

AS AMENDED ON JULY 23, 2012

ORDINANCE NO. 2211

AN ORDINANCE ~~of the Mayor and City Council~~ of the City of Salisbury, Maryland, to repeal and reenact Chapter 2.04 – Ethics to comply with Maryland Code requirements for Ethics Legislation relating to the Ethics Commission, Conflicts of Interest, Financial Disclosure, Lobbying, Exemptions and Modifications, and Enforcement.

WHEREAS, Maryland Law requires certain provisions in the Ethics Code of Maryland Municipalities and Counties; and

WHEREAS, the Mayor and City Council have determined that these changes can best be addressed by repeal and reenactment of Chapter 2.04 - Ethics in the City Code.

NOW, THEREFORE, be it enacted and ordained by the Council of City of the Salisbury, Maryland, IN REGULAR SESSION, that Chapter 2.04 be repealed and reenacted as follows:

CHAPTER 2.04

ETHICS

Section 1. Short Title.

This chapter may be cited as the City of Salisbury Public Ethics Ordinance.

Section 2. Applicability.

The provisions of this chapter apply to all City elected officials, employees, and appointees, boards and commissions of the City.

Section 3. Ethics Commission.

(a) There is a City Ethics Commission that consists of five (5) members appointed by the Mayor with the advice and consent of the City Council.

(b) The Commission shall:

(1) Devise, receive and maintain all forms required by this chapter;

(2) Develop procedures and policies for advisory opinion requests and provide published advisory opinions to persons subject to this chapter regarding the applicability of the provisions of this chapter to them;

(3) Develop procedures and policies for processing of complaints to make appropriate determinations regarding complaints filed by any person alleging violations of this chapter; and

(4) Conduct a public information program regarding the purposes and application of this chapter

(c) The City Attorney shall advise the Commission.

(d) The Commission shall certify to the State Ethics Commission on or before October 1 of each year that the City is in compliance with the requirements of *State Government Article*, Title 15, Subtitle 8, Annotated Code of Maryland for elected local officials.

(e) The Commission shall determine if changes to this chapter are required to be in compliance with the requirements of *State Government Article*, Title 15, Subtitle 8, Annotated Code of Maryland, and shall forward any recommended changes and amendments to the City Council for enactment.

(f) The Commission may adopt other policies and procedures to assist in the implementation of the Commission programs established in this chapter.

Section 4. Conflicts of Interest.

(a) In this section, "qualified relative" means a spouse, parent, child or sibling.

(b) All City elected officials, officials appointed to City boards and commissions subject to this chapter and employees are subject to this section.

(c) Participation prohibitions. Except as permitted by the Commission regulation or opinion, an official or employee may not participate in:

(1) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, or a qualified relative of the official or employee has an interest.

(2) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter, in which any of the following is a party:

(i) A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

(ii) A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner or employee;

(iii) A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment;

(iv) If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

(v) An entity, doing business with the City, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interest; or

(vi) A business entity that:

(A) The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

(B) As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(3) A person who is disqualified from participating under paragraphs 1 or 2 of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

(i) The disqualification leaves a body with less than a quorum capable of acting;

(ii) The disqualified official or employee is required by law to act; or

(iii) The disqualified official or employee is the only person authorized to act.

(4) The prohibitions of paragraph 1 and 2 of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(d) Employment and financial interest restrictions.

(1) Except as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(i) Be employed by or have a financial interest in any entity:

(A) Subject to the authority of the official or employee of the City, agency, board, commission with which the official or employee is affiliated; or

(B) That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

(2) This prohibition does not apply to:

(i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;

(ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publically disclosed to the appointing authority and the Commission;

(iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Commission; or

(iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(e) Post-employment limitations and restrictions:

(1) A former official or employee may not assist or represent any party other than the City for compensation in a case, contract, or other specific matter involving the City if that matter is one in which the former official or employee significantly participated as an official or employee.

(2) Until the conclusion of one year after the elected official leaves office, a former member of the City Council or a former Mayor may not assist or represent another party for compensation in a matter involving the City that is subject to legislative action before the Mayor and City Council.

(f) Contingent compensation. Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the City.

(g) Use of prestige of office.

(1) An official or employee may not intentionally use the prestige of the office or public position for the private gain of that official or employee or the private gain of another.

(2) This subsection does not prohibit performance of usual and customary constituent services by an elected local official without additional compensation.

(h) Solicitation and acceptance of gifts.

(1) An official or employee may not solicit any gift.

(2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:

(i) Is doing business with or seeking to do business with the City office, agency, board, or commission with which the official or employee is affiliated;

(ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;

(iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or

(iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.

