be and is hereby authorized to file and accept grants from the Executive Office of Energy and Environmental Affairs; and
2. That the Council hereby appropriates \$851,877.00 to implement the project, to be reimbursed up to a maximum amount of \$400,000 by the Executive Office of Energy and Environmental Affairs; and
3. That the Mayor be and is hereby authorized to take such other actions as are necessary to carry out the terms, purposes, and conditions of this grant to be administered by the Department of Planning and Community Development; and
4. That Gallows Hill Park is dedicated to park purposes under M.G.L. chapter 45, section 3; and
5. That this resolution shall take effect upon the EOEEA's announcement of the awarding of said PARC Grant and be null and void in the event no grant is awarded.

#734 – COMMUNICATION FROM THE MAYOR RELATIVE TO THE TAX RATE

The following letter recommended by the Mayor was received and placed on file.

Letter from the Mayor with her recommendation of the setting of the current fiscal year tax rate. The Mayor's recommendation for the proposed tax rate of \$15.10 for residential and \$29.54 for commercial which will again be under the City's allowable levy limit. (*See letter below*)

Ladies and Gentlemen of the City Council:

Each year the City Council must vote to set the residential tax factor and thereby set the tax rate for the fiscal year. In Massachusetts, Proposition 2 ½ caps new property taxes at no more than 2.5% of the previous year's levy. This year, the tax rate – \$15.10 for residential and \$29.54 for commercial – is once again under the City's allowable levy limit, with excess levy capacity of \$4.13 million, validating our City's responsible approach to budgeting and managing public finances. We continue to maintain a generally low tax bill increase over time, as well, with the average increase over the last nine years for the average single-family taxpayer in Salem coming in at 3.3%

Based on the rates above, the change in the average single-family tax bill will be \$230.06 (4.1%), the average condominium unit change will be \$281.04 (5.0%), the average two-family change will be \$273.18 (4.9%) per unit, and the average three-family change will be \$197.93 (3.5%) per unit. The average commercial property tax bill change will

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be \$400.08 (7.1%). In an effort to keep property taxes as reasonable as possible, I have also attached separate appropriation order submittals to apply revenues from free cash and receipts reserved accounts, as has been our usual practice, to help reduce the total amount to be raised through taxation and thus lessen the amount to be raised from Salem property taxpayers by \$3,237,058.

Salem is a desirable community in which to live and our strengthening property values reflect the increasing demand for property here. Property values also have an impact on tax bills and changes in those tax bills are partly reflective of changes in property values. In terms of change over the average value from the last fiscal year, single family homes average values are up 6.0%, residential condos are up by 8.9%, two-family homes are up by 5.6% per unit, 3-family homes are up by 3.7% per unit, and commercial property is up by 3.7%. Overall, property value changed by 7.9% city-wide. In all classifications, with the exception of commercial property, the change in property value outpaces the change in the average tax bill.

As you know, while Salem is seen as a leader across the Commonwealth in terms of ability to find and secure grants, it is property taxes that pay most of the cost of the City services our residents rely upon: fully staffed Police and Fire Departments, who keep us safe during routine times and emergencies; funding of our schools and our students, who continue to work hard on improving their achievements in preparation for serving as the next generation of leaders in our city, and efforts to expand maintenance of our parks, streets and sidewalks, while also supporting our fantastic library – one of the busiest in the North of Boston Library Exchange – and our new Community Life Center, which abounds with activity.

While property tax dollars help to fund the lion's share of these necessary expenditures, we always strive to manage the overall tax burden on our City's homeowners and I am proud that we have never needed or sought a Proposition 2 ½ override. We seek efficiencies and opportunities for regionalization or streamlining. We look to technology and performance improvement strategies to reduce the cost of doing business. The most powerful tool at our disposal, however, is responsible, sensible private development that adds to our tax base. This is why we have advocated for the appropriate redevelopment of sites such as the former courthouses, the vacant power plant property, and the under-utilized and vacant former industrial parcels that comprise the North River Canal Corridor. I am extremely pleased that certified new growth this fiscal year is \$1,500,919. While this new growth figure is slightly less than what we saw in FY2018, it still exceeds the growth we saw in any other year prior to that since I first took office and exceeds our sixteen-year average by a full 42%. For every dollar in new growth, that is one less dollar that is coming from existing property owners to fund local government expenditures.

We have sought to export our tax burden to visitors where possible, by supporting the development of new hotels and the extension of lodging taxes to short-term rentals. Even the new 3% adult-use cannabis local excise tax will, to a large extent, likely be borne by visitors to our community.

We have been extremely pro-active in pursuing grant opportunities whenever they become available. Since the start of my administration in 2006 we have successfully received over \$150 million in state and federal grants. Just about one-fifth of our revenues is aid from the state, however state aid is not increasing at the same rate as state assessments. State aid increased by 0.6% this year, but was outpaced by state charges, which increased by 2.3%. This is clearly not sustainable. When it comes to the unfunded charter school reimbursement by the state, Salem's aid dropped by a considerable 27%, over \$266,000, to around the same reimbursement level we saw in FY2011. We need a stronger partner at the state level, to fully fund the charter school funding formula and to push for a long overdue and more fair adjustment to the SESD PILOT to accurately reflect inflation. I know that we can count on our own legislators to be positive leaders on these important issues.

We also work to have meaningful partnerships with our anchor institutions and non-profits, including our tax agreement and CBA with Footprint, investments in our schools and neighborhoods from SSU, and discussions about expanded community support from NSMC, and our ongoing push for a nearly two decades' over-due adjustment in our SESD PILOT. Salem is a better place for our anchor institutions, which certainly have a collective positive economic impact on our community; however, because they are tax-exempt, we must also balance the impact of around 14% of our

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property values being off the tax rolls. Some of that impact will be aided by negotiations on host community agreements with the forthcoming adult-use cannabis retailers that we expect will be opening in the coming year.

One of the biggest challenges we continue to face is pressure from reductions in revenues and increases in fixed costs. Our general City budget grew by only 3.6% this fiscal year, however more than half of that increase – 54% - was due to increases in fixed costs such as state charges, health insurance costs, Medicare, worker's compensation, debt payments, and municipal insurance.

As we set our tax rate for the current fiscal year, the recommendation is to set our CIP split at 1.70, making the residential factor 0.868800. Without this CIP split, our residential property taxpayers will bear a substantial and, in my view, unfair increase in their share of our property tax levy. We should not allow this to happen and, therefore, this shift in the tax split is warranted.

The vision for our City laid out in our annual budget, and continued with this tax proposal, reflects our collective desire to keep Salem a vibrant, thriving community that delivers quality public services in as efficient and affordable a manner as possible. When I took office, we faced a \$3.5 million deficit. We spent all our savings just to keep the lights on and were forced to borrow money to pay normal operating expenses. We have worked collaboratively over the last decade to eliminate prior deficits, improve city finances, and balance our books with an eye on both the needs of today and our aspirations for the future. It has not always been easy. Just as we emerged from those local fiscal trials in 2007 our national economy spiraled into a recession.

But whatever the cause of our challenges, we weathered them and are today stronger and better positioned than ever, with record growth, a vibrant local economy, record bond ratings, and award-winning balanced budgets. Our City's bond rating from Standard & Poor's was upgraded five years ago to AA, the highest in the City's history. In their most recent ratings report the agency cited our financial stability and conservative budgeting practices in affirming that strong rating. This is validation that Salem's fiscal policies are of the highest standard and that the path we have set for ourselves is the correct one for our community.

#735 – RESIDENTIAL FACTOR FOR FISCAL YEAR 2019

Councillor Turiel moved that the City of Salem adopt a residential factor of .868770% for Fiscal Year 2019 by a roll call vote. This was adopted by a roll call vote of 10 yeas, 1 nay and 0 absent. Councillors Dibble, Dominguez, Furey, Madore, McCarthy, Milo, Peterson, Sargent, Turiel and Gerard were all recorded as voting in the affirmative. Councillor Flynn was recorded as voting in the negative.

Councillor Turiel moved for immediate reconsideration in the hopes it would not prevail. Reconsideration was denied.

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#736 – CITY OF SALEM NOT ADOPT AN OPEN SPACE EXEMPTION FOR FISCAL YEAR 2019

Councillor Turiel moved that the City of Salem NOT adopt an OPEN SPACE EXEMPTION for Fiscal Year 2019 by roll call vote. This was adopted by a roll call vote of 11 yeas, 0 nays and 0 absent. Councillors Dibble, Dominguez, Flynn, Furey, Madore, McCarthy, Milo, Peterson, Sargent, Turiel and Gerard were all recorded as voting in the affirmative.

Councillor Turiel Moved for Immediate Reconsideration in hopes it would not prevail.
Reconsideration was denied.

#737 – CITY OF SALEM NOT ADOPT A RESIDENTIAL EXEMPTION FOR FISCAL YEAR 2019

Councillor Turiel moved that the City of Salem NOT adopt a RESIDENTIAL EXEMPTION for Fiscal Year 2019 by Roll Call Vote. This was adopted by a roll call vote of 11 yeas, 0 nays and 0 absent. Councillors Dibble, Dominguez, Flynn, Furey, Madore, McCarthy, Milo, Peterson, Sargent, Turiel and Gerard were all recorded as voting in the affirmative.

Councillor Turiel Moved for Immediate Reconsideration in hopes it would not prevail.
Reconsideration was denied.

#738 – CITY OF SALEM NOT ADOPT A SMALL COMMERCIAL EXEMPTION FOR FISCAL YEAR 2019

Councillor Turiel moved that the City of Salem NOT adopt a SMALL COMMERCIAL EXEMPTION for Fiscal Year 2019 by Roll Call Vote. This was adopted by a roll call vote of 11 yeas, 0 nays and 0 absent. Councillors Dibble, Dominguez, Flynn, Furey, Madore, McCarthy, Milo, Peterson, Sargent, Turiel and Gerard were all recorded as voting in the affirmative.

Councillor Turiel Moved for Immediate Reconsideration in hopes it would not prevail.
Reconsideration was denied.

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#739 – TRAFFIC ORDINANCE AMENDING CH. 42 SEC.S 50, 74 & 17A RELATIVE TO CROSSWALKS

Councillor McCarthy introduced the following Ordinance which was referred to the Committee on Ordinances, Licenses and Legal Affairs co-posted with the Committee of the Whole and rule 31B was suspended to carry this matter forward.

ORDINANCE: amending Traffic, Chapter 42, Relative to Crosswalks Section 50, Section 74, and Section 17A

In the year two thousand and ***Eighteen***

An Ordinance to amend an Ordinance relative to Traffic, Chapter 42, - Crosswalks including Section 50 – Prohibited in certain specified places; Section 74 – General Prohibition towing zones; and Section 17A – Schedule of Fines re: Penalties

Be it Ordained by the City Council of the City of Salem, as follows

SECTION 1.

Amending Section 50, Prohibited in certain specified places by adding to the end of the section: “P. **CROSSWALKS** – Within ten (10) feet of a crosswalk on the side from which traffic approaches, or except where a sign requiring a greater distance has been erected.”

Amending Section 74, General Prohibition Towing Zones by adding to the end of the section: “Upon any way within ten (10) feet of a crosswalk on the side from which traffic approaches, or except where a sign requiring a greater distance has been erected.”

Amending Section 17A, Schedule of Fine re: Penalties by adding to the end of the \$25.00 Fine Section: “Within ten (10) feet of a crosswalk on the side from which traffic approaches, or except where a sign requiring a greater distance has been erected.... Section 50 and Section 74

SECTION 2. This ordinance shall take effect as provided by City Charter

#740 – MONTHLY FINANCIAL REPORT DATED OCTOBER 31, 2018

Councillor Turiel introduced the following Order which was adopted and rule 31B be suspended to carry the matter forward.

ORDER: That the FY2019 Monthly Financial report dated October 31, 2018 be referred to the Committee on Administration and Finance

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741 – CITY COUNCIL APPOINT NEW MEMBER OF THE CPA COMMITTEE

Councillor Turiel introduced the following Order which was referred to Government Services co-posted with the Committee of the Whole and that rule 31B be suspended to carry this matter forward.

ORDER: That any Salem Resident interested in applying to be a member of the Community Preservation Act Committee submit an application (found online) along with a resume to the City Clerk by December 31, 2018 and that the Committee on Government Services co-posted with the Committee of the Whole, meet before January 24, 2019 to review such applications and resumes and bring forward a committee report of one, two or three names at the January 24, 2019 regular Council Meeting to fill the vacancy left by Kevin Cornacchio for a term to expire on May 23, 2020 And that Rule 31B be suspended so that the matter may be carried into the new year of 2019.

#742 – RESOLUTION RELATIVE TO THE CITY’S MARIJUANA LICENSING PROCESS

Councillor Dibble introduced the following Resolution which was referred to the Committee on Public Health, Safety and the Environment co-posted with the Committee of the Whole due to the late file and that rule 31B be suspended to carry the matter forward.

