

**RESOLUTION NO. 2101**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SALISBURY TO ESTABLISH A MORATORIUM ON CERTAIN CITY ENFORCEMENT ACTIONS IN CONNECTION WITH MULTI-FAMILY RESIDENCES IN R-5, R-8, AND R-10 ZONING DISTRICTS THAT ARE SUSPECTED OF BEING USED IN AN ILLEGAL, NON-CONFORMING MANNER

WHEREAS, the Mayor and Council recognize that a fundamental principle of zoning under Maryland law is to reduce nonconformance; and

WHEREAS the City of Salisbury desires to enact changes to the City Code and/or to City procedures in connection with the enforcement of the City's Zoning Code, specifically in connection with illegal, non-conforming uses in R-5, R-8, and R-10 zoning districts, with the goal of making enforcement more efficient, more fair, and less confusing for the City's zoning officials, the City's Board of Zoning Appeals, property owners, and members of the general public; and

WHEREAS the City of Salisbury believes that enacting the changes in enforcement procedures and/or the City Code will require a certain amount of time to complete; and


WHEREAS the City of Salisbury believes that, in the interim time between passage of this resolution and the enactment of the changes, it is equitable that a moratorium of City enforcement actions in connection with properties suspected of being used in an illegal, non-conforming manner be established.

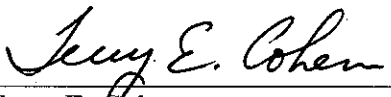
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SALISBURY THAT a moratorium is established on City enforcement actions in connection with multi-family residences in the R-5, R-8, and R-10 zoning districts that are suspected of being

used in an illegal, non-conforming manner, as defined by the City's Zoning Code, for a period of 90 days or until new procedures are adopted, whichever is sooner.

The above Resolution was introduced and duly passed at the regular meeting of the Council of the City of Salisbury held on the 12th day of September, 2011, and is to become effective immediately upon adoption.

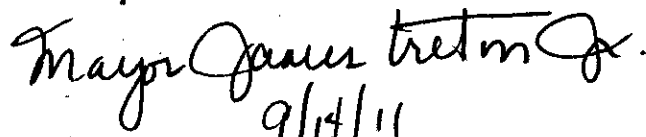
ATTEST:

  
Brenda J. Colegrove  
City Clerk

  
Terry E. Cohen  
President of the City Council  
of the City of Salisbury

~~APPROVED BY ME this \_\_\_\_\_ day of \_\_\_\_\_, 2011.~~

~~James Ireton, Jr.,  
Mayor of the City of Salisbury~~

*Not approved:*  
  
9/14/11

Council overrode mayor's veto on September 19, 2011 5-0 vote

  
Brenda J. Colegrove, City Clerk

---

---

**MEMORANDUM**

---

---

**TO:** ALL CITY COUNCIL MEMBERS  
**FROM:** TERRY E. COHEN, COUNCIL PRESIDENT  
**SUBJECT:** RESOLUTION - LEGAL NONCONFORMING USE VS. ILLEGAL  
CONVERSION MORATORIUM  
**DATE:** 9/8/2011  
**CC:** BRENDA COLEGROVE, KIM NICHOLS, JOHN PICK, MAYOR IRETON

---

This cover memo for the attached resolution is provided for the benefit of the public record and for framing the discussion of the attached resolution to enact a moratorium of 90 days or less for enforcement actions on suspected illegal conversions of single-family homes into multifamily use. This will also provide an opportunity to set the record straight after misinformation resulting from a statement of the mayor's was published in today's *Daily Times*.

On August 2, 2010, Mayor Ireton held a press conference to release a package of legislation relative to crime and housing issues, known as "The 2010 Safe Streets Neighborhood Legislative Package." He introduced six new pieces of legislation and advised that an existing portion of code, periodic inspections, would get renewed focus.

Without rehashing all the controversy, among the relevant facts is that Council Vice President Campbell and I (prior to election to council leadership) were invited by the mayor to weigh in on legislation drafted by the city's legal counsel under his direction. We gave input to five pieces of legislation.

The mayor's proposal to change the Board of Zoning Appeals procedure (original proposed ordinance attached) was not one of them, contrary to the mayor's assertion in today's *Daily Times* that this piece of legislation "was written by Councilwomen Cohen and Campbell, staff experts, and myself." Neither Mrs. Campbell nor I had seen that piece of legislation until its presentation at the press conference.

In discussion about this proposal, Council perceived problems with the mayor's recommendation to raise the evidence standard to one typically associated with criminal cases, which may make enforcement more difficult than it already is. Possible considerations for achieving the goal of abating illegal conversions include those used by other municipalities.

The mayor also lamented in the *Daily Times* today that it had been a year since he had introduced this legislation and tied that delay to current council leadership. The facts are:

- The previous council president did not allow any portion of the mayor's proposed package on the agenda for approximately six months.