(4) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:

(i) Meals and beverages consumed in the presence of the donor or sponsoring entity;

(ii) Ceremonial gifts or awards that have insignificant monetary value;

(iii) Unsolicited gifts of nominal value that do not exceed \$20.00 in cost or trivial items of informational value;

(iv) Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;

(v) Gifts of tickets or free admission extended to an elected local official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;

(vi) A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the City and that the gift is purely personal and private in nature;

(vii) Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or

(viii) Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is not related in any way to the official's or employee's official position.

(5) The exceptions set forth in paragraph (4) shall not apply to a gift:

(i) That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;

(ii) Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or

(iii) Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.

(i) Disclosure of confidential information. Other than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

(j) Participation in procurement.

(1) An individual, or a person that employs an individual who assists a City agency in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement may not submit a bid or proposal for that procurement, or assist or represent another person, directly or indirectly, who is submitting a bid for proposal for the procurement.

(2) The Commission may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.

Section 5. Financial disclosure – local elected officials and candidates to be local elected officials.

(a) (1) This section applies to all local elected officials and candidates to be local elected officials.

(2) Except as provided in subsection (b) of this section, a local elected official or a candidate to be a local elected official shall file the financial disclosure statement required under this section:

(i) On a form provided by the Commission;

(ii) Under oath or affirmation; and

(iii) With the Commission

(3) Deadlines for filing statements.

(i) An incumbent local elected official shall file a financial disclosure statement annually no later than April 30th of each year for the preceding calendar year.

(ii) An individual who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement, shall file a statement for the preceding calendar year within thirty (30) days after appointment.

(iii) (A) An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within sixty (60) days after leaving the office.

(B) The statement shall cover:

1. The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

2. The portion of the current calendar year during which the individual held the office.

(b) Candidates to be local elected officials.

(1) Except for an official who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be an elected local official shall file a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

(2) A candidate to be an elected local official shall file a statement required under this section:

(A) In the year the certificate is filed, no later than the filing of the certificate of candidacy;

(B) In the year of the election, on or before the earlier of April 30 or the last day for the withdrawal of candidacy; and

(C) In all other years for which a statement is required, on or before April 30.

(3) A candidate to be an elected official:

(A) May file the statement required under §5(b)(2)(A) of this chapter with the City Clerk or Board of Election Supervisors with the certificate of candidacy or with the Commission prior to filing the certificate of candidacy; and

(B) Shall file the statements required under §5(b)(2)(B) and (C) with the Commission.

(4) If a candidate fails to file a statement required by this section after written notice is provided by the City Clerk or Board of Election Supervisors at least twenty (20) days before the last day for the withdrawal of candidacy, the candidate is deemed to have withdrawn the candidacy.

(5) The City Clerk or Board of Election Supervisors may not accept any certificate of candidacy unless a statement has been filed in proper form.

(6) Within thirty (30) days of the receipt of a statement required under this section, the City Clerk or Board of Election Supervisors shall forward the statement to the Commission or the office designated by the Commission.

(e) Public record.

(1) The City Clerk shall maintain all financial disclosure statements filed under this section.

(2) Financial disclosure statements shall be made available during normal office hours for examination and copying by the public subject to reasonable fees and administrative procedures established by the Commission.

(3) If an individual examines or copies a financial disclosure statement, the City Clerk shall record:

(i) The name and home address of the individual reviewing or copying the statement; and

(ii) The name of the person whose financial disclosure statement was examined or copied.

(4) Upon request by the official or employee whose financial disclosure statement was examined or copied, the Commission or the office designated by the City Clerk shall provide the official with a copy of the name and address of the person who reviewed the official's financial disclosure statement.

(f) Retention requirements. The Commission or the office designated by the City Clerk shall retain financial disclosure statements for four (4) years from the date of receipt.

(g) Contents of statement.

(1) Interests in real property.

(i) A statement filed under this section shall include a schedule of all interests in real property wherever located.

(ii) For each interest in real property, the schedule shall include:

(A) The nature of the property and the location by street address, mailing address, or legal description of the property;

(B) The nature and extent of the interest held, including any conditions and encumbrances on interest;

(C) The date when, the manner in which, and the identity of the person from whom the interest was acquired;

(D) The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

(E) If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

(F) The identity of any other person with an interest in the property.

(2) Interests in corporations and partnerships.

(i) A statement filed under this section shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the City.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the corporation, partnership, limited liability partnership or limited liability corporation.

(B) The nature and amount of the interest held, including any conditions and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person or legal entity from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired, other than by purchase, the fair market value of the interest at the time acquired.

(iii) An individual may satisfy the requirement to report the amount of the interest held under item (B)(ii) of this paragraph by reporting, instead of a dollar amount:

(A) For an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or

(B) For an equity interest in a partnership, the percentage of equity interest held.

