

**CITY OF SALEM
APRIL 29. 2024
JOINT PUBLIC HEARING OF THE
CITY COUNCIL AND THE PLANNING BOARD**

The Salem City Council will hold a Joint Public Meeting with the Planning Board in-person in the City Council Chambers, City Hall, 93 Washington Street, 2nd floor, Salem, MA on Monday, April 29, 2024 at 6:30 P.M. in accordance with Chapter 40A, Section 5, of the Massachusetts General Laws for the purpose of discussing a three (3) Zoning Ordinance Amendments relative to Coastal Resiliency Overlay District, Flood Hazard Overlay District, and amending Sec. 2.2, Overlay Districts, to add Coastal Resiliency Overlay District (C-ROD) to list of overlay districts. In person shall be the primary method of public access to such meetings. A secondary method of public access may be provided, if technologically feasible through Salem Access Television, and/or remotely through zoom. Please see below. The public hearing is to provide interested parties with an opportunity to comment on these Zoning Amendments. The complete text of these three (3) zoning ordinances are available in the back-up documentation, at the City Clerk's office, 93 Washington Street, Salem or the Planning Department, City Hall Annex, 98 Washington Street, Salem during normal working hours.

City Council in attendance: All councillors were present.

The meeting was called to order at 6:47 pm. Council President Hapworth presided.

Planning Board in attendance: Helen Sides, Acting Chair, Zach Caunter, Tom Furey, Sarah Tarbet, Jonathan Berk

Absent: Carole Hamilton, Kirt Reider, Bill Griset, Josh Turiel

Also in attendance: Amanda Chiancola, Deputy Director DPCD, Tom Devine, Senior Planner, Robyn Lee, Staff Planner, Tom Daniel Director DPCD, Andrew Gorman, Senior Environmental Planner, Beals and Thomas, Neal Duffy Director Sustainability and Resiliency, Deb Duhamel, City Engineer

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1. Add Sec. 8.9, Coastal Resiliency Overlay District (C-ROD) to establish standards for development within areas subject to projected worsening flood risk. Boundaries are based on the MA Coast Flood Risk Model's projected Significant Wave Height elevation in a 100- year flood event in 2070. Section applies to all new buildings within the overlay district and modification of buildings with 6 or more residential units or greater than 7,500 sq. ft. nonresidential space. Modification of an existing building where within a 24-month period Level 2 Alteration (per State Building Code) neither exceeds 50% of the aggregate building area below the Sea Level Rise Base Flood Elevation (SLR BFE) nor 75% of the aggregate building area above the SLR BFE. Residential dwelling units, building mechanical uses, and electrical service uses shall be located above the SLR BFE with the exception of Building Mechanical Uses and Electrical Service Uses that Cannot Practically Be Located Above the SLR BFE. Section provides limited relief from dimensional requirements for Building Height (measured from SLR BFE); and gross floor area and front, rear, and side yards (to exclude vertical circulation and flood protection equipment). Projects subject to the ordinance shall undergo C-ROD site plan review by the Planning Board who shall consider the following C-ROD site plan review criteria: adequacy of best practices to minimize flood risk or damage; adequacy of alternatives analysis and operations and maintenance plan for parking located below the SLR BFE within or beneath a building; adequacy of flood protection for all Building Mechanical Uses and Electrical Service Uses that Cannot Practically Be Located Above SLR BFE; adequacy of convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets and sidewalks in the event of coastal flooding; adequacy of project design to support pedestrian connections; adequacy of the minimization of the visual impact of utilities, building mechanicals, and flood protection equipment; adequacy of protection of the building's historic character and compatibility with historic character of the surrounding neighborhood. Waivers may be granted by the Planning Board if a project can achieve the purposes of this section without strictly meeting every provision, subject to the following considerations: whether existing roadway and sidewalk grade make compliance with requirement for vehicular and pedestrians movement during flood event impractical; whether there is no way to achieve vertical circulation that complies fully with both this section and the Americans with Disabilities Act and MA Architectural Access Board standards; whether the purposes of the ordinance can be achieved through innovative design approaches or through external site features. A project within a Local Historic District, individually listed on the National Register of Historic Places, or determined by the Salem Historical Commission to be historically significant, that meets the provisions of the ordinance to the maximum extent practicable but demonstrates that full compliance with the ordinance is not feasible without degrading the structure's historic character, may request a waiver from the Planning Board.