A Resolution For An Order For A Hearing To Examine And Discuss Best Equity Practices In The City’s Marijuana Licensing Process, The Differences Between Medical Use Marijuana And Adult Use Marijuana & Potential For A Social Equity Program

WHEREAS, In 2016, the citizens of the Commonwealth of Massachusetts approved ballot Question 4, a proposal to legalize and regulate adult-use marijuana, with 53.7% according to Massachusetts Election Statistics, and the Legislature passed Chapter 55 of the Acts of 2017, *An Act to ensure safe access to marijuana*; and

WHEREAS, This law requires clear differences in the treatment of adult-use marijuana and medical use marijuana; and

WHEREAS, This law requires the development of “procedures and policies to promote and encourage full participation in the regulated marijuana industry by people from communities that have previously been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities; and

WHEREAS, A Shenandoah University study¹ identified 29 cities and towns in Massachusetts as “Areas of Disproportionate Impact” as well as women, farmers, veterans, and people of color as groups most disproportionately impacted; and

WHEREAS, A large portion of Salem’s communities, include large numbers of people of color identified as having been disproportionately impacted; and

WHEREAS, Local control allows localities to submit initiative measures questioning the sale of marijuana on certain premises and adopt the following types of ordinances or bylaws:

¹ “The Impact of Drug and Marijuana Arrests within the Largest Cities of Massachusetts,” Jon B. Gettman, Ph.D., Assoc. Professor of Criminal Justice, Shenandoah University

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- Ordinances governing the time, place, and manner of a marijuana establishment
- Ordinances limited the number of marijuana establishments in a city or town. *(Note: Certain ordinances in this category require a local vote in order to be adopted.)*
- Ordinances restricting the licensed cultivation, processing, and manufacturing of marijuana that could be considered a “public nuisance”
- Ordinances addressing standards for public signs related to marijuana establishments
- Ordinances detailing consequences for violating marijuana related ordinances; and

WHEREAS, The cities of Somerville, Cambridge, and Boston have explored or employed equity programs or practices promoting equity in their selection processes; and

WHEREAS, Salem should establish and guarantee equity in its process by employing a social equity program and instituting an objective, transparent selection process intentionally focused on repairing past inequities, beginning with acknowledging and prioritizing review for state designated economic empowerment and social equity applicants;

WHEREAS, Salem should establish and guarantee medical marijuana safe access in its process to ensure that registered qualifying patient access is not disrupted, beginning with acknowledging the differences between medical use marijuana and adult use marijuana;

NOW, THEREFORE BE IT

ORDERED, That the appropriate committees of the Salem City Council convene one or more public hearings to discuss the City’s current marijuana licensing process and explore best equity practices, as well as, policies and programs other municipalities are considering and or have employed. Those invited to provide testimony will include the City of Salem’s Office of Business and Economic Development, Zoning Board of Appeals, Salem State University’s Office of Diversity and Multicultural Affairs, representatives from the Massachusetts Patient Advocacy Alliance, and all other interested parties.

#743 – GRANTING CERTAIN LICENSES

Councillor McCarthy offered the following report for the Committee on Ordinances, Licenses and Legal Affairs. It was voted to accept the report and adopt the recommendation.

The Committee on Ordinances, Licenses and Legal Affairs to whom was referred the matter of granting certain licenses has considered said matter and would recommend that the following licenses be granted.

SECOND HAND VALUABLES: Moon Baby Hair & Wares, 302 B Essex St. Salem, MA
Old Naumkeag Antiques, Hawthorne Blvd Salem, MA
Game Zone, 276 Essex St. Salem, MA

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#744 – ORDINANCE RELATIVE TO TREES (LORAX ORDINANCE)

Councillor McCarthy offered the following report for the Committee on Ordinances, Licenses and Legal Affairs co-posted with the Committee of the Whole. It was voted to accept the report and adopt the recommendation.

The Committee on Ordinances, Licenses and Legal Affairs co-posted with the Committee of the Whole to whom was referred the matter of the proposed Ordinance relative to a Tree Commission and Warden, Public Tree Preservation, Protected Tree Preservation and References for Public and Protected Trees, has considered said matter and would recommend adoption as amended for first passage.

Chapter 43. Trees

ARTICLE I. GENERAL

Sec. 43-01. Findings

The City of Salem has determined that trees have been lost due to natural causes, environmental hazards such as methane (natural gas) leaks near trees or insufficient replacement after the construction process or have been severely damaged or disfigured through excessive or improper pruning. The result is a net loss of trees.

A well-managed urban forest serves a wide variety of functions:

- Enhancing the quality of life, our environment, and the overall appearance of the City;
- Enhancing visual and aesthetic qualities that attract visitors and businesses;
- Defining public spaces and creating civic identity;
- Contributing to the distinct visual character of neighborhoods;
- Protecting and increasing real property values;
- Providing natural privacy among neighbors;
- Preserving the character of wooded and natural areas;
- Conserving and reducing energy consumption by providing shade and evaporative cooling through transpiration;
- Reducing direct sun and reflected glare;
- Improving local and global air quality by absorbing carbon dioxide, ozone, and particulate matter, and by producing oxygen;
- Reducing wind speed and directing air flow;
- Reducing and baffling noise pollution;
- Providing habitat for birds, small mammals, other wildlife, and beneficial insects;
- Reducing storm water runoff and soil erosion; and
- Providing natural flood and microclimate control.

Sec. 43-02. Intent

The City resolves to plant more trees than are removed to compensate for past tree losses and the length of time required for a tree to achieve maturity; to plant judiciously to ensure that all new trees are planted where the chance of survival is optimal; and to maintain well and regularly to ensure a long, healthy, and fruitful life.

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Sec. 43-03. Statement of Purpose

The City Council hereby finds that the preservation of existing trees and the promotion of new tree planting is a public purpose that protects the public health, welfare, environment, and aesthetics for the City of Salem and its residents.

The provisions of this ordinance reinforce, enhance, and expand existing legal vehicles to ensure that future development and public policy adequately preserve, protect, and provide for replacement of Public Trees as well as increasing the Public Tree Inventory.

The provisions of this ordinance pertain to private property when there is construction or demolition and when any tree within the setback area of non-exempt private property meets the definition of a Protected Tree. This Ordinance does not apply to properties with single, double or triple residential units.

This ordinance:

- A. Ensures that Salem sustains its designation as Tree City USA by meeting or exceeding the four core standards of sound urban forestry management: maintaining a Tree Commission, having a City tree ordinance, spending at least \$2 per capita on urban forestry, and celebrating Arbor Day.
- B. Protects and preserves Public Trees pursuant to Mass General Law Chapter 87;
- C. Encourages private property owners to plant or to accept a tree from the City to be planted within the setback area of their lot instead of in the tree lawn, if the Warden so recommends;
- D. Allows the Tree Warden, or a private organization acting with the written consent of the Warden, to plant trees acquired with public or private funds in the Public Rights-of-Way or within the setback from such Public Rights-of-Way with acceptance by the property owner for the purpose of improving, protecting, shading, or ornamenting the land.
- E. Establishes and empowers a Tree Commission, working with the Tree Warden, to regulate the removal and replacement of trees and to promote the planting, maintenance, and protection of trees throughout the City.

ARTICLE II. TREE COMMISSION AND TREE WARDEN

DIVISION 1. TREE COMMISSION

Sec. 43-10. Tree Commission

The Salem Tree Commission is hereby established and shall be charged with advising and assisting the Tree Warden in carrying out his duties and responsibilities. It shall advise the Mayor, the City Council, and the general public on all matters concerning existing and new Public and Protected Trees, including the selection of trees for planting, planting and pruning of trees, the treatment of disease, and the preservation and regular maintenance of trees. In addition, the Commission shall be charged with overseeing tree removal appeals regarding Protected Trees located within setback areas of non-exempt properties, and advising the City on maintaining Salem's status as a "Tree City USA" community. The Tree Commission shall also promote best practices and technologies consistent with Americans with Disabilities Act rules and regulations in order to accommodate trees within sidewalks throughout the City.

Sec. 43-11. Powers and Duties

- A. **Responsibilities** The Tree Commission shall have the following duties and responsibilities as may be further specified in this ordinance:
 1. Development of rules, regulations, Tree Inventory, manuals, and other data, in conjunction with the Warden, to carry out the purposes and intent of this ordinance;
 2. Whenever a hearing is required in regard to cutting down or removal of a Protected Tree, the Commission may offer written recommendations to the Tree Warden;
 3. Upon appeal by an owner or abutter, the Tree Commission shall review the Warden's grant or denial of Tree Permits to remove Protected Trees on private property within the setback areas, with the required public legal notice to be made at the appellant's expense;

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4. Through the Tree Warden, if City funds are or become available, offer to offset the loss of any eight-inch-plus (8+) DBH tree located within a setback area with a replacement tree from the City either on applicant's land or on an abutter's setback with the abutter's express approval; or encourage the mitigation of the loss through a contribution to the Tree Donation Fund;
 5. Whenever the Tree Warden prepares an impact statement on the effect of any construction project on existing trees or the ability to plant trees in that area in the future, the Tree Commission may submit its advice as part of a submission to appropriate City boards or departments and/or to the City Council for its review of the project;
 6. Work in conjunction with the Planning and Engineering Departments to identify methods to include new and to protect existing trees in every City sidewalk and/or roadway project;
 7. Advocacy, public education, and coordination with other City boards or committees and civic groups to promote the purposes and intent of this ordinance;
 8. Work in conjunction with the Warden to seek grants or other assistance concerning the preservation and maintenance of trees in the City.
 9. Upon request by the Mayor or the City Council, consider, investigate, make findings, report, and recommend upon any special matter or question coming within the scope of its work.
- B. **Annual Plan.** It shall be the further responsibility of the Tree Warden, in conjunction with the Tree Commission and the Director of Public Services, to update annually a plan for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs along streets and in other public areas. The Warden shall also work with the Commission and the Director of Public Services to develop an annual budget. Such plan and budget shall be presented annually, by February first, to the Mayor's office for review and comment and then proceeding to the City Council. Upon the Mayor's acceptance and approval, the plan shall constitute the official comprehensive Annual City Tree Plan for the City of Salem.

Sec. 43-12. Composition and Meetings

- A. **Composition.** All members and alternates of the Tree Commission shall be Salem residents and shall serve for a term of three (3) years, with appointments to be staggered to ensure continuity. The composition of the Commission and the appointing authority for the seven (7) Commission members and two (2) alternates is set forth below. Alternates, when appointed shall be designated as first alternate and second alternate, and shall be called upon to vote on a rotating basis in the event of a member's absence or inability to vote.
1. One member of the Planning Board as designated by the board or, if no member of the board is available, an interested individual selected by the board, confirmed by majority vote of the City Council;
 2. One member of the Park and Recreation Commission as designated by the commission or, if no member of the commission is available, an interested individual selected by the commission, confirmed by majority vote of the City Council;
 3. One member who is a licensed landscape architect or certified arborist appointed by majority vote of the City Council;
 4. One member of the general public and one alternate of the general public to be appointed by majority vote of the City Council;
 5. One member who is a licensed landscape architect or certified arborist appointed by the Mayor, confirmed by majority vote of the City Council;
 6. One member of the general public and one alternate of the general public to be appointed by the Mayor, confirmed by majority vote of the City Council; and
 7. One member who is a licensed civil engineer or who has extensive experience in heavy equipment or roadway operations appointed by the Mayor, confirmed by majority vote of the City Council.
- B. **Meetings.** The Tree Commission shall schedule meetings as needed. The Tree Warden or his/her designee shall participate in the meetings.

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DIVISION 2. TREE WARDEN

Sec. 43-13. Tree Warden; Duties and Responsibilities

The duties and responsibilities of the Tree Warden shall conform to General Law Chapter 87 and shall include, but not be limited to, the following and as may be further specified in this ordinance:

1. Management of all trees within Public Rights-of-Way and adjacent to City buildings and commons; care and control of trees on City property if so requested by the City Council, and on City property owned by other departments such as Schools, Park and Recreation, and Conservation, if so requested by the respective department, board, or commission;
2. Development of an Annual Work Plan, using the Tree Inventory as a resource, for submission to the Tree Commission for systematic tree maintenance, replacements, plantings, and removals for each fiscal year. The plan shall include locations of work, designated work to be accomplished, and resources including funds required.
3. Expending funds, in coordination with the Tree Commission, appropriated for planting trees on land under the jurisdiction of the Tree Warden;
4. With recommendations from the Tree Commission, granting or denying permits and attaching thereto reasonable conditions required under this ordinance;
5. Working in conjunction with the Tree Commission and other City Departments to seek grants or other assistance concerning the preservation, maintenance, planting of trees in City;
6. Development of rules, regulations, Tree Inventory, manuals, and other data, in conjunction with the Tree Commission and other City Departments, to carry out the purposes and intent of this Chapter;
7. Ensuring the regular maintenance of and updating of The City of Salem Tree Inventory to track removal and replacement of trees in order to replace lost trees in an orderly fashion;
8. Appointment of designee to serve in the absence of the Tree Warden.
9. Coordinate with any private organization that creates a program for the planting or pruning of Public Trees in the Public Rights-of-Way or within the setbacks with acceptance by the property owner;
10. With authorization by the Council, undertaking other responsibilities consistent with the purposes and intent of this ordinance;
11. Enforcement of this ordinance.

ARTICLE III. PUBLIC TREE PRESERVATION

Sec. 43-20. Findings

The Public Tree canopy contributes to the quality of life, the environment, and the overall appearance of the City, enhances visual and aesthetic qualities that attract visitors and businesses, and as well, defines public spaces and creates civic identity.

Sec. 43-21. Definitions

Aggregate Diameter. The combined diameter of a multiple trunk tree measured at breast height.

Caliper. The measure of a newly installed tree. Caliper measurement of a trunk shall be taken six (6) inches above ground level for trees of up to and including four (4) inch caliper size. If the caliper at six (6) inches above the ground exceeds four (4) inches, the caliper should be measured at twelve (12) inches above ground level.

Certified Arborist. An arborist certified by Massachusetts Arborists Association (MAA), its successor organization, or the International Society of Arboriculture (ISA).

Diameter at Breast Height (DBH). The diameter of a tree trunk at 4½ feet above the existing grade at the base of the tree.

Dripline. A vertical line running through the outermost portion of the crown of a tree and extending to the ground.

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Person. Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a Public Tree.

Pruning Standards. Standards for pruning as defined in the City of Salem Tree Manual and any future amendments or revisions to the same.

Public Tree.

- A. Any tree along Public Rights-of-Way within City limits or within a public park or public space under the jurisdiction of the City Council, Park and Recreation, Cemetery or Conservation Commissions as well as on public school grounds, or on any other City-owned land, or on property of the Commonwealth which the City has authority to plant or maintain.
- B. In addition, any tree may be determined by the Tree Warden to be a Public Tree if its growth has encroached from the setback area into the space above a Public Right-of-Way between the height of six (6) inches and four and a half (4½) feet above grade. A Public Tree may not be cut or pruned except at the direction of the Warden or pertinent commission.