(3) Interests in business entities doing business with City.

(i) A statement filed under this section shall include a schedule of all interests in any business entity that does business with the City, other than interests reported under paragraph (2) of this subsection.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The nature and amount of the interest held, including any conditions to and encumbrances in the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received in exchange for the interest and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired, other than by purchase, the fair market value of the interest at the time acquired.

(4) Gifts.

(i) A statement filed under this section shall include a schedule of each gift in excess of \$20.00 in value or a series of gifts totaling \$100.00 or more received during the reporting period from or on behalf of, directly or indirectly, any one person or legal entity who does business with or is regulated by the City.

(ii) For each gift reported, the schedule shall include:

(A) A description of the nature and value of the gift; and

(B) The identity of the person or legal entity from whom, or on behalf of whom, directly or indirectly, the gift was received.

(5) Employment with or interests in entities doing business with City.

(i) A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the City.

(ii) For each position reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The title and nature of the office, directorship, or salaried employment held and the date it commenced; and

(C) The name of each City agency with which the entity is involved.

(6) Indebtedness to entities doing business with City.

(i) A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons or legal entities doing business with the City owed at any time during the reporting period;

(A) By the individual; or

(B) By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.

(ii) For each liability reported under this paragraph, the schedule shall include:

(A) The identity of the person or legal entity to whom the liability was owed and the date the liability was incurred;

(B) The amount of the liability owed as of the end of the reporting period;

(C) The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

(D) The security given, if any, for the liability.

(7) A statement filed under this section shall include a schedule of the immediate family members of the individual employed by the City in any capacity at any time during the reporting period.

(8) Sources of earned income.

(i) A statement filed under this section shall include a schedule of the name and address of each place of employment and of each business entity of which the individual or member of the individual's immediate family was a sole or partial owner and from which the individual or member of the individual's immediate family received earned income, at any time during the reporting period.

(ii) A minor child's employment or business ownership need not be disclosed if the agency that employs the individual does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.

(9) A statement filed under this section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.

(h) For the purposes of §5(g)(1),(2) and (3) of this chapter, the following interests are considered to be the interests of the individual making the statement:

(1) An interest held by a member of the individual's immediate family, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual.

(2) An interest held by a business entity in which the individual held a thirty percent (30%) or greater interest at any time during the reporting period.

(3) An interest held by a trust or an estate in which, at any time during the reporting period:

- (i) The individual held a reversionary interest or was a beneficiary, or
- (ii) If a revocable trust, the individual was a settler;

(i) (1) The Commission shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

(2) The City Ethics Commission may take appropriate enforcement action to ensure compliance with this section.

Section 6. Financial disclosure – employees and appointed officials.

(a) This section only applies to the following appointed officials and employees:

City Administrator – Assistant City Administrator

City Clerk – Assistant City Clerk

City Solicitor – Assistant City Solicitor

Department Directors - Assistant Department Directors

Members of Quasi-Judicial Boards and Commissions including, but not limited

to:

Members of Board of Zoning Appeals

Members of Housing Board of Adjustment and Appeals

Members of Building Board of Adjustment and Appeals

Members of the Planning and Zoning Commission appointed by the City

Members of the Ethics Commission

Members of the Historic District Commission

(b) A statement filed under this section shall be filed with the Commission under oath or affirmation.

(c) On or before April 30 of each year during which an official or employee holds office, an official or employee shall file a statement disclosing gifts received during the preceding calendar year from any person that contracts or is regulated by the City including the name of the donor of the gift and the approximate retail value at the time of receipt.

(d) An official or employee shall disclose employment and interests that raise conflicts of interest or potential conflicts of interest in connection with a specific proposed action by the employee or official sufficiently in advance of the action to provide adequate disclosure to the public.

(e) The Commission shall maintain all disclosure statements filed under this section as public records available for public inspection and copying as provided in §5(e) and (f) of this chapter.

Section 7. Lobbying.

(a) A person shall file a lobbying registration statement with the Commission if the person:

(1) Personally appears before the City official or employee with the intent to influence that person in performance of the official duties of the official or employee; and

(2) In connection with the intent to influence expends or reasonably expects to expend in a given calendar year excess of \$100.00 on food, entertainment or other gifts for officials or employees of City.

(b) A person shall file registration statement required under this section on or before the latter of January 15 of the calendar year or within five (5) days after first performing an act that requires registration in the calendar year.

(c) (1) The registration statement shall identify:

(i) The registrant;

(ii) Any other person on whose behalf the registrant acts; and

(iii) The subject matter on which the registrant purposes to make appearances specified in subsection (a) of this section.