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Mr. Daniel, Director DPCD, sets context for this work that goes back two years ago as an outgrowth of prior work on the Wetlands Ordinance where zoning work didn't fit into wetlands work. This policy work began in the Planning and Sustainability and Resiliency departments with coming on board Engineering. There has been a working group with deliberative discussions, reading, and learning.

Mr. Devine recognizes others who have been a part of the working group. He shares proposed zoning changes that require buildings to be resilient to projected future flooding events and keeps the city eligible for federal flood insurance. Ongoing planning will be needed to prioritize what we protect in the city and for how long. There will be hard decision to be made in the future. This will be presented in three separate hearings but is comprehensive zoning change.

Mr. Devine provides background on the process. The most direct related to these changes are: 2020: Salem Sound Coastwatch Risk Model introduction; 2022: Wetlands Ordinance update, changes included giving Conservation Commission ability to consider climate change when reviewing development in flood zones; 2022: Resilient Together, El Punto, included a recommendation to update flood ordinance to incorporate future flood risk. The proposed zoning changes consider human health as well.

Engagement for the zoning changes include: 2022: webpage launch; 2023: public forum, presentations to the Committee of the Whole and Sustainability, Energy, and Resiliency Committee; 2024: Joint Public Hearing between City Council and Planning Board.

The working group has met eight times since 2022. These zoning changes are where conversations landed.

Today flood ordinances are permitted through Building Department, Conservation Commission, and Planning Board. The Wetlands Protection Ordinance was updated in 2022 to include climate change.

The new zoning ordinance, C-ROD, will be a Planning Board Site Plan Review. State and federal government require an ordinance that is tied to FEMA maps that don't project future flooding. We propose changing this from Planning Board to an administrative permit, F-HOD.

Andrew Gorman, Beals and Thomas, will go over four major goals of C-ROD: resiliency over time, emergency response needs, creating clear legal and implementable regulations, climate adaptation in historic buildings and neighborhoods.

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In 2020, Salem Sound Coast Watch with the Woods Hole group looked at different flood projections. They selected 2070 100-year flood plain, which projects 4.3' of sea level rise over 2008 baseline. This provides the boundaries of the proposed ordinance. There is an [interactive map available](#).

Looking at all new buildings, major renovations of large buildings (six (6) or more residential units or greater than seven thousand five hundred (7500) square feet of nonresidential area), and major renovations of small residential buildings (fewer than six (6) units).

Dwelling units and mechanicals must be raised above sea level rise base flood elevation. Selective parking will be allowed below sea level if no alternatives are available.

Exemptions include non-major renovations, detached unoccupied accessory structures, divided ownership, mechanicals not being reconfigured or expanded, and smaller buildings rebuilt after catastrophe.

Maximum building height measured from SLR BFE. Areas for vertical circulation from the grade (stairs, ramps, or elevators) are excluded from the GFA and those devoted to flood protection equipment. Exempted areas include areas of vertical

General waivers include whether grade of the existing roadways or sidewalks from which the property derives; no way to comply with both C-ROD and ADA; resiliency can be achieved by not foreseen circumstances. Planning board can peer review if there is an innovation not foreseen in ordinance.

Many historic properties on the waterfront. Unique waiver for historic properties in local historic district, listed in National Register of Historic Place, or significant from Salem Historical Commission. If waiver is necessary to avoid degrading building's historic character. Historical Commission can provide comments.