Remove (including removing and removal). The cutting down of any Public Tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a Public Tree, including, but not limited to, excessive or improper pruning.

Tree Donation Fund. Voluntary contributions may be made to benefit tree planting and maintenance in Salem. See Section 43-62.

Tree Manual. The City of Salem Tree Manual prescribing the preferred species and the proper manner of planting and maintenance of trees.

Tree Replacement. The Tree Warden shall require the replacement of a removed sound Public Tree, which shall be planted by the City or by the applicant's contractor as approved by the Tree Warden in accordance with Standards cited in Section 43-60.

Tree Replacement Fund. Payments required by this ordinance for planting at the same site or at another location shall be deposited into this fund. See Section 43-61.

Tree Warden. The individual who holds this title shall be an arborist certified by the Massachusetts Arborists Association (MAA) or such successor organization. This position shall be appointed by the Mayor and confirmed by the City Council.

Sec. 43-22. Applicability

The terms and provisions of this ordinance shall be administered by the Tree Warden and shall apply to any Public Tree located on land owned and managed by the City of Salem, with the exception of the land under the auspices of the Park and Recreation, Cemetery, or Conservation Commissions.

Sec. 43-23. Permit

No person other than the Warden shall remove, prune, or alter a Public Tree located on land subject to the provisions of this ordinance without first obtaining a Tree Permit from the Warden. Applications shall be made in writing on forms specified by the Warden.

Sec. 43-24. Activities Requiring a Tree Permit

A Tree Permit issued by the Tree Warden is required prior to any of the following activities:

1. Any exterior work that requires the removal of a Public Tree;
2. Any construction on City or private property within the dripline of a Public Tree;
3. Construction within that portion of the dripline of a Public Tree that is located over the Public Right-of-Way;

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4. Removal of a Public Tree. Additionally, a hearing is required, as per MGL c. 87 s. 3., prior to the issuance of a Tree Permit, with appropriate and timely notices to the public at the expense of the applicant;
5. Pruning or treatment for the benefit of the health, safety, or overall well-being of a Public Tree, by anyone other than the Warden or his/her designee as provided in MGL c. 87 and additionally requires the oversight of the Warden;
6. Planting of a tree in the Public Right-of-Way or on City property by anyone other than the Warden or his/her designee as outlined under MGL c. 87 with the exception of a person or private organization working in concert with the Warden;
7. Pruning or altering of a Public Tree for the purposes of overhead utility line clearance. A work plan shall be submitted sixty (60) days prior to the work permit approval as provided in MGL c. 87 s. 14;
8. Affixing or hanging anything from a Public Tree;
9. Excavation: All Public Trees on public property near the excavation or construction of any building, structure, or street, or in the vicinity of utility work:
 - a. Shall be sufficiently guarded and protected by those responsible for such work so as to prevent injury to said trees.
 - b. Shall not excavate any ditches, tunnels, or trenches, or install pavement within the dripline of any Public Tree without a permit from the Tree Warden.

Sec. 43-25. Permit Application; Fee

No application fee shall be charged. An application for a Tree Permit shall be submitted to the Tree Warden on the appropriate form. The application shall include any materials or information required based on the nature of the activity for which application is made.

Sec. 43-26. Review of Permit Applications

The Tree Warden **shall** review applications for Tree Permits in accordance with the provisions of this ordinance and with any rules or regulations promulgated hereunder;

1. The Warden shall date stamp or otherwise record the date of filing of each application for a Tree Permit;
2. The Warden shall complete the review of each Tree Permit application no later than ten (10) business days after the submission of a completed application to the Warden except in the case of a request to remove a Public Tree which shall be subject to the procedures for a hearing as set forth in MGL c. 87.

Sec. 43-27. Conditions

The Tree Warden may impose conditions upon a Tree Permit as he deems necessary to protect existing Public Trees. The conditions shall be in writing. The Tree Warden shall make a determination that the prescribed protective measures have been adequately provided before any disturbance of the site related to the permitted activity may begin.

Sec. 43-28. Construction

Except as provided in a Tree Permit, construction activities on City-owned property and Public Right-of-Ways under the dripline of a Public Tree is prohibited. Prohibited construction activities include, but are not limited to, trenching or grading, storage of materials or equipment, passage of heavy equipment and spillage of chemicals or other materials, which are damaging to trees.

Sec. 43-29. Suspension or Revocation

The Tree Warden may suspend or revoke a Tree Permit at any time upon written notice to the permit holder for failing to comply with this ordinance, or with conditions of the permit. Written notice shall be sent by mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the noncompliance and to apply for a renewal of the Tree Permit upon compliance, where practicable. The suspension or revocation of a Tree Permit shall not affect the validity of a Building Permit or be cause for withholding a Certificate of Occupancy.

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CITY COUNCIL REGULAR MEETING

Sec. 43-30. Removal of a Sound Public Tree

The Tree Warden shall notify the Tree Commission and the Ward Councilor upon receipt of an application to cut down or remove a sound Public Tree. All Public Tree hearings shall comply with the applicable requirements set forth in MGL c. 87, s. 3. When a Public Tree is to be taken down, a public hearing shall be scheduled. The hearing will be advertised twice in a local newspaper during the fourteen (14) days prior to the hearing, posted on the city website, the City Hall bulletin board, and a notice is affixed to the tree itself. The resident owner requesting the removal of a Sound Public Tree shall pay for:

1. Notices for the hearing, and for an appeal if there is one;
2. The removal of the tree;
3. The replacement cost of the Public Tree on the tree lawn of the owner or on the tree lawn of another property. The replacement shall be equal to the DBH inches of the tree to be removed either as one or multiple trees.
4. The costs of planting. The Tree Warden shall provide the City's current tree planting costs.

Sec. 43-31. Tree Removal Waiting Period; Exemption

No Public Tree shall be removed pursuant to a permit until five (5) days after its issuance.

No waiting period is required to remove a public shade tree pursuant to a permit if the removal of the tree(s) is necessary based on a determination by the Tree Warden that one of the following conditions is met:

1. The Public Tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of public utility service, is causing drainage or passage problems upon Public Rights-of-Way, or poses a threat to pedestrian or vehicular safety;
2. The removal of the Public Tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as confirmed by the owner's certified arborist to the Warden.

Sec. 43-32. Appeal

Any person aggrieved by a decision of the Tree Warden regarding a Public Tree Removal may file an appeal with the Mayor or his/her designee. The appeal must be in writing and must be received within five (5) business days of issuance of the Warden's decision. Upon receipt of the appeal, the Mayor or his/her designee shall provide a copy to the City Clerk and to the ward Councilor for the ward in which the tree is located. Notice of the appeal hearing shall be posted on the city website, the City Hall bulletin board, and a notice shall be affixed to the tree itself. The appellant shall pay for two advertisements in a local newspaper during the fourteen (14) days prior to the hearing. A final decision shall be made on the matter within thirty (30) days from the date of receipt of the appeal request and the rationale for the decision shall be stated. A copy of the final decision shall be provided to the appellant, the City Clerk, and to the Councilor. There shall be no further appeal of the matter. No Public Trees shall be removed while an appeal is pending.

Sec. 43-33. Duration of Permit

Any permit issued by the Tree Warden shall be valid for ninety (90) days from issuance. The warden, following an email or written request by the applicant, may extend the length of the permit for any length of time, as he deems necessary and appropriate.

Sec. 43-34. Emergencies

A Public Tree may be removed without first obtaining a written permit as otherwise required by this section only if the Tree Warden or his/her designee determines that the condition of the Public Tree is hazardous and immediately endangers the public health, safety or welfare or causes an immediate disruption of public services such that immediate removal is required. If such determination is made, the Warden or his/her designee may remove the tree or provide oral authorization for its removal, utilizing such professional criteria and technical assistance, as he deems necessary. The Warden shall memorialize in writing each such oral authorization to remove a hazardous tree and keep a record of it.

Sec. 43-35. Recording

Public Trees that are removed through this emergency provision shall be recorded in the City Tree Inventory.

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Sec. 43-36. Waiver

The requirements of this section may be waived by the Warden during the period of an emergency such as a hurricane, windstorm, tornado, flood, or other act of God.

Sec. 43-37. Tree Replacement

The Tree Warden shall require the replacement of a removed sound Public Tree, which shall be planted by the City or by the applicant's contractor as approved by the Warden in accordance with Standards cited in Section 43-60.

Sec. 43-38. Payment in Lieu of Planting Replacement Tree(s)

In lieu of planting a replacement tree as provided in Section 43-30, a person who has been granted a Tree Permit shall make a contribution to the Tree Replacement Fund established in Section 43-61 in an amount equal to the cost to replace the tree in accordance with Section 43-61, which cost shall be determined by the Warden who shall provide the City's current tree planting costs.

Sec. 43-39. Rules and Regulations

The Warden is authorized to promulgate reasonable rules and regulations to implement administration of this ordinance.

Sec. 43-40. Enforcement

The Tree Warden shall be authorized to enforce the provisions of this section. The Warden shall provide written notice to the offender of the specific violation and provide a reasonable time for compliance. Such notice shall be sent by mail, return receipt requested, or by hand delivery. Thereafter, the Warden may impose the fines described in Section 43-42.

Sec. 43-41. Tree Vandalism

No person shall without written permit from the Tree Warden, in the case of a tree or shrub on public property, do or cause to be done by others any of the following acts:

1. Secure, fasten or run any rope, wire, sign, unprotected electrical installation, or other device or material to, around or through a tree or shrub, except to secure leaning or newly planted trees;
2. Break, injure, mutilate, deface, poison, kill, or destroy any tree or shrub including during snow plowing;
3. Remove any guard, stake, or other device or material intended for the protection of a Public Tree or shrub, or close or obstruct any open space above the base of a Public Tree or shrub designed to permit access of air, water, and fertilizer;
4. Attach any sign, poster, notice, or other object on any tree, or fasten any guy wire, cable, rope, nails, screws, or other device to any tree, except that the City may authorize tying temporary signs to trees if necessary; or
5. Cause or encourage any fire or burning near or around any tree.

Sec. 43-42. Penalties

1. Tree Vandalism: Each instance of vandalism shall constitute a violation of this ordinance and shall be subject to a fine of up to \$300.
2. Removal Without A Permit: Each instance in which a Public Tree is removed without a permit shall constitute a violation of this ordinance and shall be subject to a fine in the amount of \$200 per DBH inch as determined by the Tree Warden for each tree removed;
3. Failure to Make Payment to Replace Trees: Each failure to make a payment into the Tree Replacement Fund beyond the timeframe of the Tree Permit shall constitute a separate violation of this ordinance and shall be subject to a fine in the amount of \$300. Each day such violation continues shall constitute a separate offense;
4. Failure To Comply With A Condition, including Tree Replacement, Contained In a Tree Permit: Each instance where there is a failure to comply with a condition contained in a Tree Permit shall be subject to a fine in the amount of \$300;
5. Failure To Comply With A Stop Work Order: Each instance where there is a failure to comply with a Stop Work Order shall constitute a violation of this ordinance, which shall be subject to a fine in the amount of \$300. Each day such violation continues shall constitute a separate offense;

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6. Public Trees: Nothing herein shall be construed to require the City to make a payment into the Tree Replacement Fund for any tree(s) that it removes.

Sec. 43-43. Severability

The provisions of this ordinance are severable. If any section, provision, or portion of this ordinance is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this ordinance shall continue to be valid.

Sec. 43-44. Conflict of Laws

Nothing in this ordinance shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing municipal or state law.

ARTICLE IV. PROTECTED TREE PRESERVATION

Sec. 43-50. Findings

Trees contribute to the distinct visual character of neighborhoods, protect and increase real property values, improve air quality, provide shade and evaporative cooling through transpiration as well as natural privacy among neighbors, and reduce and baffle noise pollution.

Sec. 43-51. Definitions

Aggregate Diameter The combined diameter of a multiple trunk tree measured at breast height.

Caliper The measure of a newly installed young tree. Caliper measurement of a trunk shall be taken six (6) inches above ground level for trees of up to and including four (4) inch caliper size. If the caliper at six (6) inches above the ground exceeds four (4) inches, the caliper should be measured at twelve (12) inches above ground level.

Certified Arborist An arborist certified by Massachusetts Arborists Association (MAA), its successor organization, or the International Society of Arboriculture (ISA).

Diameter at Breast Height (DBH) The diameter of the trunk of a tree at 4½ feet above the existing grade at the base of the tree.

Dripline A vertical line running through the outermost portion of the crown of a tree and extending to the ground.

Exempt Lot The lot is occupied and used primarily as a residence for up to three (3) dwelling units at the time any Protected Tree is proposed for removal. The Ordinance is not applicable to properties with single, double or triple residential units.

Exterior Work Permit A building permit or approval, which is required in order to perform work on the exterior of a building or a lot, including, but not limited to the following: a building permit; a demolition permit; certificates of appropriateness, non-applicability, or hardship; curb cut and street opening permits; an order of conditions; site plan approval; subdivision approval; a special permit; a review of an alteration of contour of land; a comprehensive permit.

Occupied Lot A lot containing a legally constructed, permanent structure, used primarily as a dwelling that is currently being legally occupied and lived in and used as a residence by a person or persons. The dwelling must have a functioning, legally permitted, permanent water, sanitary, and electrical services.

Person Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a Protected Tree as well as the owner of the real property from which the tree is removed. The definition of "person" shall not include the City of Salem.

Protected Tree

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- A. A tree, with trunk dimensions DBH of eight (8) inches or greater or any multiple trunk tree with an aggregate DBH of fifteen (15) inches or greater located in the setback area bordering a Public Right-of-Way of non-exempt private land, requires a Tree Permit before it may be removed. Permits to remove such trees shall not be unreasonably denied.
- B. The Tree Warden may also designate a tree as Protected, as defined above, if its growth has encroached into the setback area of non-exempt private land, between the height of six (6) inches and four and a half (4½) feet above grade, whether the growth is from the owner's land or the Public Right-of-Way; provided that the tree is not hazardous or undesirable as defined in the Tree Manual.

