

## **ORDINANCE NO. 2693**

### **AN ORDINANCE OF THE CITY OF SALISBURY TO ESTABLISH A PAYMENT IN LIEU OF TAXES (“PILOT”) TO ENCOURAGE AFFORDABLE HOUSING DEVELOPMENT.**

**WHEREAS**, there is a significant need in the City of Salisbury for quality housing units for persons with low to moderate incomes; and

**WHEREAS**, Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland authorizes a municipality to offer a payment in lieu of taxes (“PILOT”) for properties: i) owned by persons engaged in constructing or operating housing structures or projects and ii) used for a housing structure or project that is constructed or substantially rehabilitated under a federal, state or local government program that 1) funds construction, or insures its financing in whole or in part, or 2) provides interest subsidy, rent subsidy or rent supplements; and

**WHEREAS**, in accordance with the above enabling authority, the City of Salisbury desires to offer a PILOT to owners of developments eligible to receive financing through the Low Income Housing Tax Credit (LIHTC) Program of the Maryland Department of Housing and Community Development (“DHCD”); and

**WHEREAS**, to qualify for the City of Salisbury PILOT, owners participating in the LIHTC Program must 1) operate an eligible development project as rental housing for low to moderate income households and limit rents pursuant to the Extended Low Income Housing Covenant for Low Income Housing Tax Credits between the owner and DHCD; 2) make no less than sixty percent (60%) of the housing units available to households having incomes of no more than sixty percent (60%) of the area median income; and 3) continue to qualify in all respects under the provisions of Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland; and

**WHEREAS**, implementing the PILOT will encourage eligible owners to construct or expand the inventory of affordable housing in the City of Salisbury; and

**WHEREAS**, the Mayor joins with the City Council in recommending the implementation of the PILOT.

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND**, as follows:

**Section 1.** Title 3 of the Salisbury City Code, entitled “REVENUE AND FINANCE”, be and hereby is amended by adding a new Chapter 3.26, titled “Payment in Lieu of Taxes (PILOT)”, as follows:

#### **Chapter 3.26 Payment in Lieu of Taxes (PILOT)**

##### **3.26.010 – Definitions**

**In this Chapter, the following words have the following meanings indicated.**

**“Affordable Housing Development” means a housing structure or project in the City of Salisbury that is: 1) eligible to receive financing through the Low Income Housing Tax Credit (LIHTC) Program of the Maryland Department of Housing and Community Development (“DHCD”); 2) operates as rental housing for low to moderate income households and limits rents pursuant to the Extended Low Income Housing Covenant for Low Income Housing Tax Credits between the owner and DHCD; 3) makes no less than sixty percent (60%) of the housing units available to households**

having incomes of no more than sixty percent (60%) of the area median income; and 4) continues to qualify in all respects under the provisions of Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland.

“Affordable Housing Unit” means a dwelling within the Affordable Housing Development that is offered for rent for residential occupancy and is made available to households having incomes of no more than sixty percent (60%) of the area median income.

“Payment in lieu of taxes” means an authorized payment made by the owner of an Affordable Housing Development instead of paying the City of Salisbury real property tax.

### 3.26.011 – Requirements of PILOT Agreement

The City of Salisbury shall enter into an agreement to accept a negotiated payment in lieu of the real property tax that would otherwise be levied on an Affordable Housing Development. Such an agreement shall consist of the following minimum terms:

A. Affordable Housing Developments shall receive a reduction of the City of Salisbury real property tax in an amount of Four Hundred Dollars (\$400.00) per Affordable Housing Unit per year, the collective amount of which shall not exceed the total annual City of Salisbury real property tax assessed to the Affordable Housing Development. The reduced amount provided for herein shall be accepted by the City of Salisbury as a payment in lieu of taxes, provided that:

B. The housing structure or project continues to qualify as an Affordable Housing Development, as set forth in 3.26.010, for a period of forty (40) years from the date the Affordable Housing Development is granted a certificate of occupancy. At any time after receiving a negotiated agreement for payment in lieu of taxes, but before forty (40) years after receiving a certificate of occupancy, if the housing structure or project fails to meet the requirements set forth in this Section 3.26.011 (B), then the owner of the housing structure or project shall pay to the City of Salisbury the difference between the ordinary City real property taxes and the payment in lieu of taxes for all years from the date the housing structure or project fails to meet the requirements of this Section 3.26.011 (B) back to the date of the initial reduction set forth in the above Section 3.26.011(A), as if the property had not been granted a payment in lieu of taxes.