The proposal is that this permitting occur through Site Plan Review with the Planning Board. They can solicit peer review feedback on technical matters. Must comply with MBTA Communities Zoning law.

City Council Questions:

Councillor Cohen asks for clarification on renovations. What renovations will enable this to be applied? Mr. Gorman says that they defer to how it is defined in the building code, structural changes. Councillor Cohen doesn't understand how mechanicals will not be changed and wonders why new mechanicals wouldn't be dictated. Mr. Gorman says that

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if the existing mechanical system is in place and it meets the needs of the structure, the ordinance wouldn't force renovation. The councillor continues by asking about the waiver for buildings that are over fifty (50) years old. Many of those properties are deemed that way without consideration if they can withstand flood adaptation. There are many historic properties that are not. Would like language that is not universal. Mr. Gorman says that the ordinance allows the Historical Commission to provide an advisory opinion specific to waiver, not that it should be exempted. Mr. Devine adds that the Planning Board still has final say. This process provides some relief to a property that can't be raised. Councillor Cohen has concerns about the language of "unanticipated technologies of resiliency".

Councillor Jerzylo questions the one-hundred-year flood, 2070 storm. In the last five (5) years, we have seen two (2) one-hundred-year storms. Since then we have seen a 100-yr storm in our city every year. We should be thinking 2030, 2035. We always show videos of what is actually happening and people say that "happens in 2070". Mr. Gorman says these storms are becoming more frequent. 2070 was arrived at scenario because we looked at Woods Hole Group's mappings after working with MassDOT and Salem Sound Coastwatch. They had various sea level rise scenarios in 2030, 2050, and 2070. 2070 represents higher scenario of sea level rise. Working group selected a model that reflected concerns.

Council President Hayworth returns to future technologies question from Councillor Cohen. Mr. Gorman says that this ordinance allows for vetting from third party review new technologies. No one can propose an engineering structure and not be vetted.

Planning Board Questions:

Mr. Caunter asks why the Planning Board is given the discretion to determine if an applicant is required to inform a potential buyer of the FHOD, why is this not a requirement? Mr. Gorman replies that the intent is to open the door for that, there may be situations where this isn't warranted.

Public Comment:

Justin Whittier, 10 River Street

There are good changes presented here. The loss of the Planning Board Special Permit loses essential protections for neighborhoods. The FHOD allows the city to say "no" to bad developments and this change will only allow tweaking. Current ordinance has four conditions that must be met. The C-ROD ordinance has toothless criteria. The current Planning Board Special Permit was wisely designed to maintain character of neighborhoods and provides safety for residents. Conditions that were previously

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defined as “must be met” are now “criteria to be considered”. Current language of the ordinance only applies to historic buildings and neighborhoods.

Councillor Morsillo moves for the public hearing to be closed. All in favor. The matter carries

Councillor Morsillo moves that the matter be referred to the Planning Board for their recommendation. All in favor. The matter carries.

2. Replace Sec. 8.1, Flood Hazard Overlay District, with new language to comply with Mass. Flood Hazard Management Program’s 2020 model ordinance to maintain the City’s participation in the National Flood Insurance Program (NFIP). The section will apply to development within the overlay district with boundaries based on the Special Flood Hazard Area on the Essex County Flood Insurance Rate Map, dated July 19, 2018. The Building Commissioner, designated as the Community Floodplan Manager, administers permits under this section and may issue a Determination of Non-Applicability for activities that have no or de minimis impact on flooding. Review criteria are: Activities may not substantially increase flood elevation in Zones A and AE; applicant shall provide Base Flood Elevation (BFE) and floodway data for work in unnumbered A Zones; subdivisions must meet established standards for flood protection; developments greater than 50 lots or 5 acres must provide technical data when BFE is not established by FEMA; in event of watercourse alteration, Floodplain Administrator notifies adjacent communities, affected bordering states, NFIP State Coordinator, and NFIP FEMA Program Specialist; City to notify NFIP State Coordinator and NFIP FEMA Program Specialist if acquiring new data that changes base flood elevation; in Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, Local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels; encroachments are prohibited in regulatory floodways unless a hydrologic and hydraulic analysis shows it will not increase BFE. For projects in the Central Business District, the amendment shall be applicable upon approval of an Economic Feasibility Analysis by the Executive Office of Housing and Livable Communities.