Pruning Standards Standards for pruning as defined in the City of Salem Tree Manual.

Remove (including removing and removal) The cutting down of any Protected Tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a Protected Tree, including, but not limited to, excessive or improper pruning.

Setback

- A. For non-residential lots, the minimum setback shall be that which meets the requirement in the Table of Dimensional Requirements in Salem's Zoning Ordinances.
- B. For residential properties, the setback for Protected Trees shall be 20 feet from property line at the Public Rights-of-Way.

Tree Donation Fund Voluntary contributions may be made to benefit tree planting and maintenance in Salem. See Section 43-62.

Tree Manual The City of Salem Tree Manual prescribing the preferred species and the proper manner of planting and maintenance of trees.

Tree Replacement The Tree Warden shall require the replacement of a removed sound Public Tree, which shall be planted by the City or by the applicant's contractor as approved by the Tree Warden in accordance with Standards cited in Section 43-60.

Tree Replacement Fund Payments required by this ordinance for planting at the same site or at another location shall be deposited into this fund. See Section 43-61.

Tree Warden The individual who holds this title shall be an arborist certified by the Massachusetts Arborists Association (MAA) or such successor organization. This position shall be appointed by the Mayor and approved by the City Council.

Sec. 43-52. Permit or Certificate of Exemption Required

- A. Applicability** The terms and provisions of this ordinance shall apply to:
 1. Any Protected Tree located in the setback area of private land bordering Public Rights-of-Way;
 2. Except Protected Tree(s) located on an Exempt Lot as described in sub-section C below. Applications for Tree Permits and Certificates of Exemption shall require no filing fee.
- B. Permit or Certificate of Exemption**
 1. On a Non-Exempt Lot, no person shall remove a Protected Tree within the setback area without a Tree Permit,
 2. On any lot, no person shall commence legally permitted exterior work without first obtaining either a Tree Permit or a Certificate of Exemption from the Tree Warden.
- C. Exempt Lot** The owner of an Exempt Lot who seeks an Exterior Work Permit shall apply for a Certificate of Exemption from the Warden if a Protected Tree within the setback will be affected by the project.

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CITY COUNCIL REGULAR MEETING

Sec. 43-53. Permit Application

A. Contents; Fee

An application for a Tree Permit shall be submitted to the Tree Warden concurrently with an application for a building permit to the Director of Inspectional Services. No application fee shall be charged. The completed application shall include but not be limited to, the following:

1. The reason the Protected Trees are proposed for removal from the setback area;
2. An existing conditions plan of the property including its shape, dimensions, and the location of current structures and improvements;
3. A construction plan showing the locations of proposed structures and improvements, if any;
4. Photographs of the Protected Trees within the property setback;
5. A tree plan showing the locations, species and DBH of each Protected Tree within the setback indicating which Protected Trees are to be removed, and the location, species, caliper, height and quantity of Replacement Trees to be located anywhere on the property;
6. The proposed relocation of any existing Protected Tree with a statement prepared by a certified arborist explaining how each Protected Tree is to be relocated and maintained;
7. The location of existing and proposed underground or overhead utility services, existing and proposed roadways, bikeways, walkways and parking areas;
8. Any proposed grade changes that might adversely affect or endanger any Protected Tree with a statement prepared by a certified arborist explaining how each Protected Tree shall be protected and maintained;
9. The proposed method of safeguarding the remaining Protected Trees during the course of the construction.

B. Review of Permit Applications

1. The Tree Warden or his/her designee shall review applications for Tree Permits in accordance with the provisions of this ordinance. The Warden shall date stamp or otherwise record the date of filing of each Tree Permit application. The Warden shall complete the review of each application no later than ten (10) business days after receiving the finished submission.
2. In cases where a construction project will impact a Protected Tree, the Warden shall report whether the Tree Permit was granted or denied to the Director of Inspectional Services within the same ten (10) business days. If the Director receives no such report about a Tree Permit for the property within the above-stated time period, he shall accept a building permit application without that report.

- C. Conditions** Upon the issuance of a Tree Permit, the Tree Warden may prescribe in writing such protective measures for existing Protected Trees, as he deems necessary. The Warden shall make a determination that the prescribed protective measures have been adequately provided before any disturbance of the site related to the permitted activity may begin.

- D. Construction** Except as provided in a Tree Permit, construction activities under the dripline of a Protected Tree are prohibited. Activities include, but are not limited to: trenching or grading, storage of materials or equipment, passage of heavy equipment within the dripline and spillage of chemicals or other materials, which are damaging to trees.

- E. Suspension or Revocation** A Tree Permit may be suspended or revoked at any time by the Warden upon written notice to the permit holder that the permit holder has failed to comply with either this ordinance or the conditions of the Tree Permit. The written notice shall be sent by certified mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the non-compliance and apply for a renewal of the Tree Permit upon compliance, where practicable. The suspension or revocation of a Tree Permit shall not affect the validity of a building permit nor be the cause for withholding the issuance of a Certificate of Occupancy.

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F. Removal of A Protected Tree

1. A Tree Permit shall be issued when a Protected Tree will be:
 - a) Replaced or relocated on site or on an abutter's setback with the abutter's express approval; or
 - b) Replaced by payment into the Tree Replacement Fund.
2. A permit shall also be granted when:
 - a) The Protected Tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of utility service, is causing drainage or passage problems upon Public Rights-Of-Way, or poses a threat to pedestrian or vehicular safety; or
 - b) The removal of the Protected Tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified to the Tree Warden by a certified arborist.

G. Appeal If a permit has been denied, the applicant must receive a written notice of the appeals process. Any person aggrieved by a decision of the Tree Warden regarding the removal of a Protected Tree may file an appeal with the Tree Commission. The appeal must be in writing and must be received within five (5) business days of issuance of the Warden's decision. Upon receipt of the appeal, the Commission shall provide a copy to the City Clerk and to the Councilor for the ward in which the tree is located. Notice of the appeal hearing shall be posted on the city website, the City Hall bulletin board, and a notice shall be affixed to the tree itself. The appellant shall pay for two advertisements in a local newspaper during the fourteen (14) days prior to the hearing. A final decision shall be made on the matter within thirty (30) days from the date of receipt of the appeal and the rationale for the decision shall be stated. A copy of the final decision shall be provided to the appellant, the City Clerk, and to the Councilor. There shall be no further appeal of the matter. No Protected Trees shall be removed while an appeal is pending.

H. Duration of Permit Any permit issued by the Warden shall be valid for ninety (90) days from issuance. The warden, following an email or written request by the applicant, may extend the length of the permit for any length of time, as he deems necessary and appropriate.

Sec. 43-54. Activities Not Requiring A Permit

- A. Pruning** A permit is not required for the pruning of Protected Trees. However, in order to prevent excessive pruning and topping of trees that will be hazardous to the health and natural appearance of the tree, compliance with approved pruning standards is strongly recommended. The Tree Warden shall maintain on file at all times a copy of the current edition of the Tree Manual and shall make copies of it available for the cost of reproduction upon request. The Tree Manual shall also be available on the City website.
- B. Emergencies** If any Protected Tree shall be determined to be in a hazardous condition so as to immediately endanger the public health, safety or welfare or cause an immediate disruption of public services and require immediate removal without delay, oral authorization may be given by the Warden or his/her designee to remove such tree, utilizing such professional criteria and technical assistance as he/she deems necessary, and the Protected Tree may be removed without obtaining a written permit as otherwise required by this ordinance. The Warden shall memorialize in writing each such oral authorization to remove a tree and keep a record of the same.
- C. Recording** Protected Trees that are removed through this emergency provision shall be recorded in the City Tree Inventory and the opportunity for replacement offered by the Tree Warden.
- D. Waiver** The Warden may waive the requirements of this ordinance during the period of an emergency such as a hurricane, windstorm, tornado, flood, or other act of God.

Sec. 43-55. Rules and Regulations

The Tree Warden is authorized to promulgate reasonable rules and regulations to implement administration of this ordinance.

DECEMBER 6, 2018

CITY COUNCIL REGULAR MEETING

Sec. 43-56. Enforcement

A. Notice of Violation

Any person who violates any of the provisions of this ordinance shall be notified by the Warden or his/her designee of the specific violation by certified mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and a reasonable time period within which compliance must be had. The Warden shall send notice of violation of the Tree Replacement Fund regulations. The notice shall include the date by which trees were to be replaced or payment was to be made for purposes of computing the per day violation fine, in accordance with the Penalty provisions of this Ordinance.

B. Stop Work Order

1. Upon notice from the Warden or his/her designee that work on any Protected Tree, or property on which a Protected Tree is located is being performed contrary to any provision of this ordinance, such work shall be immediately stopped. The Stop Work Order shall be in writing and shall be delivered to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work will be permitted to resume;
2. The Tree Warden is also authorized to request, to the extent permissible by law, that the city department that has granted an exterior work permit to order the owner cease any activity that might affect a Protected Tree while a Stop Work Order is pending;
3. Any person who shall continue any work in or about the Protected Tree or property on which a Protected Tree is located after having been served with a Stop Work Order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than \$300 for each such violation. Each day during which a violation exists shall constitute a separate offense.

C. Injunctive Relief

1. Whenever there exists reasonable cause to believe that a person is violating this ordinance or any standards adopted pursuant to this ordinance or any term, condition or provision of an approved Tree Permit, the City may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the City for a mandatory or prohibitory injunction and an order of abatement demanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.
2. Upon determination of a court that an alleged violation is occurring, it shall enter such order or judgment as is necessary to abate the violation. The institution of an action for injunctive relief under this subsection shall not relieve any party to such proceedings from any civil penalty prescribed for violation of this ordinance.

Sec. 43-57. Tree Vandalism

No person shall, without the consent of the owner of a private tree or shrub, do or cause to be done by others any of the following acts:

- A. Secure, fasten or run any rope, wire, sign, unprotected electrical installation, or other device or material to, around or through a tree or shrub, except to secure leaning or newly planted trees;
- B. Break, injure, mutilate, deface, poison, kill, or destroy any tree or shrub including during snow plowing;
- C. Remove any guard, stake, or other device or material intended for the protection of a tree or shrub, or close or obstruct any open space above the base of a tree or shrub designed to permit access of air, water, and fertilizer;
- D. Attach any sign, poster, notice, or other object on any tree, or fasten any guy wire, cable, rope, nails, screws, or other device to any tree, except that the City may authorize tying temporary signs to trees if necessary;
or
- E. Cause or encourage any fire or burning near or around any tree.

Sec. 43-58. Penalties

- A. Tree Vandalism** Each instance of mayhem shall constitute a violation of this ordinance and shall be subject to a fine of up to \$300.

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- B. Removal Without a Permit** Each instance in which a Protected Tree is removed without a permit shall constitute a violation of this ordinance and shall be subject to a fine in the amount of \$200 per DBH inch as determined by the Tree Warden for each tree removed;
- C. Failure to Make Payment to Replace Trees** Each failure to replace a tree or make a payment into the Tree Replacement Fund beyond the timeframe of the Tree Permit shall constitute a separate violation of this ordinance and shall be subject to a fine in the amount of \$300. Each day such violation continues shall constitute a separate offense.
- D. Failure to Comply with a Condition Contained in a Tree Permit** Each instance where there is a failure to comply with a condition contained in a Tree Permit shall be subject to a fine in the amount of \$300.
- E. Failure to Comply with a Stop Work Order** Each instance where there is a failure to comply with a Stop Work Order shall constitute a violation of this ordinance, which shall be subject to a fine in the amount of \$300. Each day such violation continues shall constitute a separate offense;
- F. Public Trees** Nothing herein shall be construed to require the City to make a payment into the Tree Replacement Fund for any tree that it removes.

Sec. 43-59. Severability; Effect on Other Laws

- A. Severability** The provisions of this ordinance are severable. If any section, provision, or portion of this ordinance is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this ordinance shall continue to be valid.
- B. Conflict of Laws** Nothing in this ordinance shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing municipal or state law.

ARTICLE V. REFERENCES FOR PUBLIC AND PROTECTED TREES

Sec. 43-60. Tree Replacement

- A. Required** Whenever a Public Tree or a Protected Tree in the setback is removed without a Tree Permit from land which required a Permit or Certificate of Exemption, it shall be replaced in the manner provided in B. below.
- B. Standards**
 1. A replacement tree shall be planted within eighteen (18) months, or prior to transfer of property ownership whichever comes first from the date the Tree Permit is issued, with planting and location to be approved by the Tree Warden;
 2. A replacement tree shall be of the same or similar species or such other species as deemed advisable by the Warden in accordance with the Tree Manual.
 3. The replacement tree shall have the same or equivalent size as measured in DBH inches as that of the tree that has been removed. In the event that a tree of the same or equivalent size as measured in DBH inches cannot be planted, then multiple smaller replacement trees may be planted provided that, wherever practicable, as determined by the Warden, the cumulative total DBH of the replacement trees shall equal or exceed the cumulative total DBH of the trees that are proposed to be removed. Planting is permitted either on applicant's land or on land abutting applicant's land with the express approval of the owner of the abutting land. The Warden may specify that replacement trees be of a minimum caliper consistent with current accepted practice as stated in the Tree Manual.
 4. A replacement tree shall be required to survive in a healthy state for two years, at which time, if it is not thriving, it shall be replaced in kind with another appropriate and same-size or larger tree.

Sec. 43-61. Tree Replacement Fund

- A.** There is hereby established a Tree Replacement Fund which shall be held by the City Treasurer in a separate, identifiable revolving account and administered in accordance with applicable provisions of the General Laws. Any payments into the Tree Replacement Fund required by this ordinance for planting at the same site or at another location shall be deposited into the fund. It shall be used solely for the purpose of buying, planting, and maintaining trees in the City. The Tree Warden, with input from the Tree Commission, shall request use of these funds for tree planting, transplanting, and other tree-related needs. Allocation of these funds shall be approved by the City Council during the annual budget process.