### 3.26.012 – Authority to Bind

The Mayor of the City of Salisbury is authorized to enter into an agreement with the owner of an Affordable Housing Development for a payment in lieu of taxes in accordance with this Chapter 3.26.

**BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, as follows:**

**Section 2.** It is the intention of the Mayor and Council of the City of Salisbury that each provision of this Ordinance shall be deemed independent of all other provisions herein.

**Section 3.** It is further the intention of the Mayor and Council of the City of Salisbury that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged invalid, unconstitutional or otherwise unenforceable under applicable Maryland or federal law, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and all other provisions of this Ordinance shall remain and shall be deemed valid and enforceable.

**Section 4.** The recitals set forth hereinabove are incorporated into this section of the Ordinance as if such recitals were specifically set forth at length in this Section 4.

**Section 5.** This Ordinance shall take effect from and after the date of its final passage.

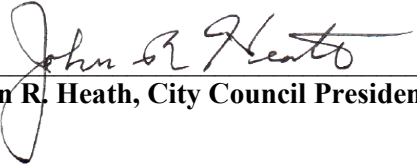
**THIS ORDINANCE** was introduced and read at a Meeting of the Mayor and Council of the City of Salisbury held on the 25<sup>th</sup> day of October, 2021 and thereafter, a statement of the substance of the Ordinance having been published as required by law, in the meantime, was finally passed by the Council of the City of Salisbury on the 8<sup>th</sup> day of November, 2021.

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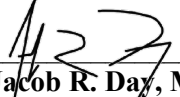
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**ATTEST:**

  
\_\_\_\_\_  
**Kimberly R. Nichols, City Clerk**

  
\_\_\_\_\_  
**John R. Heath, City Council President**

Approved by me, this 11th day of November, 2021.

  
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**Jacob R. Day, Mayor**

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**WHEREAS**, the Owner proposes to develop the multifamily component of \_\_\_\_\_, a \_\_\_\_\_ development consisting of a commercial building and rental apartments, located at \_\_\_\_\_ in Salisbury, Maryland (the “Property”) for the purposes of providing rental housing for low to moderate income households (the “Project”); and

- (a) The real property is owned by a person engaged in constructing or operating housing structures or projects; and
- (b) The real property is used for a housing structure or project that is constructed or substantially rehabilitated under a federal, state or local government program that:
  - (1) funds construction, or insures its financing in whole or in part, or
  - (2) provides interest subsidy, rent subsidy or rent supplements; and
- (c) The Owner:
  - (1) agrees to continue to maintain the real property as rental housing for lower income persons under the requirements of the government programs and to renew any annual contributions contract or other agreement for rental subsidy or supplement; or
  - (2) enters into an agreement with the governing body of the City to allow the property or portion of the property which was maintained for lower income persons to remain as housing for lower income persons.

**WHEREAS**, the Owner has demonstrated to the City that an agreement for payments in lieu of taxes is necessary; and

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH:** In consideration of the mutual covenants, terms and agreements hereof and pursuant to the power and authority of Section 7-506.1 of the Tax Property Article of the Annotated Code of Maryland, it is agreed as follows:

45           1.       The Owner agrees: (1) that it will operate the Project as rental housing for low to  
46 moderate income households and will limit rents pursuant to the Extended Low Income Housing  
47 Covenant for Low Income Housing Tax Credits between the Owner and the Maryland Department  
48 of Housing and Community Development (herein the "Extended Use Covenant"); (2) it will make  
49 no less than 60 percent of the units available to households having incomes of no more than 60  
50 percent of the area median income ("**Affordable Housing Units**"); and (3) that the Project qualifies  
51 and will continue to qualify in all respects under the provision of said Section 7-506.1 of the Tax  
52 Property Article of the Annotated Code of Maryland.