- The then-majority's preference was start with what is known as the "Crime-free Lease Addendum."
- The current council and its current leadership was sworn in on April 18, 2011.
- On May 16, council first considered the mayor's proposed "Tenants' Bill of Rights" form, which was part of the originally proposed package.
- Council made modifications with assistance from legal counsel and developed an ordinance to make the now "Tenants' Rights Lease Addendum" a legal requirement.
- The "Tenants's Rights Lease Addendum" became law on August 8.
- Two weeks later, the proposed change to the Board of Zoning Appeals procedure was placed on council's August 22 work session agenda and discussed. Research was to be done on two tracks.
- Sept. 6, the council reviewed the findings of legal counsel, the 1995 Boards of Zoning Appeals handbook found by the City Clerk Brenda Colegrove and materials I had submitted a year ago to the mayor and legal counsel on other municipalities' laws. Input from staff and from a local landlord and attorney was considered. Council's conclusion was, a moratorium would be advisable while council works to create an ordinance that works well, rather than producing something quickly just for the sake of output and appearances.

Although as noted by legal counsel a moratorium could be accomplished administratively by the mayor, City Administrator John Pick requested a formal action from Council. This affords the public great transparency and the City greater protection, as was the case with the Adult Establishments zoning ordinance.

Before seeing the proposed resolution, the mayor responded that he does not support a moratorium and issued biting criticism in today's newspaper. It is now up to Council to decide if it is better for the City and the public to require a moratorium on a process the mayor stated in his original proposal is "undermined" or to allow that process to continue while new law is developed.

Council shares the desire of the public and the mayor to eliminate illegal conversions, but understands the importance of being meticulous to create laws that can be enforced and upheld, with an outcome that achieves the goal.

A good start has been achieved by the council in just a few weeks. With diligence and effective support, errors of the past can be avoided. New legislation can be passed and implemented that gains what is desired by not only both Mayor and Council, but also and more importantly, by the people we serve, in a responsible and fair manner.

###

CITY OF SALISBURY

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SALISBURY TO AMEND CHAPTER 17.12 TO CHANGE THE BOARD OF ZONING APPEALS PROCEDURES FOR APPEALS RELATED TO NONCONFORMING USES.

WHEREAS, the Mayor and Council recognize that a fundamental principle of zoning under Maryland law is to reduce nonconformance;

WHEREAS, the Mayor and Council are concerned that a shortage of safe, code compliant, low and moderate income housing exists in the City of Salisbury and that the past conversions of single-family residences to multifamily residential use have provided and continue to provide, in many cases, unsafe and non-code compliant low and moderate income dwelling units in the City, which pose a threat to the health, safety, and welfare of the Citizens of Salisbury;

WHEREAS, the Mayor and Council recognize that nonconforming use enforcement efforts are being undermined by the practical effect of certain provisions of the hearing procedures set forth in the Salisbury Municipal Code for the Board of Zoning Appeals: specifically, the presentation of affidavits, which often cover periods of time in excess of fifty years, in lieu of live testimony and the desire of the board to question witnesses regarding discrepancies that appear in the affidavits and evidence presented.

WHEREAS, the Mayor and Council have determined that an applicant or appellant should have to meet a more demanding burden of proof when seeking to have a nonconforming use declared lawful because a fundamental principle of zoning law is to reduce nonconformance.

WHEREAS, the purpose of these amendments is to promote the goal of returning nonconformance to conformance by ending unlawful nonconforming uses, establishing uniform standards and criteria for remedying the problem of unlawful and, in some cases, lawful conversions from single-family to multifamily residential uses and, in so doing, incorporate the

concepts of equity necessary to protect those who should be deemed faultless. Nothing herein shall be construed to limit the rights of any person under the provisions of the Zoning Code.

NOW THEREFORE, be it enacted and ordained by the City Council of the City of Salisbury, in regular session, as follows:

## **Chapter 17.12**

### **Article VI Board of Zoning Appeals**

#### **Sections**

#### **17.12.120 Hearings and meetings—Actions on similar application—Time Limit**

A. The board shall fix a reasonable time and place for the public hearing of an application, appeal or other matter, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. All meetings of the board shall be open to the public.

1. Hearings other than Nonconforming Uses. At the hearing, any party may appear in person or by agent or by attorney and testify as to any material facts. The burden of proof and persuasion on all questions of fact, which are to be determined by the board by a preponderance of the evidence, shall be on the applicant or appealing party.

2. Hearings on Nonconforming Uses. At the hearing, a party shall appear and may be represented by an attorney. A person offering testimony shall appear and testify in person. The burden of proof and persuasion on all questions of fact, which are to be determined by the board by clear and convincing evidence, shall be on the applicant or appealing party.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, that this ordinance shall take effect upon final passage.

THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the \_\_\_\_ day of \_\_\_\_\_, 2009, and having been published as required by law, in the meantime, was finally passed by the Council on the \_\_\_\_ day of \_\_\_\_\_, 2009.

---

Brenda J. Colegrove, City Clerk

---

Louise Smith,  
President of the Council of  
the City of Salisbury

Approved by me, this \_\_\_\_\_  
day of \_\_\_\_\_, 2009.

---

James Ireton,  
Mayor of the City of Salisbury