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- B. Payment in Lieu of Planting Replacement Trees: When a healthy Public Tree is removed at the request of a property owner, or agent thereof, the requesting party shall make a contribution to a Tree Replacement Fund in an amount deemed equal to the cost to replace the tree plus the value of the tree to be replaced. The cost to remove, replant and purchase new trees shall be determined by the Warden who shall provide the City's current tree planting costs.

Sec. 43-62. Tree Donation Fund

Collection of voluntary contributions under this ordinance shall be deposited into the Tree Donation Fund, a separate, identifiable revolving account, provided such fund is annually reauthorized, and administered by the City to be dedicated solely for the planting and maintenance of new trees. The Tree Warden, with input from the Tree Commission and commensurate with the reasonably practicable suggestions of any donor, shall request use of these funds for tree planting, and other tree-related needs. Allocation of these funds shall be approved by the City Council during the annual budget process.

The amendments included Sec. 43-03 amending the effective date of Article IV to July 1, 2019 to allow for budgeting additional staff hours as shown in the last paragraph of the section. Amending Sec. 43-53 by deleting sub-paragraph 1-9 and replacing it with a reference to application requirements established by the Tree Commission. And also an amendment to 43-12, Composition and Meetings by deleting #2 under subsection A and replacing it with a member of the Lorax Committee.

The amended version of the Ordinance that was passed for first passage is as follows:

Chapter 43. Trees

ARTICLE I. GENERAL

Sec. 43-01. Findings

The City of Salem has determined that trees have been lost due to natural causes, environmental hazards such as methane (natural gas) leaks near trees or insufficient replacement after the construction process or have been severely damaged or disfigured through excessive or improper pruning. The result is a net loss of trees.

A well-managed urban forest serves a wide variety of functions:

- Enhancing the quality of life, our environment, and the overall appearance of the City;
- Enhancing visual and aesthetic qualities that attract visitors and businesses;
- Defining public spaces and creating civic identity;
- Contributing to the distinct visual character of neighborhoods;
- Protecting and increasing real property values;
- Providing natural privacy among neighbors;
- Preserving the character of wooded and natural areas;
- Conserving and reducing energy consumption by providing shade and evaporative cooling through transpiration;
- Reducing direct sun and reflected glare;
- Improving local and global air quality by absorbing carbon dioxide, ozone, and particulate matter, and by producing oxygen;
- Reducing wind speed and directing air flow;
- Reducing and baffling noise pollution;
- Providing habitat for birds, small mammals, other wildlife, and beneficial insects;
- Reducing storm water runoff and soil erosion; and
- Providing natural flood and microclimate control.

DECEMBER 6, 2018

CITY COUNCIL REGULAR MEETING

Sec. 43-02. Intent

The City resolves to plant more trees than are removed to compensate for past tree losses and the length of time required for a tree to achieve maturity; to plant judiciously to ensure that all new trees are planted where the chance of survival is optimal; and to maintain well and regularly to ensure a long, healthy, and fruitful life.

Sec. 43-03. Statement of Purpose; Effective Date

Statement of Purpose. The City Council hereby finds that the preservation of existing trees and the promotion of new tree planting is a public purpose that protects the public health, welfare, environment, and aesthetics for the City of Salem and its residents.

The provisions of this ordinance reinforce, enhance, and expand existing legal vehicles to ensure that future development and public policy adequately preserve, protect, and provide for replacement of Public Trees as well as increasing the Public Tree Inventory.

The provisions of this ordinance pertain to private property when there is construction or demolition and when any tree within the setback area of non-exempt private property meets the definition of a Protected Tree. This Ordinance does not apply to properties with single, double or triple residential units.

This ordinance:

- A. Ensures that Salem sustains its designation as Tree City USA by meeting or exceeding the four core standards of sound urban forestry management: maintaining a Tree Commission, having a City tree ordinance, spending at least \$2 per capita on urban forestry, and celebrating Arbor Day.
- B. Protects and preserves Public Trees pursuant to Mass General Law Chapter 87;
- C. Encourages private property owners to plant or to accept a tree from the City to be planted within the setback area of their lot instead of in the tree lawn, if the Warden so recommends;
- D. Allows the Tree Warden, or a private organization acting with the written consent of the Warden, to plant trees acquired with public or private funds in the Public Rights-of-Way or within the setback from such Public Rights-of-Way with acceptance by the property owner for the purpose of improving, protecting, shading, or ornamenting the land.
- E. Establishes and empowers a Tree Commission, working with the Tree Warden, to regulate the removal and replacement of trees and to promote the planting, maintenance, and protection of trees throughout the City.

Effective Date. Each Article of this Ordinance, except Article IV, shall take effect upon adoption as provided by City Charter. Article IV shall be in effect on July 1, 2019

**ARTICLE II. TREE COMMISSION AND TREE WARDEN
DIVISION 1. TREE COMMISSION**

Sec. 43-10. Tree Commission

The Salem Tree Commission is hereby established and shall be charged with advising and assisting the Tree Warden in carrying out his duties and responsibilities. It shall advise the Mayor, the City Council, and the general public on all matters concerning existing and new Public and Protected Trees, including the selection of trees for planting, planting and pruning of trees, the treatment of disease, and the preservation and regular maintenance of trees. In addition, the Commission shall be charged with overseeing tree removal appeals regarding Protected Trees located within setback areas of non-exempt properties, and advising the City on maintaining Salem's status as a "Tree City USA" community. The Tree Commission shall also promote best practices and technologies consistent with Americans with Disabilities Act rules and regulations in order to accommodate trees within sidewalks throughout the City.

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Sec. 43-11. Powers and Duties

A. Responsibilities The Tree Commission shall have the following duties and responsibilities as may be further specified in this ordinance:

1. Development of rules, regulations, Tree Inventory, manuals, and other data, in conjunction with the Warden, to carry out the purposes and intent of this ordinance;
2. Whenever a hearing is required in regard to cutting down or removal of a Protected Tree, the Commission may offer written recommendations to the Tree Warden;
3. Upon appeal by an owner or abutter, the Tree Commission shall review the Warden's grant or denial of Tree Permits to remove Protected Trees on private property within the setback areas, with the required public legal notice to be made at the appellant's expense;
4. Through the Tree Warden, if City funds are or become available, offer to offset the loss of any eight-inch-plus (8+) DBH tree located within a setback area with a replacement tree from the City either on applicant's land or on an abutter's setback with the abutter's express approval; or encourage the mitigation of the loss through a contribution to the Tree Donation Fund;
5. Whenever the Tree Warden prepares an impact statement on the effect of any construction project on existing trees or the ability to plant trees in that area in the future, the Tree Commission may submit its advice as part of a submission to appropriate City boards or departments and/or to the City Council for its review of the project;
6. Work in conjunction with the Planning and Engineering Departments to identify methods to include new and to protect existing trees in every City sidewalk and/or roadway project;
7. Advocacy, public education, and coordination with other City boards or committees and civic groups to promote the purposes and intent of this ordinance;
8. Work in conjunction with the Warden to seek grants or other assistance concerning the preservation and maintenance of trees in the City.
9. Upon request by the Mayor or the City Council, consider, investigate, make findings, report, and recommend upon any special matter or question coming within the scope of its work.

B. Annual Plan. It shall be the further responsibility of the Tree Warden, in conjunction with the Tree Commission and the Director of Public Services, to update annually a plan for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs along streets and in other public areas. The Warden shall also work with the Commission and the Director of Public Services to develop an annual budget. Such plan and budget shall be presented annually, by February first, to the Mayor's office for review and comment and then proceeding to the City Council. Upon the Mayor's acceptance and approval, the plan shall constitute the official comprehensive Annual City Tree Plan for the City of Salem.

Sec. 43-12. Composition and Meetings

A. Composition. All members and alternates of the Tree Commission shall be Salem residents and shall serve for a term of three (3) years, with appointments to be staggered to ensure continuity. The composition of the Commission and the appointing authority for the seven (7) Commission members and two (2) alternates is set forth below. Alternates, when appointed shall be designated as first alternate and second alternate, and shall be called upon to vote on a rotating basis in the event of a member's absence or inability to vote.

1. One member of the Planning Board as designated by the board or, if no member of the board is available, an interested individual selected by the board, confirmed by majority vote of the City Council;
2. One Member of the LORAX Committee or is such Committee shall no longer exist, an interested individual selected by the commission, confirmed by majority vote of the City Council;
3. One member who is a licensed landscape architect or certified arborist appointed by majority vote of the City Council;
4. One member of the general public and one alternate of the general public to be appointed by majority vote of the City Council;
5. One member who is a licensed landscape architect or certified arborist appointed by the Mayor, confirmed by majority vote of the City Council;
6. One member of the general public and one alternate of the general public to be appointed by the Mayor, confirmed by majority vote of the City Council; and

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7. One member who is a licensed civil engineer or who has extensive experience in heavy equipment or roadway operations appointed by the Mayor, confirmed by majority vote of the City Council.

B. Meetings. The Tree Commission shall schedule meetings as needed. The Tree Warden or his/her designee shall participate in the meetings.

DIVISION 2. TREE WARDEN

Sec. 43-13. Tree Warden; Duties and Responsibilities

The duties and responsibilities of the Tree Warden shall conform to General Law Chapter 87 and shall include, but not be limited to, the following and as may be further specified in this ordinance:

1. Management of all trees within Public Rights-of-Way and adjacent to City buildings and commons; care and control of trees on City property if so requested by the City Council, and on City property owned by other departments such as Schools, Park and Recreation, and Conservation, if so requested by the respective department, board, or commission;
2. Development of an Annual Work Plan, using the Tree Inventory as a resource, for submission to the Tree Commission for systematic tree maintenance, replacements, plantings, and removals for each fiscal year. The plan shall include locations of work, designated work to be accomplished, and resources including funds required.
3. Expending funds, in coordination with the Tree Commission, appropriated for planting trees on land under the jurisdiction of the Tree Warden;
4. With recommendations from the Tree Commission, granting or denying permits and attaching thereto reasonable conditions required under this ordinance;
5. Working in conjunction with the Tree Commission and other City Departments to seek grants or other assistance concerning the preservation, maintenance, planting of trees in City;
6. Development of rules, regulations, Tree Inventory, manuals, and other data, in conjunction with the Tree Commission and other City Departments, to carry out the purposes and intent of this Chapter;
7. Ensuring the regular maintenance of and updating of The City of Salem Tree Inventory to track removal and replacement of trees in order to replace lost trees in an orderly fashion;
8. Appointment of designee to serve in the absence of the Tree Warden.
9. Coordinate with any private organization that creates a program for the planting or pruning of Public Trees in the Public Rights-of-Way or within the setbacks with acceptance by the property owner;
10. With authorization by the Council, undertaking other responsibilities consistent with the purposes and intent of this ordinance;
11. Enforcement of this ordinance.

ARTICLE III. PUBLIC TREE PRESERVATION

Sec. 43-20. Findings

The Public Tree canopy contributes to the quality of life, the environment, and the overall appearance of the City, enhances visual and aesthetic qualities that attract visitors and businesses, and as well, defines public spaces and creates civic identity.

Sec. 43-21. Definitions

Aggregate Diameter. The combined diameter of a multiple trunk tree measured at breast height.

Caliper. The measure of a newly installed tree. Caliper measurement of a trunk shall be taken six (6) inches above ground level for trees of up to and including four (4) inch caliper size. If the caliper at six (6) inches above the ground exceeds four (4) inches, the caliper should be measured at twelve (12) inches above ground level.

Certified Arborist. An arborist certified by Massachusetts Arborists Association (MAA), its successor organization, or the International Society of Arboriculture (ISA).

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Diameter at Breast Height (DBH). The diameter of a tree trunk at 4½ feet above the existing grade at the base of the tree.

Dripline. A vertical line running through the outermost portion of the crown of a tree and extending to the ground.

Person. Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a Public Tree.

Pruning Standards. Standards for pruning as defined in the City of Salem Tree Manual and any future amendments or revisions to the same.

Public Tree.

A. Any tree along Public Rights-of-Way within City limits or within a public park or public space under the jurisdiction of the City Council, Park and Recreation, Cemetery or Conservation Commissions as well as on public school grounds, or on any other City-owned land, or on property of the Commonwealth which the City has authority to plant or maintain.

B. In addition, any tree may be determined by the Tree Warden to be a Public Tree if its growth has encroached from the setback area into the space above a Public Right-of-Way between the height of six (6) inches and four and a half (4½) feet above grade. A Public Tree may not be cut or pruned except at the direction of the Warden or pertinent commission.

Remove (including removing and removal). The cutting down of any Public Tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a Public Tree, including, but not limited to, excessive or improper pruning.

Tree Donation Fund. Voluntary contributions may be made to benefit tree planting and maintenance in Salem. See Section 43-62.

Tree Manual. The City of Salem Tree Manual prescribing the preferred species and the proper manner of planting and maintenance of trees.

Tree Replacement. The Tree Warden shall require the replacement of a removed sound Public Tree, which shall be planted by the City or by the applicant's contractor as approved by the Tree Warden in accordance with Standards cited in Section 43-60.

Tree Replacement Fund. Payments required by this ordinance for planting at the same site or at another location shall be deposited into this fund. See Section 43-61.

Tree Warden. The individual who holds this title shall be an arborist certified by the Massachusetts Arborists Association (MAA) or such successor organization. This position shall be appointed by the Mayor and confirmed by the City Council.

Sec. 43-22. Applicability

The terms and provisions of this ordinance shall be administered by the Tree Warden and shall apply to any Public Tree located on land owned and managed by the City of Salem, with the exception of the land under the auspices of the Park and Recreation, Cemetery, or Conservation Commissions.

Sec. 43-23. Permit

No person other than the Warden shall remove, prune, or alter a Public Tree located on land subject to the provisions of this ordinance without first obtaining a Tree Permit from the Warden. Applications shall be made in writing on forms specified by the Warden.