(2) The registration statement shall cover a defined registration period not to exceed one calendar year.

(d) Within thirty (30) days after the end of any calendar year during which a person was registered under this section, the person shall file a report with the Commission disclosing:

(1) The value, date, and nature of any food, entertainment or other gift provided to a City official or employee; and

(2) If a gift or series of gifts to a single official or employee exceeds \$100.00 in value, the identity of the official or employee.

(e) The Commission shall maintain the registrations and reports filed under this section as public records available for public inspection and copying for four years after receipt by the Commission.

Section 8. Exemptions and modifications.

The Commission may grant exemptions and modifications to the provisions of Sections 4 and 6 of this chapter to employees and to appointed members of the City Boards and Commissions, when the Commission finds that an exemption or modification would not be contrary to the purposes of this chapter, and the application of this chapter would:

(a) Constitute an unreasonable invasion of privacy; and

(b) Significantly reduce the availability of qualified persons for public service.

Section 9. Enforcement.

(a) The Commission may:

(1) Assess a late fee of \$20.00 per day for five (5) days and \$10.00 for each subsequent day up to a maximum of \$250.00 for failure to timely file a financial disclosure statement required under Sections 6 and 7 of this chapter;

(2) Assess a late fee of \$20.00 per day for five (5) days and \$10.00 for each subsequent day up to a maximum of \$250.00 for failure to file a timely lobbyist registration or lobbyist report required under Section 8 of this chapter; and

(3) Issue a cease and desist order against any person found to be in violation of this chapter.

(b) (1) Upon a finding of a violation of any provision of this chapter, the Commission may:

(i) Issue an order of compliance directing the respondent to cease and desist from the violation;

(ii) Issue a reprimand; or

(iii) Recommend to the appropriate authority other appropriate discipline of the respondent, including censure or removal if that discipline is authorized by law.

(2) If the Commission finds that a respondent has violated Section 7 of this chapter, the Commission may:

(i) Require a respondent who is a registered lobbyist to file any additional reports or information that reasonably related to the information that is required under Section 7 of this chapter.

(ii) Impose a fine not exceeding \$500.00 for each violation; and

(iii) Suspend the registration of an individual registered lobbyist if the Commission finds that the lobbyist knowingly and willfully violated Section 7 of this chapter or has been convicted of a criminal offense arising from lobbying activities.

(c) (1) Upon request of the Commission, the City Attorney may file a petition for injunctive or other relief in the Circuit Court for Wicomico County, or in any other court having proper venue for the purpose of requiring compliance with the provisions of this chapter.

(2) (i) The court may:

(A) Issue an order to cease and desist from the violation;

(B) Except as provided in subparagraph (ii) of this paragraph, void an official action taken by an official or employee with a conflict of interest prohibited by this chapter when the action arises from or concerns the subject matter of the conflict and if the legal action is brought within ninety (90) days of the occurrence of the official action, if the court deems voiding the action to be in the best interest of the public; or

(C) Impose a fine of up to \$500.00 for any violation of the provisions of this chapter, with each day upon which the violation occurs constituting a separate offense;

(ii) A court may not void any official action appropriating public funds, levying taxes, or providing for issuance of bonds, notes, or other evidences of public obligations.

(d) In addition to any other enforcement provisions in this chapter, a person who the Commission or a court finds has violated this chapter:

(1) Is subject to termination or other disciplinary action; and

(2) May be suspended from receiving payment of salary or other compensation pending full compliance with the terms of an order of the Commission or a court.

(e) A City official or employee found to have violated this chapter is subject to disciplinary or other appropriate personnel action, including removal from office, disciplinary action, suspension of salary, or sanction.

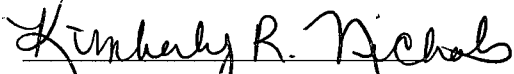
(f) Violations of Section 7 of this chapter shall be a misdemeanor subject to a fine of up to \$500.00 or imprisonment of up to one year.

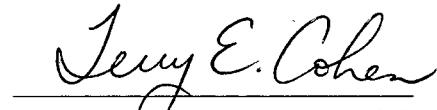
(g) A finding of a violation of this chapter by the Commission is public information.

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

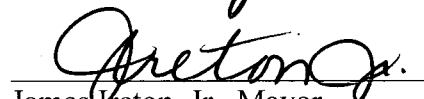
THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the 9th day of July, 2012 and thereafter, a statement of the substance of the ordinance having been published as required by law, in the meantime, was finally passed by the Council on the 23rd day of July, 2012.

ATTEST:


Kimberly R. Nichols, City Clerk


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

Approved by me, this 26th
day of July, 2012.


James Preton, Jr., Mayor
of the City of Salisbury