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54           2.       Beginning July 1, 2022, or the July 1 following the issuance of certificate of  
55 occupancy, whichever is later, the Property shall be exempt from ordinary City real property taxes,  
56 provided the Property continuously meets the requirements set forth in the above paragraph 1 for a  
57 period of forty (40) years. In lieu of ordinary City real property taxes, the Property shall make a  
58 payment equivalent to the Property's total annual City real property tax assessment, reduced by  
59 the amount of Four Hundred Dollars (\$400.00) per Affordable Housing Unit per year, which  
60 collective reduction shall not exceed the total annual City real property tax assessment. The  
61 payments to be made hereunder by the Owner to the City with respect to the Property shall be in  
62 lieu of all ordinary City taxes on real property under the Tax Property Article of the Annotated  
63 Code of Maryland, and shall be made by the Owner first and accepted by the City through the Fiscal  
64 Year 2058, or for forty (40) years following the issuance of the certificate of occupancy.

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66           3.       This Agreement shall be in effect for forty years, which is anticipated to be through  
67 **Fiscal Year 20\_\_**, **ending June 20\_\_** and the portion of the property to be maintained for lower  
68 income persons shall remain as housing for lower income persons for a term of at least forty (40)  
69 years pursuant to Section 7-506.1(a)(2)(iv)2. The Property shall be assessed and reassessed from  
70 time to time as though for purposes of City real property taxation according to the regular methods  
71 and practices applicable to other real property of a similar classification in the City of Salisbury.

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73           4.       If at any time during the term of this Agreement, the City real property taxes are  
74 less than the Payment in Lieu of Taxes (the "PILOT"); the Owner shall pay the ordinary City real  
75 property taxes payable as if the property not been tax exempt.

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77           5.       For the **Fiscal Years 20\_\_ through 205\_\_** the Owner's annual payment in lieu of  
78 taxes shall be calculated as follows:

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80           Owner shall make payment in lieu to the City in an amount equal to the fiscal year taxes, an amount  
81 of the assessed value of the property times the City tax rate minus (such subtracted amount  
82 calculated as follows:  $\$400 \times \text{Affordable Housing Units} = \$$ \_\_\_\_\_). No credit shall be  
83 given to the Owner in the event the reduction is in excess of the City tax rate.

84           6.       By June 30th of each year, the Owner shall provide to the City evidence of its  
85 ongoing compliance with the requirements set forth in the above Paragraph 1. By July 30<sup>th</sup> of each  
86 year, the City shall bill the Owner for the payment which is due by September 30<sup>th</sup> of that year, as  
87 set forth in this Agreement.

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89           7.       Payments due hereunder will be considered delinquent thirty (30) days after the  
90 due date of the bill sent to the Owner. Interest at the rate of one percent (1%) per month shall be  
91 charged and collected by the City on all amounts remaining unpaid thirty (30) days after the due  
92 date.  
93

8. If, during the term of this Agreement, a Project fails to meet the requirements set forth in the above paragraph 1, then the Owner shall pay a sum equal to the total real property taxes which would have been due from the Owner in the absence of this Agreement, plus all interest, if any, less all amounts actually paid under this Agreement.

9. If the Owner is in default for one hundred eighty (180) days for any payment required under any of the provisions of this Agreement, the City may, at its option, declare a default by providing written notice of the default to the Owner and to the holders of all mortgages or deeds of trust. If within thirty (30) days of such notice, the payments have not been brought current, then the City may, at its option, declare all amounts due as follows: a sum equal to the total real property taxes which would have been due from the Owner in the absence of this Agreement, plus all interest, if any, less all amounts actually paid under this Agreement. To enforce its rights under this paragraph, the City may renegotiate this Agreement, foreclose, or seek any other remedy available at law or in equity. Notwithstanding anything to the contrary which is or might be contained in this agreement, payments due under this paragraph shall be considered a first lien against the Property and superior to any other liens placed upon the Property and may be collected in the same manner as City real property taxes.