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Sec. 43-24. Activities Requiring a Tree Permit

A Tree Permit issued by the Tree Warden is required prior to any of the following activities:

1. Any exterior work that requires the removal of a Public Tree;
2. Any construction on City or private property within the dripline of a Public Tree;
3. Construction within that portion of the dripline of a Public Tree that is located over the Public Right-of-Way;
4. Removal of a Public Tree. Additionally, a hearing is required, as per MGL c. 87 s. 3., prior to the issuance of a Tree Permit, with appropriate and timely notices to the public at the expense of the applicant;
5. Pruning or treatment for the benefit of the health, safety, or overall well-being of a Public Tree, by anyone other than the Warden or his/her designee as provided in MGL c. 87 and additionally requires the oversight of the Warden;
6. Planting of a tree in the Public Right-of-Way or on City property by anyone other than the Warden or his/her designee as outlined under MGL c. 87 with the exception of a person or private organization working in concert with the Warden;
7. Pruning or altering of a Public Tree for the purposes of overhead utility line clearance. A work plan shall be submitted sixty (60) days prior to the work permit approval as provided in MGL c. 87 s. 14;
8. Affixing or hanging anything from a Public Tree;
9. Excavation: All Public Trees on public property near the excavation or construction of any building, structure, or street, or in the vicinity of utility work:
 - a. Shall be sufficiently guarded and protected by those responsible for such work so as to prevent injury to said trees.
 - b. Shall not excavate any ditches, tunnels, or trenches, or install pavement within the dripline of any Public Tree without a permit from the Tree Warden.

Sec. 43-25. Permit Application; Fee

No application fee shall be charged. An application for a Tree Permit shall be submitted to the Tree Warden on the appropriate form. The application shall include any materials or information required based on the nature of the activity for which application is made.

Sec. 43-26. Review of Permit Applications

The Tree Warden **shall** review applications for Tree Permits in accordance with the provisions of this ordinance and with any rules or regulations promulgated hereunder;

1. The Warden shall date stamp or otherwise record the date of filing of each application for a Tree Permit;
2. The Warden shall complete the review of each Tree Permit application no later than ten (10) business days after the submission of a completed application to the Warden except in the case of a request to remove a Public Tree which shall be subject to the procedures for a hearing as set forth in MGL c. 87.

Sec. 43-27. Conditions

The Tree Warden may impose conditions upon a Tree Permit as he deems necessary to protect existing Public Trees. The conditions shall be in writing. The Tree Warden shall make a determination that the prescribed protective measures have been adequately provided before any disturbance of the site related to the permitted activity may begin.

Sec. 43-28. Construction

Except as provided in a Tree Permit, construction activities on City-owned property and Public Right-of-Ways under the dripline of a Public Tree is prohibited. Prohibited construction activities include, but are not limited to, trenching or grading, storage of materials or equipment, passage of heavy equipment and spillage of chemicals or other materials, which are damaging to trees.

Sec. 43-29. Suspension or Revocation

The Tree Warden may suspend or revoke a Tree Permit at any time upon written notice to the permit holder for failing to comply with this ordinance, or with conditions of the permit. Written notice shall be sent by mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the noncompliance and

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to apply for a renewal of the Tree Permit upon compliance, where practicable. The suspension or revocation of a Tree Permit shall not affect the validity of a Building Permit or be cause for withholding a Certificate of Occupancy.

Sec. 43-30. Removal of a Sound Public Tree

The Tree Warden shall notify the Tree Commission and the Ward Councilor upon receipt of an application to cut down or remove a sound Public Tree. All Public Tree hearings shall comply with the applicable requirements set forth in MGL c. 87, s. 3. When a Public Tree is to be taken down, a public hearing shall be scheduled. The hearing will be advertised twice in a local newspaper during the fourteen (14) days prior to the hearing, posted on the city website, the City Hall bulletin board, and a notice is affixed to the tree itself. The resident owner requesting the removal of a Sound Public Tree shall pay for:

1. Notices for the hearing, and for an appeal if there is one;
2. The removal of the tree;
3. The replacement cost of the Public Tree on the tree lawn of the owner or on the tree lawn of another property. The replacement shall be equal to the DBH inches of the tree to be removed either as one or multiple trees.
4. The costs of planting. The Tree Warden shall provide the City's current tree planting costs.

Sec. 43-31. Tree Removal Waiting Period; Exemption

No Public Tree shall be removed pursuant to a permit until five (5) days after its issuance.

No waiting period is required to remove a public shade tree pursuant to a permit if the removal of the tree(s) is necessary based on a determination by the Tree Warden that one of the following conditions is met:

1. The Public Tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of public utility service, is causing drainage or passage problems upon Public Rights-of-Way, or poses a threat to pedestrian or vehicular safety;
2. The removal of the Public Tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as confirmed by the owner's certified arborist to the Warden.

Sec. 43-32. Appeal

Any person aggrieved by a decision of the Tree Warden regarding a Public Tree Removal may file an appeal with the Mayor or his/her designee. The appeal must be in writing and must be received within five (5) business days of issuance of the Warden's decision. Upon receipt of the appeal, the Mayor or his/her designee shall provide a copy to the City Clerk and to the ward Councilor for the ward in which the tree is located. Notice of the appeal hearing shall be posted on the city website, the City Hall bulletin board, and a notice shall be affixed to the tree itself. The appellant shall pay for two advertisements in a local newspaper during the fourteen (14) days prior to the hearing. A final decision shall be made on the matter within thirty (30) days from the date of receipt of the appeal request and the rationale for the decision shall be stated. A copy of the final decision shall be provided to the appellant, the City Clerk, and to the Councilor. There shall be no further appeal of the matter. No Public Trees shall be removed while an appeal is pending.

Sec. 43-33. Duration of Permit

Any permit issued by the Tree Warden shall be valid for ninety (90) days from issuance. The warden, following an email or written request by the applicant, may extend the length of the permit for any length of time, as he deems necessary and appropriate.

Sec. 43-34. Emergencies

A Public Tree may be removed without first obtaining a written permit as otherwise required by this section only if the Tree Warden or his/her designee determines that the condition of the Public Tree is hazardous and immediately endangers the public health, safety or welfare or causes an immediate disruption of public services such that immediate removal is required. If such determination is made, the Warden or his/her designee may remove the tree or provide oral authorization for its removal, utilizing such professional criteria and technical assistance, as he deems necessary. The Warden shall memorialize in writing each such oral authorization to remove a hazardous tree and keep a record of it.

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Sec. 43-35. Recording

Public Trees that are removed through this emergency provision shall be recorded in the City Tree Inventory.

Sec. 43-36. Waiver

The requirements of this section may be waived by the Warden during the period of an emergency such as a hurricane, windstorm, tornado, flood, or other act of God.

Sec. 43-37. Tree Replacement

The Tree Warden shall require the replacement of a removed sound Public Tree, which shall be planted by the City or by the applicant's contractor as approved by the Warden in accordance with Standards cited in Section 43-60.

Sec. 43-38. Payment in Lieu of Planting Replacement Tree(s)

In lieu of planting a replacement tree as provided in Section 43-30, a person who has been granted a Tree Permit shall make a contribution to the Tree Replacement Fund established in Section 43-61 in an amount equal to the cost to replace the tree in accordance with Section 43-61, which cost shall be determined by the Warden who shall provide the City's current tree planting costs.

Sec. 43-39. Rules and Regulations

The Warden is authorized to promulgate reasonable rules and regulations to implement administration of this ordinance.

Sec. 43-40. Enforcement

The Tree Warden shall be authorized to enforce the provisions of this section. The Warden shall provide written notice to the offender of the specific violation and provide a reasonable time for compliance. Such notice shall be sent by mail, return receipt requested, or by hand delivery. Thereafter, the Warden may impose the fines described in Section 43-42.

Sec. 43-41. Tree Vandalism

No person shall without written permit from the Tree Warden, in the case of a tree or shrub on public property, do or cause to be done by others any of the following acts:

1. Secure, fasten or run any rope, wire, sign, unprotected electrical installation, or other device or material to, around or through a tree or shrub, except to secure leaning or newly planted trees;
2. Break, injure, mutilate, deface, poison, kill, or destroy any tree or shrub including during snow plowing;
3. Remove any guard, stake, or other device or material intended for the protection of a Public Tree or shrub, or close or obstruct any open space above the base of a Public Tree or shrub designed to permit access of air, water, and fertilizer;
4. Attach any sign, poster, notice, or other object on any tree, or fasten any guy wire, cable, rope, nails, screws, or other device to any tree, except that the City may authorize tying temporary signs to trees if necessary; or
5. Cause or encourage any fire or burning near or around any tree.

Sec. 43-42. Penalties

1. Tree Vandalism: Each instance of vandalism shall constitute a violation of this ordinance and shall be subject to a fine of up to \$300.
2. Removal Without A Permit: Each instance in which a Public Tree is removed without a permit shall constitute a violation of this ordinance and shall be subject to a fine in the amount of \$200 per DBH inch as determined by the Tree Warden for each tree removed;
3. Failure to Make Payment to Replace Trees: Each failure to make a payment into the Tree Replacement Fund beyond the timeframe of the Tree Permit shall constitute a separate violation of this ordinance and shall be subject to a fine in the amount of \$300. Each day such violation continues shall constitute a separate offense;
4. Failure To Comply With A Condition, including Tree Replacement, Contained In a Tree Permit: Each instance where there is a failure to comply with a condition contained in a Tree Permit shall be subject to a fine in the amount of \$300;

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5. Failure To Comply With A Stop Work Order: Each instance where there is a failure to comply with a Stop Work Order shall constitute a violation of this ordinance, which shall be subject to a fine in the amount of \$300. Each day such violation continues shall constitute a separate offense;

6. Public Trees: Nothing herein shall be construed to require the City to make a payment into the Tree Replacement Fund for any tree(s) that it removes.

Sec. 43-43. Severability

The provisions of this ordinance are severable. If any section, provision, or portion of this ordinance is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this ordinance shall continue to be valid.

Sec. 43-44. Conflict of Laws

Nothing in this ordinance shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing municipal or state law.

ARTICLE IV. PROTECTED TREE PRESERVATION

Sec. 43-50. Findings

Trees contribute to the distinct visual character of neighborhoods, protect and increase real property values, improve air quality, provide shade and evaporative cooling through transpiration as well as natural privacy among neighbors, and reduce and baffle noise pollution.

Sec. 43-51. Definitions

Aggregate Diameter The combined diameter of a multiple trunk tree measured at breast height.

Caliper The measure of a newly installed young tree. Caliper measurement of a trunk shall be taken six (6) inches above ground level for trees of up to and including four (4) inch caliper size. If the caliper at six (6) inches above the ground exceeds four (4) inches, the caliper should be measured at twelve (12) inches above ground level.

Certified Arborist An arborist certified by Massachusetts Arborists Association (MAA), its successor organization, or the International Society of Arboriculture (ISA).

Diameter at Breast Height (DBH) The diameter of the trunk of a tree at 4½ feet above the existing grade at the base of the tree.

Dripline A vertical line running through the outermost portion of the crown of a tree and extending to the ground.

Exempt Lot The lot is occupied and used primarily as a residence for up to three (3) dwelling units at the time any Protected Tree is proposed for removal. The Ordinance is not applicable to properties with single, double or triple residential units.

Exterior Work Permit A building permit or approval, which is required in order to perform work on the exterior of a building or a lot, including, but not limited to the following: a building permit; a demolition permit; certificates of appropriateness, non-applicability, or hardship; curb cut and street opening permits; an order of conditions; site plan approval; subdivision approval; a special permit; a review of an alteration of contour of land; a comprehensive permit.

Occupied Lot A lot containing a legally constructed, permanent structure, used primarily as a dwelling that is currently being legally occupied and lived in and used as a residence by a person or persons. The dwelling must have a functioning, legally permitted, permanent water, sanitary, and electrical services.

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Person Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a Protected Tree as well as the owner of the real property from which the tree is removed. The definition of "person" shall not include the City of Salem.

Protected Tree

- A. A tree, with trunk dimensions DBH of eight (8) inches or greater or any multiple trunk tree with an aggregate DBH of fifteen (15) inches or greater located in the setback area bordering a Public Right-of-Way of non-exempt private land, requires a Tree Permit before it may be removed. Permits to remove such trees shall not be unreasonably denied.
- B. The Tree Warden may also designate a tree as Protected, as defined above, if its growth has encroached into the setback area of non-exempt private land, between the height of six (6) inches and four and a half (4½) feet above grade, whether the growth is from the owner's land or the Public Right-of-Way; provided that the tree is not hazardous or undesirable as defined in the Tree Manual.

Pruning Standards Standards for pruning as defined in the City of Salem Tree Manual.

Remove (including removing and removal) The cutting down of any Protected Tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a Protected Tree, including, but not limited to, excessive or improper pruning.

Setback

- A. For non-residential lots, the minimum setback shall be that which meets the requirement in the Table of Dimensional Requirements in Salem's Zoning Ordinances.
- B. For residential properties, the setback for Protected Trees shall be 20 feet from property line at the Public Rights-of-Way.

Tree Donation Fund Voluntary contributions may be made to benefit tree planting and maintenance in Salem. See Section 43-62.

Tree Manual The City of Salem Tree Manual prescribing the preferred species and the proper manner of planting and maintenance of trees.

Tree Replacement The Tree Warden shall require the replacement of a removed sound Public Tree, which shall be planted by the City or by the applicant's contractor as approved by the Tree Warden in accordance with Standards cited in Section 43-60.

Tree Replacement Fund Payments required by this ordinance for planting at the same site or at another location shall be deposited into this fund. See Section 43-61.

Tree Warden The individual who holds this title shall be an arborist certified by the Massachusetts Arborists Association (MAA) or such successor organization. This position shall be appointed by the Mayor and approved by the City Council.