Mr. Gorman introduces the FHOD. To meet NFIP eligibility, must meet federal requirements and follow state model ordinance. The state model ordinance was looked at in partnership with the Massachusetts Department of Conservation and Recreation (DCR) flood office. The goal is to comply with minimum flood insurance requirements and that meets the needs of Salem. The FHOD boundaries are defined by FEMA’s special flood hazard area (the 100-year flood zone) on Essex County Flood Insurance Rate Maps. The proposal is a permitting process for all proposed construction in the floodplain overlay district. The Building Commissioner can make determination of non-applicability

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(roofing, windows, some interior remodeling). The proposal will include an administrative permit, not special permit, through Inspectional Services with DPCD support. Floodplain Administrator role will be filled by Building Commissioner, every community in Massachusetts will have this. Requirements include elevating residential structures above the existing floodplain, prohibition on raising base flood elevation, providing BFE data when FEMA doesn't, prohibitions on floodway encroachments.

What happens to current FHOD provisions. The one-hundred-year (100) flood plain overlaps with the 2070 one-hundred-year (100) flood plain often. Public hearing on these issues would be through the Site Plan Review under C-ROD, compliance with underlying district, utilities protected, and pedestrian vehicular movement moves to CROD.

Mr. Devine notes [written public comments](#) from: Emmett Costen, Morris Schopf, The Board of the Federal Street Neighborhood Association, and Margaret Van Deusen.

City Council Questions:

Councillor Morsillo asks where written public comments are. Ms. Chiancola clarifies they are in the Planning Board SharePoint folder.

Planning Board Questions:

No questions

Public Comment:

Stacia Kraft

There is a technical difficulty on the speaker's part

Councillor Morsillo moves that the public hearing be closed. All in favor. The matter carries

Councillor Morsillo moves that the matter be referred to the Planning Board. All in favor. The matter carries.

Return to Public Comment

Stacia Kraft, 140 Federal Street

Three years ago in 2021, over eighteen hundred (1800) residents signed petition for banning development in flood zones. This was after viewing Woods Hole mapping. Though we went on to amend wetlands protections. This issue is addressed my NPS and the gables. The environmental head for Massachusetts recommended a managed retreat for structures.. We are now encouraging new development in flood zones. This FHOD will streamline new development in our flood zones.

3. Amend the Zoning Ordinance to revise Sec. 2.2, Overlay Districts, to add Coastal Resiliency Overlay District (C-ROD) to list of overlay districts.

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Mr. Devine presents. If C-ROD is passed then C-ROD must be added to the list. Mr. Devine goes on to share a list of team contacts

Council President Hapworth motions for a five-minute recess. None opposed. The motion is approved. Motion for 5-minute recess

The meeting resumes. The City Solicitor is reviewing case law to see if the hearing needs to be repeated due to the unexpected departure of a Planning Board member.

Mr. Devine concludes his presentation. There are two things happening a new ordinance to require future resiliency from flooding and updated ordinance to require meeting federal requirement to maintain federal requirements for flood insurance eligibility.

City Council Questions:

Councillor Merkl thanks the work that has gone into these ordinances

Planning Board Questions:

No questions

Public Comment:

No comments.

Councillor Morsillo moves to close public hearing. All in favor. The matter carries.

Councillor Morsillo moves that the matter be referred to the Planning Board. All in favor. The matter carries

Zach Caunter moves to adjourn the Planning Board. Sarah Tarbet seconds. All in favor.

On the motion of Councillor Prosniewski the meeting adjourned at 7:48 P.M.