10. In the event of the sale or other transfer of Owner's right, title and interest in and to the Project, which shall only occur with the express written consent of the City, which consent shall not be unreasonably withheld, Owner shall be relieved of all obligations and liabilities under this Agreement accruing after the date of such sale or transfer, and the purchaser or transferee of Owner's right, title and interest in and to the Property shall automatically, without the execution of any further documentation, become responsible for all obligations and liabilities of Owner under this Agreement accruing from and after the date of such sale or transfer. Any subsequent sales or transfers shall likewise relieve the seller or transferor of all obligations and liabilities under this Agreement accruing from and after the date of sale or transfer, and the purchaser or transferee shall automatically become responsible therefor.

11. This Agreement may be assigned to a holder of a mortgage or deed of trust in the event of a foreclosure or transfer under said mortgage or deed of trust, provided that the assignee shall be subject to the terms and conditions of this Agreement.

12. For the purposes of this Agreement, all notices shall be hand-delivered or mailed by first class mail or certified mail, return receipt requested or via overnight delivery service. Notices shall be given to the Parties as follows:

TO CITY: Office of Finance/City of Salisbury  
Government Office Building  
125 N. Division Street  
Salisbury, MD 21801

TO OWNER: \_\_\_\_\_  
OWNER ADDRESS  
\_\_\_\_\_  
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\_\_\_\_\_

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149 Each notice that is sent by one Party to the other Party at the listed address shall be  
150 presumed to have been received three (3) days after the date of mailing; except when prior written  
151 notice is given by one Party to the other that a Party or an address has changed. Notwithstanding  
152 any provision to the contrary contained in this Agreement, any person or Party not listed in this  
153 paragraph shall not be entitled to notice as may be required by this Agreement unless one Party  
154 notifies the other Party that additional notice shall also be sent to such person or Party.  
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156 13. This Agreement shall inure to the Parties hereto and their respective successors,  
157 assigns, and/or legal representatives.  
158

159 14. The recitals set forth at the beginning of this Agreement shall be deemed to be a  
160 part of this Agreement.  
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162 15. Mention in this Agreement of any specific right or remedy shall not preclude the  
163 City from exercising any other right or remedy available at law or in equity; and the failure of the  
164 City to insist in any one or more instances upon a strict or prompt performance of any obligation  
165 of Owner under this Agreement, or to exercise any option, right or remedy herein contained or  
166 available at law or equity, shall not be construed as a waiver or relinquishment thereof, unless  
167 expressly waived in writing by the City. The waiver by the City of any breach of this Agreement  
168 requires the City's written consent to any act or conduct of Owner; and knowledge of, or  
169 acquiescence by the City in, any such act or conduct shall not be deemed a waiver of the  
170 requirement for written consent. Exercise by the City, or the beginning of the exercise by the City,  
171 of any one or more of the rights or remedies provided for in this Agreement or now or hereafter  
172 existing at law or in equity or by statute or otherwise shall not be construed as an election of  
173 remedies so as to preclude the simultaneous or subsequent exercise by the City of any other right  
174 or remedy for such breach.  
175

176 16. This Agreement contains the entire agreement of the Parties to this Agreement with  
177 respect to the matters set forth herein. All other agreements and understandings of the Parties to the  
178 Agreement, written or oral, if any, are merged into this Agreement.  
179

180 17. This Agreement may be amended or modified in whole or in part only by an  
181 agreement in writing, executed by all of the Parties to this Agreement.  
182