Sec. 43-52. Permit or Certificate of Exemption Required

- A. Applicability** The terms and provisions of this ordinance shall apply to:
 1. Any Protected Tree located in the setback area of private land bordering Public Rights-of-Way;
 2. Except Protected Tree(s) located on an Exempt Lot as described in sub-section C below. Applications for Tree Permits and Certificates of Exemption shall require no filing fee.

B. Permit or Certificate of Exemption

1. On a Non-Exempt Lot, no person shall remove a Protected Tree within the setback area without a Tree Permit,

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2. On any lot, no person shall commence legally permitted exterior work without first obtaining either a Tree Permit or a Certificate of Exemption from the Tree Warden.

C. Exempt Lot The owner of an Exempt Lot who seeks an Exterior Work Permit shall apply for a Certificate of Exemption from the Warden if a Protected Tree within the setback will be affected by the project.

Sec. 43-53. Permit Application

A. Contents; Fee

An application for a Tree Permit shall be submitted to the Tree Warden concurrently with an application for a building permit to the Director of Inspectional Services. No application fee shall be charged. The completed application shall include information the Tree Commission shall so determine, in consultation with the Tree Ward, pursuant to its power and duties set forth in Sec. 43-11.

B. Review of Permit Applications

1. The Tree Warden or his/her designee shall review applications for Tree Permits in accordance with the provisions of this ordinance. The Warden shall date stamp or otherwise record the date of filing of each Tree Permit application. The Warden shall complete the review of each application no later than ten (10) business days after receiving the finished submission.
2. In cases where a construction project will impact a Protected Tree, the Warden shall report whether the Tree Permit was granted or denied to the Director of Inspectional Services within the same ten (10) business days. If the Director receives no such report about a Tree Permit for the property within the above-stated time period, he shall accept a building permit application without that report.

C. Conditions Upon the issuance of a Tree Permit, the Tree Warden may prescribe in writing such protective measures for existing Protected Trees, as he deems necessary. The Warden shall make a determination that the prescribed protective measures have been adequately provided before any disturbance of the site related to the permitted activity may begin.

D. Construction Except as provided in a Tree Permit, construction activities under the dripline of a Protected Tree are prohibited. Activities include, but are not limited to: trenching or grading, storage of materials or equipment, passage of heavy equipment within the dripline and spillage of chemicals or other materials, which are damaging to trees.

E. Suspension or Revocation A Tree Permit may be suspended or revoked at any time by the Warden upon written notice to the permit holder that the permit holder has failed to comply with either this ordinance or the conditions of the Tree Permit. The written notice shall be sent by certified mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the non-compliance and apply for a renewal of the Tree Permit upon compliance, where practicable. The suspension or revocation of a Tree Permit shall not affect the validity of a building permit nor be the cause for withholding the issuance of a Certificate of Occupancy.

F. Removal of A Protected Tree

1. A Tree Permit shall be issued when a Protected Tree will be:
 - a) Replaced or relocated on site or on an abutter's setback with the abutter's express approval; or
 - b) Replaced by payment into the Tree Replacement Fund.
2. A permit shall also be granted when:
 - a) The Protected Tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of utility service, is causing drainage or passage problems upon Public Rights-Of-Way, or poses a threat to pedestrian or vehicular safety; or
 - b) The removal of the Protected Tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified to the Tree Warden by a certified arborist.

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G. Appeal If a permit has been denied, the applicant must receive a written notice of the appeals process. Any person aggrieved by a decision of the Tree Warden regarding the removal of a Protected Tree may file an appeal with the Tree Commission. The appeal must be in writing and must be received within five (5) business days of issuance of the Warden's decision. Upon receipt of the appeal, the Commission shall provide a copy to the City Clerk and to the Councilor for the ward in which the tree is located. Notice of the appeal hearing shall be posted on the city website, the City Hall bulletin board, and a notice shall be affixed to the tree itself. The appellant shall pay for two advertisements in a local newspaper during the fourteen (14) days prior to the hearing. A final decision shall be made on the matter within thirty (30) days from the date of receipt of the appeal and the rationale for the decision shall be stated. A copy of the final decision shall be provided to the appellant, the City Clerk, and to the Councilor. There shall be no further appeal of the matter. No Protected Trees shall be removed while an appeal is pending.

H. Duration of Permit Any permit issued by the Warden shall be valid for ninety (90) days from issuance. The warden, following an email or written request by the applicant, may extend the length of the permit for any length of time, as he deems necessary and appropriate.

Sec. 43-54. Activities Not Requiring A Permit

A. Pruning A permit is not required for the pruning of Protected Trees. However, in order to prevent excessive pruning and topping of trees that will be hazardous to the health and natural appearance of the tree, compliance with approved pruning standards is strongly recommended. The Tree Warden shall maintain on file at all times a copy of the current edition of the Tree Manual and shall make copies of it available for the cost of reproduction upon request. The Tree Manual shall also be available on the City website.

B. Emergencies If any Protected Tree shall be determined to be in a hazardous condition so as to immediately endanger the public health, safety or welfare or cause an immediate disruption of public services and require immediate removal without delay, oral authorization may be given by the Warden or his/her designee to remove such tree, utilizing such professional criteria and technical assistance as he/she deems necessary, and the Protected Tree may be removed without obtaining a written permit as otherwise required by this ordinance. The Warden shall memorialize in writing each such oral authorization to remove a tree and keep a record of the same.

C. Recording Protected Trees that are removed through this emergency provision shall be recorded in the City Tree Inventory and the opportunity for replacement offered by the Tree Warden.

D. Waiver The Warden may waive the requirements of this ordinance during the period of an emergency such as a hurricane, windstorm, tornado, flood, or other act of God.

Sec. 43-55. Rules and Regulations

The Tree Warden is authorized to promulgate reasonable rules and regulations to implement administration of this ordinance.

Sec. 43-56. Enforcement

A. Notice of Violation

Any person who violates any of the provisions of this ordinance shall be notified by the Warden or his/her designee of the specific violation by certified mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and a reasonable time period within which compliance must be had. The Warden shall send notice of violation of the Tree Replacement Fund regulations. The notice shall include the date by which trees were to be replaced or payment was to be made for purposes of computing the per day violation fine, in accordance with the Penalty provisions of this Ordinance.

B. Stop Work Order

1. Upon notice from the Warden or his/her designee that work on any Protected Tree, or property on which a Protected Tree is located is being performed contrary to any provision of this ordinance, such work shall be immediately stopped. The Stop Work Order shall be in writing and shall be delivered to the owner of the

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property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work will be permitted to resume;

2. The Tree Warden is also authorized to request, to the extent permissible by law, that the city department that has granted an exterior work permit to order the owner cease any activity that might affect a Protected Tree while a Stop Work Order is pending;

3. Any person who shall continue any work in or about the Protected Tree or property on which a Protected Tree is located after having been served with a Stop Work Order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than \$300 for each such violation. Each day during which a violation exists shall constitute a separate offense.

C. Injunctive Relief

1. Whenever there exists reasonable cause to believe that a person is violating this ordinance or any standards adopted pursuant to this ordinance or any term, condition or provision of an approved Tree Permit, the City may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the City for a mandatory or prohibitory injunction and an order of abatement demanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.

2. Upon determination of a court that an alleged violation is occurring, it shall enter such order or judgment as is necessary to abate the violation. The institution of an action for injunctive relief under this subsection shall not relieve any party to such proceedings from any civil penalty prescribed for violation of this ordinance.

Sec. 43-57. Tree Vandalism

No person shall, without the consent of the owner of a private tree or shrub, do or cause to be done by others any of the following acts:

- A. Secure, fasten or run any rope, wire, sign, unprotected electrical installation, or other device or material to, around or through a tree or shrub, except to secure leaning or newly planted trees;
- B. Break, injure, mutilate, deface, poison, kill, or destroy any tree or shrub including during snow plowing;
- C. Remove any guard, stake, or other device or material intended for the protection of a tree or shrub, or close or obstruct any open space above the base of a tree or shrub designed to permit access of air, water, and fertilizer;
- D. Attach any sign, poster, notice, or other object on any tree, or fasten any guy wire, cable, rope, nails, screws, or other device to any tree, except that the City may authorize tying temporary signs to trees if necessary; or
- E. Cause or encourage any fire or burning near or around any tree.

Sec. 43-58. Penalties

A. Tree Vandalism Each instance of mayhem shall constitute a violation of this ordinance and shall be subject to a fine of up to \$300.

B. Removal Without a Permit Each instance in which a Protected Tree is removed without a permit shall constitute a violation of this ordinance and shall be subject to a fine in the amount of \$200 per DBH inch as determined by the Tree Warden for each tree removed;

C. Failure to Make Payment to Replace Trees Each failure to replace a tree or make a payment into the Tree Replacement Fund beyond the timeframe of the Tree Permit shall constitute a separate violation of this ordinance and shall be subject to a fine in the amount of \$300. Each day such violation continues shall constitute a separate offense.

D. Failure to Comply with a Condition Contained in a Tree Permit Each instance where there is a failure to comply with a condition contained in a Tree Permit shall be subject to a fine in the amount of \$300.

E. Failure to Comply with a Stop Work Order Each instance where there is a failure to comply with a Stop Work Order shall constitute a violation of this ordinance, which shall be subject to a fine in the amount of \$300. Each day such violation continues shall constitute a separate offense;

F. Public Trees Nothing herein shall be construed to require the City to make a payment into the Tree Replacement Fund for any tree that it removes.

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Sec. 43-59. Severability; Effect on Other Laws

A. Severability The provisions of this ordinance are severable. If any section, provision, or portion of this ordinance is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this ordinance shall continue to be valid.

B. Conflict of Laws Nothing in this ordinance shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing municipal or state law.

ARTICLE V. REFERENCES FOR PUBLIC AND PROTECTED TREES

Sec. 43-60. Tree Replacement

A. Required Whenever a Public Tree or a Protected Tree in the setback is removed without a Tree Permit from land which required a Permit or Certificate of Exemption, it shall be replaced in the manner provided in B. below.

B. Standards

1. A replacement tree shall be planted within eighteen (18) months, or prior to transfer of property ownership whichever comes first from the date the Tree Permit is issued, with planting and location to be approved by the Tree Warden;
2. A replacement tree shall be of the same or similar species or such other species as deemed advisable by the Warden in accordance with the Tree Manual.
3. The replacement tree shall have the same or equivalent size as measured in DBH inches as that of the tree that has been removed. In the event that a tree of the same or equivalent size as measured in DBH inches cannot be planted, then multiple smaller replacement trees may be planted provided that, wherever practicable, as determined by the Warden, the cumulative total DBH of the replacement trees shall equal or exceed the cumulative total DBH of the trees that are proposed to be removed. Planting is permitted either on applicant's land or on land abutting applicant's land with the express approval of the owner of the abutting land. The Warden may specify that replacement trees be of a minimum caliper consistent with current accepted practice as stated in the Tree Manual.
4. A replacement tree shall be required to survive in a healthy state for two years, at which time, if it is not thriving, it shall be replaced in kind with another appropriate and same-size or larger tree.

Sec. 43-61. Tree Replacement Fund

A. There is hereby established a Tree Replacement Fund which shall be held by the City Treasurer in a separate, identifiable revolving account and administered in accordance with applicable provisions of the General Laws. Any payments into the Tree Replacement Fund required by this ordinance for planting at the same site or at another location shall be deposited into the fund. It shall be used solely for the purpose of buying, planting, and maintaining trees in the City. The Tree Warden, with input from the Tree Commission, shall request use of these funds for tree planting, transplanting, and other tree-related needs. Allocation of these funds shall be approved by the City Council during the annual budget process.

B. Payment in Lieu of Planting Replacement Trees: When a healthy Public Tree is removed at the request of a property owner, or agent thereof, the requesting party shall make a contribution to a Tree Replacement Fund in an amount deemed equal to the cost to replace the tree plus the value of the tree to be replaced. The cost to remove, replant and purchase new trees shall be determined by the Warden who shall provide the City's current tree planting costs.

Sec. 43-62. Tree Donation Fund

Collection of voluntary contributions under this ordinance shall be deposited into the Tree Donation Fund, a separate, identifiable revolving account, provided such fund is annually reauthorized, and administered by the City to be dedicated solely for the planting and maintenance of new trees. The Tree Warden, with input from the Tree Commission and commensurate with the reasonably practicable suggestions of any donor, shall request use of these funds for tree planting, and other tree-related needs. Allocation of these funds shall be approved by the City Council during the annual budget process.

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#745 – MATTERS CARRIED FORWARD INTO 2019

Councillor McCarthy offered the following report for the Committee on Ordinances, Licenses and Legal Affairs. It was voted to accept the report and adopt the recommendation.

The Committee on Ordinances, Licenses and Legal Affairs to whom was referred the matter of carrying matters forward has considered said matter and would recommend that Rule 31B be suspended so that the attached matters may be carried into the new year of 2019:

Councillor Madore moved that Rule 31B be suspended to carry matter relative to the Traffic and Parking Ordinance be carried forward. This motion failed.

#746 – MATTERS CARRIED FORWARD INTO 2019

Councillor Turiel offered the following report for the Committee on Administration and Finance. It was voted to accept the report and adopt the recommendation.

The Committee on Administration and Finance to whom was referred the matter of carrying matters forward has considered said matter and would recommend that Rule 31B be suspended so the attached matters may be carried into the new year of 2019.

#747 – MATTERS CARRIED FORWARD INTO 2019

Councillor Sargent offered the following report for the Committee on Government Services. It was voted to accept the report and adopt the recommendation.

The Committee on Government Services to whom was referred the matter of carrying matters forward has considered said matter and would recommend that Rule 31B be suspended so the attached matters may be carried into the new year of 2019.

#748 – (#588, #652, #703) – EXPANSION OF THE HDIP ZONE TO INCLUDE ADDITIONAL PARCES AND ZONING DISTRICTS

Councillor Dibble offered the following report for the Committee on Community and Economic Development co-posted with the Committee of the Whole. It was voted to accept the report and adopt the recommendation.