183 18. The Parties covenant and agree with one another, upon the request of any Party to  
184 this Agreement, to do, execute, acknowledge and deliver, or cause to be done, executed,  
185 acknowledged or delivered, any such further act(s), deed(s), document(s), assignment(s),  
186 transfer(s), conveyance(s), power(s) of attorney or assurance(s) as may be reasonably necessary or  
187 desirable to give full effect to this Agreement and the transactions contemplated by the terms  
188 contained herein.  
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190 19. Whenever possible, each provision and term of this Agreement shall be interpreted  
191 in a manner to be effective and valid, but if any provision or term of this Agreement is adjudged  
192 by a court of competent jurisdiction to be prohibited or invalid, then such provision or term will be  
193 ineffective only to the extent of such prohibition or invalidity and without invalidating or affecting



194 in any manner whatsoever the remainder of such provision or term or the remaining provisions or  
195 terms of this Agreement.  
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197 20. This Agreement, and all the terms and conditions contained herein, shall not be  
198 construed or enforced in favor of or against any Party hereto by reason of the fact that Party or that  
199 Party's agent or attorney drafted all or any part of this Agreement. Unless otherwise expressly  
200 provided, the words "hereof", "herein" and "hereunder" and similar references refer to this  
201 Agreement in its entirety and not to any specific section or subsection hereof, the words  
202 "including" or "includes" do not limit the preceding words or terms and the word "or" is used  
203 in the inclusive sense. As used herein, any reference to the masculine, feminine or neuter gender  
204 shall include all genders, the plural shall include the singular, and the singular shall include the  
205 plural.  
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207 21. It is understood and agreed by the execution of this Agreement that the City does  
208 not waive any rights of governmental immunity which it may have in any damage suits against it,  
209 and that the City reserves the right to plead governmental immunity in such suit in law or in equity  
210 or such pleading as is appropriate notwithstanding the execution of this Agreement.  
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212 22. Owner shall indemnify, defend and save harmless the City and its officers,  
213 employees and agents from and against any suits, actions, legal or administrative proceedings,  
214 demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including  
215 interest and attorneys' fees, in any way connected with any injury to any person or damage to any  
216 property or any loss to the City or third parties.  
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218 23. This Agreement shall be governed by the Maryland law and any actions between  
219 the Parties hereto shall be brought in and vest jurisdiction and venue solely in the Circuit Court for  
220 Wicomico County.  
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222 24. **Each of the Parties hereby expressly waive trial by jury in any action,**  
223 **proceeding or counterclaim brought by any Party hereto against any other Party on any**  
224 **matter whatsoever arising out of or in any way connected with this Agreement, the**  
225 **relationship of the Parties to one another and/or any claim, injury or damage arising from or**  
226 **consequent upon this Agreement.**  
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228 25. Each Party represents and warrants to the other Party that: **(i)** it has the full right,  
229 power and authority to execute this Agreement; **(ii)** the execution and delivery of this Agreement  
230 and the performance of its obligations hereunder are not prohibited by or in breach of, and the  
231 provisions hereof do not conflict with, any other agreement, mortgage, contract or other instrument  
232 or document to which it is a party or by which it is otherwise bound; and, **(iii)** there are no legal  
233 requirements imposed upon it which prohibit or limit the execution and delivery of this Agreement  
234 and the performance of its obligations hereunder.  
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236 **IN WITNESS WHEREOF**, the City has caused this Agreement to be signed in its name by the  
237 Mayor of the City of Salisbury, to be attested to by the City Clerk, and to have the City Seal affixed  
238 hereto; and the Owner has caused this Agreement to be signed in its name by its Authorized Agent,  
239 duly attested.  
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ATTEST:

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OWNER:

\_\_\_\_\_ (Seal)

By: \_\_\_\_\_  
Authorized Agent

ATTEST:

CITY OF SALISBURY, MARYLAND

\_\_\_\_\_

\_\_\_\_\_ (Seal)

Jacob R. Day  
MAYOR, City of Salisbury



**To:** All Council Members  
**From:** Nathaniel Sansom, Special Assistant to the Mayor  
**Subject:** PILOT- Payment In Lieu of Taxes  
**Date:** October 13, 2021

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Included below is a proposal pertaining to the establishment of a Payment in Lieu of Taxes (PILOT) program for affordable housing; this is one of the central pillars of Mayor Day's *Here is Home* initiative announced on September 29<sup>th</sup>.

### **State Law**

PILOT programs exist throughout the State of Maryland; while many are created at the county level, § 7-501 of the Maryland Tax-Property Article<sup>1</sup> vests municipal governments in all counties other than Worcester County with the authority to “authorize, by law, an exemption from county or municipal corporation property tax” for eligible property, in accordance with § 6-102(e) of the Maryland Tax-Property Article, which pertains to tax on leasehold interests<sup>2</sup>.

The Tax-Property Article also provides for County exemptions for low income family housing in accordance with § 7-503. This Section of the Article creates exemptions for affordable housing owned by nonprofit corporations and LLCs that are exempt from income tax as well as for nonprofit housing corporations, as defined in § 12-104(b) of the Housing and Community Development Article<sup>3</sup>.

In § 7-506.1, the Tax-Property Article allows for PILOTs for Governmentally subsidized housing outside of Baltimore City; this is the legal authority the City of Salisbury has used to enter into PILOT Agreements in the past.

### **What Salisbury has done**

In 2005, the Council passed **Res. 1296**<sup>4</sup> which created a policy whereby the city created the framework for PILOT programs. Eligible projects must meet the following criteria:

- They must be “located in a Department of Housing and Urban Development Qualified Census Tract”
- “Have been granted low-income housing tax credits through the State of Maryland program”
- They must also meet certain requirements relating to rental rates, which must be set for 40 years to serve individuals earning less than 50% of our area’s median income.

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<sup>1</sup> <https://law.justia.com/codes/maryland/2015/article-gtp/title-7/subtitle-5/section-7-501/>

<sup>2</sup> <https://law.justia.com/codes/maryland/2015/article-gtp/title-6/subtitle-1/section-6-102/>

<sup>3</sup> <https://law.justia.com/codes/maryland/2015/article-gtp/title-7/subtitle-5/section-7-503/>

<sup>4</sup> <https://salisbury.md/wp-content/uploads/archived/resolutions/Res1296.pdf>



## MEMORANDUM

One notable limitation of this program is its dependence upon the County as the amount land owners would pay through the PILOT was to be split between the City and the County and the program was dependent upon the County adopting a similar policy.

In 2016, the Council passed **Res. 2688**<sup>5</sup>, providing a PILOT for the development of Gatehouse market and Lofts at 401 West Main St. This was a Green Street Housing, LLC project that met PILOT requirements through participation in the Maryland Department of Housing and Community Development's Low Income Housing Tax Credit Program.

By Resolution, the City approved a PILOT agreement which provided Green Street with a reduction in "real estate taxes in the amount of \$400 per unit per year if the project continues to provide affordable housing for persons of lower income for a period of forty (40) years from the date the building is granted a certificate of occupancy"<sup>6</sup>. We modeled the enclosed Ordinance and template PILOT Agreement off of that which was used to create the Greenstreet PILOT.

### **Recommendation**

To further the objectives of the *Here is Home* comprehensive housing initiative, the Administration requests that the Council Amend Title 3 (Revenue and Finance) of the City Code, adding the proposed Chapter, 3.26, which establishes a framework authorizing the Mayor to enter into PILOT Agreements on behalf of the City that provides a reduction in real property taxes of up to \$400 per affordable housing unit per year, with the total reduction not to exceed the annual City real property tax assessment for the property. The proposed code revisions are included within the enclosed Ordinance. For reference, a copy of our revised template PILOT Agreement has also been included for your review.

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<sup>5</sup> <https://salisbury.md/wp-content/uploads/2015/12/10-24-16-Amended-Agnd-Pckt.pdf>

<sup>6</sup> <https://salisbury.md/wp-content/uploads/2015/12/10-24-16-Amended-Agnd-Pckt.pdf> pp. 75-76

Above reference links to template program agreement used in the past.