The Committee on Community and Economic Development co-posted with the Committee of the Whole to whom was referred the matter of discussing the expansion of the HDIP Zone to include additional parcels, all parcels within the B-5 Zoning District, the NRCC Zoning District and 5 Broad St., 17 Hawthorne Blvd. and 150 Federal St. has considered said matter and would recommend a favorable recommendation to the full Council.

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#749 – (#589, #653, #704) – HDIP ZONE AMENDMENT PROPOSAL

Councillor Dibble offered the following report for the Committee on Community and Economic Development co-posted with the Committee of the Whole. It was voted to accept the report and adopt the recommendation.

The Committee on Community and Economic Development co-posted with the Committee of the Whole to whom was referred the matter of discussing the HDIP Zone Amendment Proposal has considered said matter and would recommend a favorable recommendation to the full Council.

#750 – MATTERS CARRIED FORWARD INTO 2019

Councillor Dibble offered the following report for the Committee on Community and Economic Development. It was voted to accept the report and adopt the recommendation.

The Committee on Community and Economic Development to whom was referred the matter of carrying matters forward has considered said matter and would recommend that Rule 31B be suspended so the attached matters may be carried into the new year of 2019.

#751 – APPROPRIATION WITHIN THE CPA FUNDS FOR 211 BRIDGE STREET

The following Order introduced by Jane Guy, Asst. Community Development Director, on behalf of the Community Preservation Committee was adopted.

ORDERED: That Twenty-five Thousand Dollars (\$25,000.00) is hereby appropriated within the CPA Funds for FY2019 to the accounts listed below in accordance with the recommendation of the Community Preservation Committee

<u>FY</u>	<u>Fund</u>	<u>Fund Name</u>	<u>Description</u>	<u>Amount</u>
2019	2001	General Fund CPA	211 Bridge Street Window Restore	\$25,000.00
			TOTAL	\$25,000.00

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#752 – NORTH SHORE MEDICAL CENTER CANCER WALK

Councillor Furey assumes the chair. Councillor Gerard recused herself.

The request from North Shore Medical Center to hold their annual Cancer Walk and use of city of streets on June 23, 2019 beginning at 8:30 A.M. was granted.

Councillor Gerard assumes the chair.

#753 – LIFE STORAGE FLOODING PROBLEMS

The communication from Life Storage to meet with Council to discuss flooding problems was referred to the Committee on Public Health, Safety and the Environment co-posted with the Committee of the Whole.

#754 – PUBLIC GUIDES

The Following License Applications were granted.

PUBLIC GUIDES:

- Constance Sable, 12 Black Watch Way, Mashpee
- John Higgins, 71 Governors Rd., Milton
- Kevin Stirnweis, 26 Ruby Ave., Marblehead
- Hannah Diozzi, 20 Pleasant St., Salem
- Nancy Sweeter, 60 Burley St., Danvers
- Beth O'Grady, 27 Williams St., Salem
- Leo T. Ward, 31 Crescent Ave., Beverly
- Abigail Russell, 37 Forest St., Wakefield
- Heide Hasselmann, 2 Cranberry Hill, Duxbury
- William Clemens, 49 Summer St., Danvers
- Jonnet Holladay, 4 Longfellow PL Apt 1610, Boston
- Carol Weitzman, 4206 Woodbridge Rd., Peabody
- Brigitta Amsler, 286 Ocean Ave., Marblehead
- Charles Galvin, 5 Warren St., Salem
- William Sano, 35 Daniels St., Salem
- Robert Kieran, 14 Tremont St., Salem
- Robert Sant Fournier, 5 Crescent Ct., Beverly
- Carole Hartling, 37 Peach Highlands, Marblehead

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#755 - #760 – LICENSES APPLICATIONS

The Following License Applications were referred to the Committee on Ordinances, Licenses & Legal Affairs and that these licenses be carried forward to 2019

SEAWORMS:	Jose Machado, 5 Marion Ave, Beverly
SECOND HAND CLOTHING	Modern Millie, 3 Central St., Salem Re-Find, 72 Washington St, Salem
SECOND HAND VALUABLE:	Record Exchange LLC, 256 Washington St., Salem RJ Coins and Jewelry, 68 Wharf St., Salem Glass and Etc., 180 Essex St., Salem Tobies Jewelry, 140 Washington St., Salem Jacqueline A Satin at the Antiques Gallery, 69 Wharf St., Salem
TAG DAYS:	SHS Gymnastics 1/12/19, 2/23/19 SHS Girls Tennis 04/07/19, 05/04/19, 05/19/19

#761 – DRAINLAYER / CONTRACT OPERATOR LICENSES

The Following Drainlayer/Contract Operator License Applications were granted.

Atlantic Paving, 119 R. Foster St., Peabody
Cahill Excavation, 9 Shortell Ave., Beverly
EKB Equipment LLC, 141 Pine St., Danvers
Geosearch Inc, 11 Chocksett Rd., Sterling
J. Masterson Const. 46 Prince St., Danvers
Pumel Ent. Inc, 116 Rabbit Rd, Salisbury
Spencer Cont. Corp 67 Foster St., Peabody
Village Const. Co, 57 Wharf St 2G, Salem

#762 - CLAIM

The Following Claim was referred to the Committee on Ordinances, Licenses & Legal Affairs and that these licenses be carried forward to 2019.

Patricia Shelton, 5 Marrietta Ave., Wilmington

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#763 – DRAINLAYER BOND

The Following Bonds were referred to the Committee on Ordinances, Licenses & Legal Affairs and Returned Approved.

DRAINLAYER: Geosearch Inc, 11 Chocksett Rd., Sterling
Spencer Cont. Corp 67 Foster St., Peabody

(#21) – ORDINANCE AMENDING CH. 40 RELATIVE TO PUBLIC GUIDES

The matter of second and final passage of an ordinance amending Public Guides was then taken up. The Ordinance was adopted for second and final passage.

In the year Two Thousand and Eighteen

An Ordinance to amend an Ordinance relative to public guides

Be it Ordained by the City Council of the City of Salem, as follows:

Section I. Chapter 40 – Tourism and Public Marketing, Article II, Division I. Generally is hereby amended by:

1) Inserting within the examination Section 40-27 (a) the phrase “and requirements of this Ordinance” at the end of the first sentence of this sub-section

2) Inserting within the prohibition section 40.30 (3) the phrase “obstructs pedestrian access on a sidewalk, or leads a tour across or into a street open to vehicular traffic on a route other than a designated crosswalk” at the end of this sub-section

3) Insert the following new prohibited conduct immediately following Section 40.36 (6):

“(7) Conduct a tour exceeding the tour participant limit and/or security/staff oversight requirements as such may be established for public safety purposes by the Chief of Police;

(8) Utilize a voice amplification device on Brown Street, Howard Street, Brown Street Court, Kimball Court and Higginson Square;

(9) Utilize Candles or any other item with a flame on a tour; or

(10) Conduct a tour on the grounds of 33 Proctor Street.”

Section II. This Ordinance shall take effect as provided by City Charter.

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(#65) – ORDINANCE AMENDING CH. 2 SEC. 1005 RELATIVE TO AFFORDABLE HOUSING TRUST FUND BOARD OF TRUSTEES

The matter of second and final passage of an ordinance amending Affordable Housing Trust Fund Board of Trustees was then taken up. The Ordinance was adopted for second and final passage.

In the year Two Thousand and Eighteen

An Ordinance to amend an ordinance relative to the Affordable Housing Trust Fund Board of Trustees

Be it ordained by the City Council of the City of Salem, as follows:

SECTION 1. Sec. 2-1005. – Powers and Duties of Chapter 2, Article IV, Div. 14 – Affordable Housing Trust Fund Board of Trustees is hereby amended by adding the following new power and duty:

“(17) To study, evaluate, and recommend policies, programs, practices, ordinances, and similar measures to increase and maintain the availability of affordable and workforce housing in the City of Salem.”

SECTION 2. This ordinance shall take effect as provided by City Charter.

(#687) – ORDINANCE AMENDING TRAFFIC CH. 42, SEC. 57B - PARKING TIME LIMITED; OFF-STREET PARKING AREAS

The matter of second and final passage of an ordinance amending traffic, parking time limited; off-street parking areas, was then taken up. The Ordinance was adopted for second and final passage. Councillor Sargent was recorded as opposed.

In the year Two Thousand and Eighteen

An Ordinance to amend an ordinance relative to parking

Be it ordained by the City Council of the City of Salem, as follows:

Section 1. Chapter 42, Article V. Parking, Sec. 57B - *Parking time limited; off-street parking areas* is hereby amended by inserting the following new paragraph:

“Any off-street parking area on which a kiosk or multi-space meter is utilized for parking fees, including the parking lots on Church Street (W), Crombie Street, 297 Bridge Street and Bridge Street adjacent to 13 Howard Street shall be enforced Monday through Saturday 8:00 am to 6:00 pm and on Sunday Noon to 6:00 pm. Parking shall be free on Sundays for Salem residents, verified via automobile registration.”

Section 2. This Ordinance shall take effect as provided by City Charter.

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(#688) – ORDINANCE AMENDING CH. 2, SEC. 1031 – COMPOSITION OF THE SALEM YOUTH COMMISSION

The matter of second and final passage of an ordinance amending the Composition of the Salem Youth Commission was then taken up. The Ordinance was adopted for second and final passage.

SECOND PASSAGE ORDINANCE: Amending an Ordinance relative the Composition of the Salem Youth Commission

In the year two thousand and eighteen

An Ordinance to amend an Ordinance relative to the Youth Commission Composition

Section 1. Sec. 2-1031. - *Composition; appointment, term; filling of vacancies* of Chapter 2, Article IV. - Boards, Commissions, Committees and Authorities, Division 17 – Youth Commission is hereby amended by inserting a new second sentence as follows:

“Two alternate members shall also be appointed to serve for a term of one year.”

Section 2. This Ordinance shall take effect as provided by City Charter.

(#692) – ORDINANCE AMENDING TRAFFIC, HANDICAP PARKING, REPEAL PERKINS ST.

The matter of second and final passage of an ordinance amending Traffic Section 50B, Handicap Parking Limited Time, **Repeal** Perkins Street was then taken up. The Ordinance was adopted for second and final passage.

In the year Two Thousand and Eighteen

An Ordinance to amend an Ordinance relative to Traffic, Chapter 42, Section 50B, “Handicap Parking Zone, Limited Time”

Be it Ordained by the City Council of the City of Salem, as follows

SECTION 1. **Repeal** Perkins Street in front of #36 for a distance of twenty (20) feet, “Handicap Parking Zone, Limited Time”

SECTION 2. This ordinance shall take effect as provided by City Charter

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(#694) – ORDINANCE AMENDING TRAFFICE, HANDICAP PARKING, OSGOOD STREET

The matter of second and final passage of an ordinance amending Traffic Section 50B, Handicap Parking Limited Time, Osgood Street was then taken up. The Ordinance was adopted for second and final passage.

In the year Two Thousand and Eighteen

An Ordinance to amend an Ordinance relative to Traffic, Chapter 42, Section 50B, “Handicap Parking Zone, Limited Time”

Be it Ordained by the City Council of the City of Salem, as follows

SECTION 1. Osgood Street in front of #54 for a distance of twenty (20) feet, “Handicap Parking Zone, Limited Time”

SECTION 2. This ordinance shall take effect as provided by City Charter

(#695) – ORDINANCE AMENDING TRAFFIC, RESIDENT STICKER & PARKING TIME LIMITED UNMETERED ZONES – BROADWAY

The matter of second and final passage of an ordinance amending Traffic, Chapter 42, Sec. 75, Resident Sticker Parking and Section 57A, Parking Time Limited; Unmetered Zones – Broadway was then taken up. The Ordinance was adopted for second and final passage.

In the year Two Thousand and Eighteen

An Ordinance to Amend an Ordinance relative to Traffic Chapter 42, Section 75, “Parking Prohibitions Towing Zone (Resident Sticker)” and Chapter 42, Section 57A, “Parking Time Limited; Unmetered Zones” by adding the following:

Be it Ordained by the City Council of the City of Salem, as follows

Section 1. Chapter 42, Section 75, “Parking Prohibitions Towing Zone (Resident Sticker)”

Broadway – Parking Prohibitions Towing Zone (Resident Sticker) – Zone E, Color Orange, northeasterly side starting at the intersection with Loring Avenue and ending at the intersection with Canal Street.

Broadway – Parking Prohibitions Towing Zone (Resident Sticker) – Zone E, Color Orange, southwesterly side starting at the intersection with Loring Avenue and ending at the intersection with Canal Street, 6:00PM to 8:00AM.

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Section 2. Chapter 42, Section 57A, “Parking Time Limited; Unmetered Zones”

Broadway – Parking Time Limited: Unmetered Zones – southwesterly side starting at the intersection with Loring Avenue and ending at the intersection with Canal Street, two (2) hour parking 8:00AM to 6:00PM.

Section 3. This Ordinance shall take effect as provided by City Charter

(#696) – ORDINANCE AMENDING TRAFFIC, HANDICAP PARKING, CORNER OF WEBSTER AND PLEASANT STREETS

The matter of second and final passage of an ordinance amending Traffic, Chapter 42 Section 50B, Handicap Parking Limited Time, Corner of Webster Street and Pleasant Street was then taken up. The Ordinance was adopted for second and final passage.

In the year Two Thousand and Eighteen

An Ordinance to amend an Ordinance relative to Traffic, Chapter 42, Section 50B, “Handicap Parking Zone, Limited Time”

Be it Ordained by the City Council of the City of Salem, as follows

SECTION 1. To be placed on Webster Street, twenty (20) feet in an easterly direction from the corner of Pleasant Street starting at #17 and running in an easterly direction on Webster Street for a distance of twenty (20) feet, “Handicap Parking Zone, Limited Time”

SECTION 2. This ordinance shall take effect as provided by City Charter

On the motion of Councillor Furey the meeting adjourned at 10:05 P.M.